



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION I
5 POST OFFICE SQUARE, 8th FLOOR
BOSTON, MASSACHUSETTS 02109-3921

December 1, 2017

President Helen G. Drinan
Simmons College
drinan@simmons.edu

Re: Complaint No. 01-16-2066
Simmons College

Dear President Drinan:

This letter is to advise you of the outcome of the complaint that the U.S. Department of Education (Department), Office for Civil Rights (OCR) received against Simmons College (the College). The Complainant alleged that the College failed to respond promptly and equitably to her complaints beginning in XXXXX that she was XXXXX by another student (the Respondent). The Complainant further alleged that on various occasions throughout the XXXXX, the College's Deputy Title IX Coordinator¹ and Title IX Coordinator² refused to consider her complaints under the College's "Gender-Based Misconduct Policy for Students, Faculty and Staff, and Visitors" (the Gender-Based Misconduct Policy).

As explained below, before OCR completed its investigation, the College expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement. The following is a discussion of the relevant legal standards and information obtained by OCR during the investigation that informed the development of the Resolution Agreement.

OCR enforces Title IX of the Education Amendments of 1972 (Title IX) and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any program or activity receiving Federal financial assistance from the Department. The College is subject to Title IX because it is a recipient of Federal financial assistance from the Department.

Legal Standards

Title IX and its implementing regulations prohibit discrimination on the basis of sex in federally assisted education programs and activities. Title IX's implementing regulations generally require a school to ensure that a student is not denied or limited in the ability to participate in or

¹ The defined term "Deputy Title IX Coordinator" refers to the employee designated by the College as its Deputy Title IX Coordinator during the time that the Complainant reported her Title IX complaints to the College. During the course of OCR's investigation, OCR learned that the College designated two new Deputy Title IX Coordinators at the start of the 2017-2018 academic year.

² The defined term "Title IX Coordinator" refers to the employee designated by the College as its Title IX Coordinator during the time that the Complainant reported her Title IX complaints to the College. During the course of OCR's investigation, OCR learned that the College designated a new Title IX Coordinator in XXXX 2016.

benefit from the school’s program on the basis of sex. The regulations also specify that, if a recipient discriminates on the basis of sex, the school must take remedial action to overcome the effects of the discrimination. In addition, the regulations establish procedural requirements that are important for the prevention or correction of sex discrimination, including sexual harassment. These requirements include the adoption and publication of grievance procedures providing for prompt and equitable resolution of complaints of sex discrimination. The regulations also require that recipients designate at least one employee to coordinate compliance with the regulations, including coordination of investigations of complaints alleging noncompliance. The rights established under Title IX must be interpreted consistent with any federally guaranteed due process rights involved in a complaint proceeding.

Summary of Preliminary Investigation

OCR investigated (1) whether the College failed to provide a prompt and equitable response to the Complainant’s reports that she had been subjected to sexual harassment, including stalking, and if so, whether the College perpetuated a sexually hostile environment for the Complainant, in violation of 34 C.F.R. §§ 106.8(b), 106.31(a) and (b); and (2) whether the College failed to designate a Title IX coordinator to coordinate its efforts to comply with and carry out its responsibilities under Title IX, including an investigation of the Complainant’s Title IX complaint communicated to the College, in violation of 34 C.F.R. § 106.8(a).

During its preliminary investigation, OCR reviewed documents provided by the Complainant and the College; interviewed the Complainant, College employees, and third parties; and conducted site visits on April 28, 2017 and May 25, 2017.

Background

During the XXXXX and XXXXX academic years, the Complainant and the Respondent were undergraduate students at the College. The College’s Title IX grievance procedure was and still is entitled the “Gender-Based Misconduct Policy for Students, Faculty and Staff, and Visitors” (the Gender-Based Misconduct Policy).

At the time that the Complainant brought her Title IX concerns to the College – both in XXXXXXXX and XXXXXXXX – the College had designated and trained a Title IX team. OCR’s investigation indicated that the College conducted extensive Title IX training with its students, employees, and Title IX team.

The College’s Response to the Complainant’s Complaints in XXXXXX

OCR determined that in XXXXXX, the Complainant reported her concerns about her interactions with the Respondent to the Associate Dean of Students at the time³ and the Violence Prevention and Educational Outreach Coordinator. While there is some dispute about what

³ The defined term “Associate Dean of Students” refers to the employee designated by the College as its Associate Dean of Students during the time that the Complainant reported her Title IX complaints to the College. During the course of OCR’s investigation, OCR learned that the Associate Dean of Students is now the College’s Dean of Students.

information the Complainant initially disclosed, the Complainant, the Associate Dean of Students, and the Violence Prevention and Educational Outreach Coordinator all stated that the Complainant told them that the Respondent said XXXXXXXXXXXXXXXXXXXXXXXXXXXX [REMAINDER OF SENTENCE OMITTED].

Based on the information provided to OCR, the Associate Dean of Students and the Violence Prevention and Educational Outreach Coordinator sought the Deputy Title IX Coordinator’s approval to conduct a mediation between the Complainant and the Respondent to XXXXXXXXXXXXXXXXXXXXXXXXXXXX [REMAINDER OF SENTENCE OMITTED]. XXXXXXXXXXXXXXXXXXXXXXXXXXXX confirmed to OCR that the mediation XXXXXXXXXXXXXXXXXXXXXXXXXXXX [REMAINDER OF SENTENCE OMITTED]. The mediation ended with XXXXXXXXXXXXXXXXXXXXXXXXXXXX [REMAINDER OF SENTENCE OMITTED]. Based on interviews, OCR determined that during or immediately after the XXXXXX mediation, the Associate Dean of Students and Violence Prevention and Educational Outreach Coordinator were aware that the behavior the Complainant was describing could be considered sexual harassment and stalking. The College, however, did not appear to initiate a Title IX investigation.

Pursuant to the Gender-Based Misconduct Policy in place at the time, a member of the Title IX team would memorialize a complainant’s written report and forward it to the Title IX Coordinator or Deputy Title IX Coordinator for further review and action. The member of the Title IX team would also provide the complainant and the respondent a copy of the Gender-Based Misconduct Policy, a summary of available resources, and an outline of rights. It does not appear that these steps were taken in the Complainant’s case. OCR would have to do further investigation to determine whether the Title IX Team believed that these steps were not necessary because the mediation between the Complainant and the Respondent had ended with XXXXXXXXXXXXXXXXXXXXXXXXXXXX [REMAINDER OF SENTENCE OMITTED]. Regardless, it does not appear that the College took any further action related to the Complainant’s case in XXXXXX.

OCR is concerned that the College failed to recognize the Complainant’s XXXXXX complaint as a sexual harassment complaint under Title IX, rather than as a XXXXXX conflict. OCR is further concerned that once the College became aware that the Respondent’s behavior towards the Complainant was based on the Respondent’s intimate feelings towards the Complainant, the College did not inform the Complainant of her rights under the College’s Gender-Based Misconduct Policy. In order to make a determination on this aspect of the case, OCR would need to XXXXX its interview with the Deputy Title IX Coordinator at the time and interview the Title IX Coordinator at the time to determine why they did not take any further actions related to the Complainant’s case in XXXXXX.⁴

The College’s Response to the Complainant’s Complaints in XXXXXX

⁴ As noted above, the defined term “Deputy Title IX Coordinator” and “Title IX Coordinator” refer to the employees designated by the College to these positions during the time that the Complainant reported her Title IX complaints to the College.

OCR determined that in XXXXXX the Complainant again reported her ongoing concerns about the Respondent’s behavior to the College. In addition to reaching out to the Associate Dean of Students and the Violence Prevention and Educational Outreach Coordinator, the Complainant also raised her concerns to the Deputy Title IX Coordinator and the Title IX Coordinator directly. The Complainant was concerned about the Respondent’s XXXXXXXXXXXX and was worried that the Respondent’s XXXXXX towards her XXXXXXXXXXXX.

A. The Deputy Title IX Coordinator’s Response

OCR determined that in XXXXXX, the Complainant emailed the Deputy Title IX Coordinator to set up a meeting to discuss how her situation with the Respondent “might be a Title IX issue.” XXXXXX, the Complainant met with the Deputy Title IX Coordinator and the Associate Dean of Students. During this meeting, the Complainant expressed her frustration over the Title IX process and argued that the College’s inaction was creating a hostile environment for her because she did not feel safe on campus. The Complainant asked whether the College’s Gender-Based Misconduct Policy was being used to investigate her complaint. According to the Complainant, the Deputy Title IX Coordinator responded that the Respondent’s XXXXXXXXXXXXXXXX. The Complainant further stated that during another meeting in XXXXXX, the Deputy Title IX Coordinator informed the Complainant that her case was “not a Title IX proceeding.” OCR has not yet obtained the Deputy Title IX Coordinator’s response regarding these alleged statements.

Pursuant to the Gender-Based Misconduct Policy in place at the time, upon receipt of a complaint, the College’s Title IX Coordinator or Deputy Title IX Coordinator would assign a member of the Title IX team to make an initial assessment. This initial assessment would consider the nature of the report, the safety of the complainant and the campus community, and the complainant’s expressed preference for resolution. Upon the completion of the initial assessment, the investigator would share the details of the case with the College’s Title IX Coordinator or Deputy Title IX Coordinator and the Coordinator(s) would determine whether there was sufficient information to proceed with an investigation.

OCR is concerned that the Deputy Title IX Coordinator made the determination that the Complainant’s allegations did not constitute a Title IX issue without conducting an initial assessment as required by the College’s Gender-Based Misconduct Policy. In order to make a determination on this aspect of the case, OCR would need to XXXXXX its interview with the College’s Deputy Title IX Coordinator at the time and interview the College’s Title IX Coordinator at the time to determine what initial assessment, if any, was conducted and by whom.

B. The Title IX Coordinator’s Response

OCR determined that in XXXXXX, the Complainant emailed the Title IX Coordinator with the subject line “Title IX Inquiry”. In XXXXXX, the Complainant met with the Title IX Coordinator. The Complainant explained that during this meeting, the Title IX Coordinator suggested that the Respondent’s XXXXXXXXXXXXXXXX, but that she would engage in a fact-finding mission to determine what occurred. Following this meeting, the Complainant requested an update from the Title IX Coordinator, but received no response.

OCR determined that in XXXXXX, the Complainant again reached out to the Title IX Coordinator. The Title IX Coordinator responded that she had looked into how the Respondent’s actions towards the Complainant were handled by the College in XXXXXX. The Title IX Coordinator explained that she believed the resolution was an agreement to mediate, which led to XXXXXXXXXXXXXXX. The Title IX Coordinator also requested to meet with the Complainant to discuss “the steps that were taken to end, remedy, and prevent the recurrence” of the Respondent’s behavior and how the College “could have handled some elements of this better for you.” According to the Complainant, XXXXXX, the Title IX Coordinator stopped the Complainant in a busy area to discuss her complaint. During this conversation, the Title IX Coordinator explained that the Respondent’s behavior XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX [REMAINDER OF SENTENCE OMITTED].

OCR further determined that XXXXXX, the Title IX Coordinator emailed the Complainant with a summary of the events related to her complaint. The Title IX Coordinator’s summary explained that “interim measures were put into place to support, stop the behavior and prevent recurrence” after the mediation in XXXXXX and that a no-contact order was put in place when XXXXXXXXXXXXXXX. The Complainant disagreed with the Title IX Coordinator’s summary and explained to OCR that the mediation went XXXXXX and interim measures were not put in writing.

The Complainant’s emails and meetings with the Title IX Coordinator in XXXXXX and XXXXXX appear to be additional instances where the Complainant had placed the College on notice of her Title IX allegations. It appears that the Title IX Coordinator sought information about the Complainant’s case from the Deputy Title IX Coordinator. Based on interviews with the XXXXXXXXXXXXXXXXXXXXXXX, the Title IX Coordinator did not reach out to XXXXXXXXXXXXXXX directly, despite XXXXXX knowledge of the case and their involvement with the Complainant and the Respondent.

The Title IX Coordinator’s apparent failure to remain apprised of the Complainant’s case and the members of the Title IX Team working with the Complainant and the Respondent is reflected in the incomplete summary she provided to the Complainant in XXXXXX. For example, the Title IX Coordinator was correct in stating that “[t]hrough mediation, which both [the Complainant] and [the Respondent] were amenable to, interim measures were put into place.” However, these interim measures and the Respondent’s XXXXXXXXXXXXXXXXXXXXXXX did not “stop the behavior and prevent recurrence,” as the Title IX Coordinator explained in her email. Rather, the Respondent XXXXXXXXXXXXXXXXXXXXXXX and in XXXXXX the Complainant was concerned that the Respondent had been XXXXXXXXXXXXXXXXXXXXXXX. In addition, the Title IX Coordinator was correct that the Complainant had requested a no-contact order, but the Title IX Coordinator’s email did not clarify, or she may not have understood, that the original no-contact order that was drafted and given to the Respondent was subsequently rescinded and orally revised by the Deputy Title IX Coordinator without alerting the Complainant, as discussed in more detail below.

OCR is concerned about the Title IX Coordinator’s incomplete summary and apparent sole reliance on the Deputy Title IX Coordinator for information about the Complainant’s case.

These actions suggest that the Title IX Coordinator may have failed to coordinate the College’s efforts to comply with and carry out its Title IX responsibilities to the Complainant. In order to make a determination on this aspect of the case, OCR would need to interview the College’s Title IX Coordinator at the time to determine her level of oversight over the College’s Title IX process as it applied to student complaints and the steps she took to apprise herself of the issues and investigation undertaken by the Title IX Team in the Complainant’s case.

The Complainant’s No-Contact Order

OCR determined that in XXXXXX, the Associate Dean of Students accompanied the Complainant to Public Safety to obtain a no-contact order. At this meeting, Public Safety did not provide the Complainant a no-contact order. The College admitted in its narrative response to OCR that this response was XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX [REMAINDER OF SENTENCE OMITTED].

OCR further determined that following that first meeting with Public Safety, the Associate Dean of Students spoke with Public Safety and notified the Deputy Title IX Coordinator that she thought a no-contact order between the Complainant and the Respondent was appropriate. The Complainant and other students then met with the Associate Dean of Students, the Violence Prevention and Educational Outreach Coordinator, and Public Safety on XXXXXX to draft no-contact orders XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX [REMAINDER OF SENTENCE OMITTED]. According to XXXXXX OCR interviewed with knowledge of the no-contact orders, the students and Public Safety discussed XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX [REMAINDER OF SENTENCE OMITTED]. According to the XXXXXX, the Complainant’s no-contact order was driven by the Respondent’s XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX behavior towards the Complainant and ensured that the Respondent would not be allowed to XXXXXXXXXXXXXXXXXXXXXXX.

OCR determined that once the College finalized the no-contact orders, the Respondent met with Public Safety and the Associate Dean of Students on XXXXXX. According to the XXXXXX, during this meeting, XX allowed the Respondent to read the no-contact orders and asked if the Respondent understood the parameters, and the Respondent expressed concern about how to remain involved in organizations on campus. When the Respondent left the meeting, the Respondent forgot to take copies of the no-contact orders. However, the Associate Dean of Students set up a follow-up meeting with the Respondent during which the Associate Dean of Students planned to discuss how the Respondent could be XXXXXXXXXXXXXXXXXXXXXXX [REMAINDER OF SENTENCE OMITTED].

OCR determined that on XXXXXX that the Respondent met with Public Safety and the Associate Dean of Students, the Respondent’s parents emailed the Deputy Title IX Coordinator and argued that the no-contact orders were effectively “restraining orders . . . prohibiting them from the rights of all students” because XXXXXXXXXXXXXXXXXXXXXXX [REMAINDER OF SENTENCE OMITTED]. The Respondent’s parents also requested a meeting with the Deputy Title IX Coordinator and wanted the College’s President to participate in that meeting. The Respondent’s parents forwarded this email to the Assistant to the College’s President and spoke with the Assistant on the phone.

After this correspondence with the Respondent’s parents, the status of the no-contact orders is uncertain. The College held a meeting in XXXXXX with Public Safety, the Associate Dean of Students, the Deputy Title IX Coordinator, and the Respondent about the no-contact orders. Based on the Deputy Title IX Coordinator’s notes from this meeting, it appears, although OCR would need to confirm with further investigation, that the no-contact orders were modified to remove the prohibitions on the Respondent’s XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX [REMAINDER OF SENTENCE OMITTED]. These modifications appear to have been conveyed verbally to the Respondent, rather than through a written amendment to the no-contact orders.

OCR determined that the Complainant never received a copy of the modifications made to the no-contact order. Rather, during a XXXXXX meeting with the Deputy Title IX Coordinator, the Deputy Title IX Coordinator explained to the Complainant that the no-contact orders violated the Respondent’s rights XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX [REMAINDER OF SENTENCE OMITTED]. The Deputy Title IX Coordinator further explained that the no-contact orders would be informal, verbal orders that prohibit the Complainant and the other students from contacting the Respondent, and vice versa.

OCR further determined that in XXXXXX, the Complainant emailed the Deputy Title IX Coordinator to request a copy of her no-contact order and the Deputy Title IX Coordinator responded with terms generally applicable to no-contact orders, but not the specific terms the Complainant had drafted with Public Safety and the Associate Dean of Students in XXXXXX. The general terms prohibited XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX [REMAINDER OF SENTENCE OMITTED]. The Deputy Title IX Coordinator explained that no-contact orders could be issued verbally or in writing. The Deputy Title IX Coordinator noted that these general terms had been conveyed to the Respondent verbally.

During OCR’s investigation, the College was unable to locate the written no-contact order between the Complainant and the Respondent that the Associate Dean of Students and Public Safety delivered to the Respondent, but the College was able to locate the written no-contact orders between XXX of the other students and the Respondent. Based on the above, OCR is concerned that College does not have a system in place for requesting, delivering, maintaining, and enforcing no-contact orders between students. Specifically, Public Safety rejected the Complainant’s first request for a no-contact order, the College did not keep copies of the original written no-contact order between the Complainant and the Respondent, and the College did not provide written copies of the no-contact order or the amended no-contact order to the Complainant or to the Respondent. OCR is particularly concerned that the Deputy Title IX Coordinator appears to have amended the no-contact order verbally. The College’s verbal amendments to the no-contact order potentially created a misunderstanding between the Complainant, the Respondent, Public Safety, and the College administration about the parameters of the no-contact orders and how they were to be enforced. In order to make a determination on this aspect of the case, OCR would need to interview the College’s Deputy Title IX Coordinator at the time, the College’s President, and Public Safety officers about the College’s process for requesting, delivering, maintaining, and enforcing no-contact orders.

Conclusion

Prior to the conclusion of OCR's investigation and pursuant to Section 302 of OCR's *Case Processing Manual*, the College expressed an interest in resolving this complaint. Subsequent discussions between OCR and the College resulted in the College signing the enclosed Resolution Agreement which, when fully implemented, will resolve the issues raised in these complaints. The terms of the Resolution Agreement are aligned with the complaint allegations and are consistent with the applicable laws and regulations. OCR will monitor the College's implementation of the Resolution Agreement and continue to do so until it has determined that the College has complied with the terms of the Resolution Agreement. Failure to implement the Resolution Agreement could result in OCR reopening the complaint.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the College's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the College must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

If you have any questions, you may contact Civil Rights Attorney Amy Fabiano at (617) 289-0007 or by e-mail at Amy.Fabiano@ed.gov.

Sincerely,

/s/

Meena Morey Chandra *w/p AMM*
Acting Regional Director

Enclosure

cc: Phil Catanzano, Phil.Catanzano@hklaw.com