



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

THE WANAMAKER BUILDING, SUITE 515
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REGION III
DELAWARE
KENTUCKY
MARYLAND
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January 17, 2017

IN RESPONSE, PLEASE REFER TO: 03162082

Mr. Charles Riser, Co-Owner
The Temple Annapolis: A Paul Mitchell Partner School
2303 Forest Drive
Annapolis, MD 21401

Dear Mr. Riser:

This is to notify you of the resolution of the above-referenced complaint filed with the U.S. Department of Education (the Department), Office for Civil Rights (OCR), against the Temple Annapolis Paul Mitchell Partnership School (the School), alleging discrimination on the bases of your age, sex and race. Specifically, Ms. Nicole Paylor (the Complainant) alleged that the School discriminated against her on the bases of race, sex and age by failing to provide an appropriate response to her complaints that a course instructor (the Instructor) and her classmates had harassed her on the bases of race, sex and age.

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.
- Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin in any program or activity receiving Federal financial assistance from the Department.
- The Age Discrimination Act of 1975 (the Age Act) and its implementing regulation at 34 C.F.R. Part 110, which prohibit discrimination on the basis of age in any program or activity receiving Federal financial assistance from the Department.

As a recipient of Federal financial assistance from the Department, the School is subject to these laws and their implementing regulations.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

Legal Standards

The Title VI implementing regulation, at 34 C.F.R. §100.3(a), provides that no person shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination. Under 34 C.F.R. §100.3(b), a recipient may not, on the ground of race, color, or national origin, restrict or deny an individual any service or benefit or provide any service or benefit to an individual which is different, or is provided in a different manner from that provided to others.

Section 106.31 (a) of Title IX, in general, provides that no person shall on the basis of sex, be excluded from participation in, be denied the benefits of, any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives Federal financial assistance. The regulations implementing Title IX, at 34 C.F.R. §§ 106.8 (a) and (b) pertain, respectively, to the designation of a responsible employee and adoption of grievances. Section 106.8(a) requires the designation of at least one responsible employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX including investigating such complaints and communicating to recipients its noncompliance with Title IX. Further, section 106.8 (a) requires the recipient to notify all students of its employee's name, office address and telephone number. Section 106.8 (b) requires the recipient to adopt and publish procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any actions prohibited by Title IX and its implementing regulation. Moreover, the regulation implementing Title IX at 34 C.F.R. § 106.9(a) requires a recipient to provide notice that it does not discriminate on the basis of sex in the educational program or activity that it operates, and that the recipient is required by Title IX not to discriminate in such a manner.

Section 110.10(a) of the Age Act states, in general, that no person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. The Age Act's implementing regulations, at 34 C.F.R. §110.25 (a), (b) and (c), provide, respectively, that a recipient shall designate a responsible employee, provide notice and grievance procedures. Section 110.25(a) provides that a recipient designate at least one employee to coordinate its efforts to comply with and carry out the act and its regulations including investigation of complaints that the recipient has violated this Act. Section 110.25 (b) provides that a recipient provides notice to its beneficiaries in a continuing manner of the information regarding the Act's provisions and regulations and the identification of the responsible employee by name or title, address and telephone number. Section 110.25 (c) provides that the recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by this Act or regulations.

A recipient's failure to respond promptly and effectively to complaints of severe, pervasive or ongoing racial, sexual, and age-based harassment that it knew or should have known about, creates a hostile environment for a complainant, and is a form of discrimination prohibited by Title VI, Title IX and the Age Act. A recipient may also violate Title VI, Title IX and the Age Act if an employee engages in racial, sexual, and age-based harassment of students in the context of the employee carrying out his/her responsibility to provide benefits and services, regardless of whether the recipient had notice of the employee's behavior.

Harassing conduct may take many forms, including verbal acts and name-calling; graphic and written statements, which may include use of cell phones or the Internet; physical conduct; or other conduct

that may be physically threatening, harmful, or humiliating. Such harassment is sufficiently severe, pervasive or ongoing when the conduct interferes with or limits a student's ability to participate in or benefit from the recipient's programs, activities, or services. When such harassment is based on race, color, national origin, sex, or age, it violates Title VI, Title IX or the Age Act.

To determine whether a hostile environment exists, OCR considers the totality of the circumstances from both an objective and subjective perspective and examines the context, nature, scope, frequency, duration, and location of incidents, as well as the identity, number, and relationships of the persons involved. Harassment must consist of more than casual, isolated incidents to constitute a hostile environment.

When responding to harassment, a recipient must take immediate and appropriate action to investigate or otherwise determine what occurred. The specific steps in an investigation will vary depending upon the nature of the allegations, the source of the complaint, the age of the student or students involved, the size and administrative structure of the school, and other factors. In all cases, however, the inquiry should be prompt, thorough, and impartial. If an investigation reveals that discriminatory harassment has occurred, a recipient must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring.

Factual Background

The Complainant alleged that the School failed to respond to her complaints that she had been harassed on the bases of her age and race, and that she had been sexually harassed by the Instructor, an employee of the School. At this stage of the investigation, the School has provided its publications and procedures which reflect that its Co-Owners are the persons responsible for coordinating the School's compliance with Title VI, Title IX and the Age Act, and that the School possesses a grievance procedure which serves as an acceptable mechanism for the prompt, equitable resolution of allegations of discrimination, including harassment, on these bases. However, OCR has not interviewed School personnel whom the Complainant identified as having received her complaints or witnesses to the alleged sexual harassment on the part of the School employee identified by the Complainant. The School requested to resolve the complaint voluntarily, before OCR could verify the Complainant's description of events.

In the course of its investigation, OCR found that the School's Catalogue, which served as a student handbook, contained a non-discrimination notice that did not identify specified protected bases against unlawful discrimination. In addition, the School's website did not have a prominent or otherwise easily located non-discrimination notice. Accordingly, OCR found that the School did not possess or adequately publicize an appropriate notice of nondiscrimination, in violation of the Age Act at 34 C.F.R. Section 110.25 (b), Title IX at 34 C.F.R. at Section 106.9(a), and Title VI at 34 C.F.R. Section 100.6 (d).

In addition, OCR found that the School maintained but did not publish its grievance procedure pertaining to discrimination and harassment on the basis of sex and age. The School's procedure, which had been previously approved by OCR, was an acceptable mechanism for the prompt, equitable resolution of complaints of discrimination on the bases of sex and age, including sexual harassment, but it was not included in the School's student handbook, website or other publications. Accordingly, OCR found that the School did not adequately publicize its grievance procedures, in violation of Title IX at 34 C.F.R. at Section and 106.9 and the Age Act at 34 C.F.R. Section 110.25(c)

Conclusion

Under OCR procedures, a complaint may be resolved before the conclusion of an investigation if a recipient asks to resolve the complaint by signing a resolution agreement. The provisions of the resolution agreement must be aligned with the complaint allegations, the information obtained during the investigation, and be consistent with applicable regulations. Such a request does not constitute an admission of a violation on the part of the School, nor does it constitute a determination by OCR of any violation of our regulations.

Consistent with OCR's procedures, the School requested to resolve the complaint through a Voluntary Resolution Agreement (the Agreement). On November 9, 2016, the School signed an Agreement to address the allegations in this complaint. As is our standard practice, OCR will monitor the School's implementation of the Agreement, a copy of which is enclosed. Accordingly, OCR is concluding its investigation of the allegation as of the date of this letter.

This letter is not intended nor should it be construed to cover any other issues regarding the School's compliance with Title VI, Title IX and the Age Act, which may exist and are not discussed herein. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

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, to the extent provided by law, personal information that, if released, could constitute an unwarranted invasion of privacy.

Please be advised that Federal regulations prohibit recipients of Federal financial assistance from taking actions that intimidate, threaten, coerce, interfere, or discriminate against any individuals who exercise their statutory rights under the laws that OCR enforces, including filing a complaint with our office or taking part in the complaint resolution process.

If you have any questions, please contact Josh Galiotto, investigator, at (215) 656-8587 or by email at joshua.galiotto@ed.gov.

Sincerely,

/s/

Nancy E. Potter
Team Leader

Enclosure