



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION IV

61 FORSYTH ST., SOUTHWEST, SUITE 19T10
ATLANTA, GA 30303-8927

REGION IV
ALABAMA
FLORIDA
GEORGIA
TENNESSEE

September 22, 2015

Mr. Gary Myers
Campus President
Fortis College
200 Vulcan Way
Dothan, Alabama 36303

Re: OCR Complaint #04-14-2281

Dear Mr. Myers:

On February 18, 2014, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint filed by the Complainant on behalf of her client (Student), against Fortis College – Dothan Campus (College) alleging discrimination on the bases of race and sex. Specifically, the Complainant alleged that: (1) the College's Director of Career Services (Director) made racially inappropriate comments to the Student; (2) the Director made inappropriate sexual comments in front of the Student; and (3) the College failed to properly investigate the Student's internal grievance.

OCR is responsible for enforcing:

- Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §§ 2000d *et seq.*, and its implementing regulation, 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin by recipients of Federal financial assistance (FFA) from the Department; and
- Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681 *et seq.*, and its implementing regulation, 34 C.F.R. Part 106, which prohibit recipients of FFA from the Department from discriminating on the basis of sex in any education program or activity.

As a recipient of FFA from the Department, the College is subject to Title VI and Title IX.

Accordingly, OCR investigated the following issues:

- whether the Student was subjected to a hostile environment based on race, as a result of the Director's actions, and whether the College failed to effectively address any hostile environment that existed in noncompliance with the Title VI implementing regulation at 34 C.F.R. §100.3(a) and (b)(1)(i)-(iv); and

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

www.ed.gov

- whether the Student was subjected to a hostile environment based on sex, as a result of the Director's actions, and whether the College failed to take prompt and equitable steps to investigate and respond to the report of harassment in noncompliance with the Title IX implementing regulation at 34 C.F.R. § 106.31(a) and (b).

In reaching its determination, OCR reviewed and analyzed documents submitted by the Complainant and the College. OCR also interviewed four members of the College's faculty and staff and also interviewed the Student. The Director was not interviewed, as her employment with the College was terminated in February 2014.

OCR evaluates evidence obtained during an investigation under a preponderance of the evidence standard to determine whether the greater weight of the evidence is sufficient to support a conclusion that a recipient failed to comply with laws or regulations enforced by OCR, or whether the evidence is insufficient to support such a conclusion.

LEGAL STANDARDS

Title VI 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 any program to which Title VI applies. The regulation implementing Title VI, at 34 C.F.R. § 100.3(b)(1), states that a recipient under any program may not, directly or through contractual or other arrangements, on the grounds of race, color or national origin (i) deny an individual any service, financial aid, or other benefit provided under the program; (ii) provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program; (iii) subject an individual to segregation or separate treatment in any matter related to his/her receipt of any service, financial aid, or other benefit under the program; or (iv) restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program.

The existence of a racially hostile environment that is created, encouraged, accepted, tolerated, or left uncorrected by a recipient also constitutes different treatment on the basis of race in violation of Title VI. 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; or other conduct that may be physically threatening, harmful, or humiliating. Race-based harassment of a student creates a hostile environment if the conduct is so severe, persistent, or pervasive that it interferes with or limits a student's ability to participate in or benefit from the recipient's program.

Title IX Standards

The Title IX implementing regulation at 34 C.F.R. § 106.31(a) provides that no person shall, on

the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives FFA. The implementing regulation at 34 C.F.R. § 106.31(b)(1)-(4) and (7) states that in providing any aid, benefit, or service to a student, a recipient shall not, on the basis of sex (1) treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service; (2) provide different aid, benefits, or services or provide aid, benefits, or services in a different manner; (3) deny any person any such aid, benefit, or service; (4) subject any person to separate or different rules of behavior, sanctions, or other treatment; or (5) otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

Sexual harassment of students, including sexual violence, is a form of prohibited sex discrimination. Sexual harassment is unwelcome conduct of a sexual nature, which can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, including sexual harassment or other acts of sexual violence. Sexual harassment prohibited by Title IX can include conduct such as touching of a sexual nature; making sexual comments, jokes, or gestures; writing graffiti or displaying or distributing sexually explicit drawings, pictures, or written materials; calling students sexually charged names; spreading sexual rumors; rating students on sexual activity or performance; or circulating, showing, or creating e-mails or websites of a sexual nature. Sexual harassment of a student creates a hostile environment if the conduct is sufficiently serious that it denies or limits a student's ability to participate in or benefit from the recipient's program.

The Title IX implementing regulation at 34 C.F.R. §106.8(a) provides that each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX, including any investigation of any complaint communicated to such recipient alleging its noncompliance with Title IX or alleging any actions which would be prohibited by this part. The recipient shall notify all its students and employees of the name, office address and telephone number of the employee or employees appointed. Pursuant to 34 C.F.R. § 106.8(b), recipients must adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by Title IX.

In assessing whether a recipient's grievance procedures comply with the regulations cited above, OCR determines whether the following elements are contained in the procedures:

- (1) proper notice of the grievance procedures, including where complaints may be filed;
- (2) application of the procedure to complaints alleging discrimination carried out by employees, other students, or third parties;
- (3) adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence;

- (4) designated and reasonably prompt timeframes for the major stages of the complaint process;
- (5) notice to the parties of the outcome of the complaint; and,
- (6) an assurance that the school will take steps to prevent recurrence of any harassment and to correct discriminatory effects on the complainant and others, if appropriate.

To ensure that students and employees have a clear understanding of what constitutes sexual violence, the potential consequences for such conduct, and how the recipient processes complaints, the recipient's Title IX grievance procedures should also include the following in writing: a statement of the recipient's jurisdiction over Title IX complaints; adequate definitions of sexual assault and an explanation as to when such conduct creates a hostile environment; reporting policies and protocols, including provisions for confidential reporting; identification of the employee or employees responsible for evaluating requests for confidentiality; notice that Title IX prohibits retaliation; notice of a student's right to file a criminal complaint and a Title IX complaint simultaneously; notice of available interim measures that may be taken to protect the student in the educational setting; the evidentiary standard that must be used (preponderance of the evidence) in resolving a complaint; notice of potential remedies for students; notice of potential sanctions against perpetrators; and sources of counseling, advocacy and support.

In addition, recipients should provide training to employees about its grievance procedures and their implementation. All persons involved in implementing a recipient's grievance procedures (*e.g.*, Title IX coordinators, investigators and adjudicators) must have training or experience in handling complaints of sexual harassment, and in the recipient's grievance procedures as well as applicable confidentiality requirements. Recipients also need to ensure that their employees are trained so that they know to report sexual harassment to appropriate officials, and so that employees with the authority to address sexual harassment know how to respond properly.

Notice of Nondiscrimination Standards

The Title VI regulation at 34 C.F.R. § 100.6(d) and Title IX regulation at 34 C.F.R. § 106.9 require that recipients notify students, parents and others that they do not discriminate on the basis of race, color, national origin, and sex, respectively. The regulations contain differences relating to the required content of recipient notices of non-discrimination and the methods used to publish them.

OCR recognizes the variations among the regulations governing notice requirements and understands that schools and colleges may wish to use one statement to comply with all requirements of the regulations implementing the laws enforced by OCR. A combined non-discrimination notice should contain two basic elements: (1) a statement of non-discrimination that specifies the basis for non-discrimination; and (2) identification by name or title, address, and telephone number of the employee or employees responsible for coordinating the compliance efforts. Although the Title IX regulations state that schools and colleges, where

appropriate, shall specify non-discrimination in the areas of admission and employment, a general statement indicating non-discrimination in all programs is acceptable.

Recipient's Obligation to Respond to Harassment

A school is responsible for addressing harassment incidents about which it knows or reasonably should have known. In some situations, harassment may be in plain sight, widespread, or well-known to students and staff, such as harassment occurring in hallways, during academic or physical education classes, during extracurricular activities, at recess, on a school bus, or through graffiti in public areas. In these cases, the obvious signs of the harassment are sufficient to put the school on notice. In other situations, the school may become aware of misconduct, triggering an investigation that could lead to the discovery of additional incidents that, taken together, may constitute a hostile environment. If an employee who is acting (or who reasonably appears to be acting) in the context of carrying out responsibilities over students engages in sexual harassment and the harassment denies or limits a student's ability to participate in or benefit from a school program on the basis of sex, the recipient is responsible for the discriminatory conduct. The recipient is, therefore, also responsible for remedying any effects of the harassment on the victim, as well as for ending the harassment and preventing its recurrence. This is true whether or not the recipient has "notice" of the harassment. If an OCR complaint alleges harassment by a recipient employee, the recipient receives actual notice and an opportunity to take corrective action before a finding of noncompliance is made.

When responding to notice of possible sexual harassment, a school must take immediate and appropriate action to investigate or otherwise determine what occurred. The specific steps in a school's 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 sexual harassment created a hostile environment, the school must then take prompt and effective steps reasonably calculated to end the sexual harassment, eliminate the hostile environment, prevent its recurrence, and, as appropriate, remedy its effects.

Once a recipient has notice of a racially hostile environment, it has a legal duty to take reasonable steps to eliminate it. OCR will evaluate the appropriateness of the responsive action by examining reasonableness, timeliness, and effectiveness. The appropriate response to a racially hostile environment must be tailored to redress fully the specific problems experienced at the institution as a result of the harassment. In addition, the responsive action must be reasonably calculated to prevent recurrence and ensure that participants are not restricted in their participation or benefits as a result of a racially hostile environment created by students or non-employees.

Hostile Environment Standard

To determine whether a student has been subjected to a hostile environment in violation of Title IX, OCR examines whether sexual misconduct is sufficiently serious to limit or deny a student's ability to participate in or benefit from the recipient's educational program. OCR considers a

variety of factors from both an objective and subjective perspective; specifically, OCR considers the incidents from the perspective of a reasonable person in the harassed student's position, considering all of the circumstances. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment. A single or isolated incident of sexual harassment may create a hostile environment if the incident is sufficiently severe. Further a hostile environment can occur even if sexual comments are not directed at the individual student who alleges harassment.¹

To determine whether a race-based hostile environment exists, OCR considers whether the harassing incidents were severe, pervasive *or* persistent. OCR examines the context, nature, scope, frequency, duration, and location of harassing incidents, as well as the identity, number, and relationships of the persons involved. OCR examines the incidents from the perspective of a reasonable person of the same age and race as the harassed student. The identity, number, and relationships of the individuals involved will also be considered on a case-by-case basis. For example, racially-based conduct by a teacher even an "off-duty" teacher, may have a greater impact on a student than the same conduct by a school maintenance worker or another student. Finally, harassment need not result in tangible injury or detriment to the victims of the harassment.

BACKGROUND

The Student is a December 2013 graduate of the College's Medical Assisting Program (Program). The Complainant is the Student's attorney. The Complainant alleged that in October 2013, prior to the Student's completion of the Program, the Director of Career Services (Director), an African-American woman, made several racially inappropriate comments to the Student, an African-American woman, when discussing the Student's demeanor during interviews. Specifically, the Complainant alleged that the Director told the Student to "put on her White girl attitude" and that the Student did not have to be "all whitey-whitey" but she should work on being "more White." During an interview with OCR, the Student stated that she was enrolled in a Professional Development Course and meeting with the Director was a course requirement. The Student also reported that the Director made such comments every time the Student went to the Director's office and the Student had three or four meetings with the Director during the Fall 2013 semester.

The Complainant also alleges that on a separate occasion during the same month as the comments above (October 2013), the Director made multiple sexually inappropriate comments in front of the Student and other College faculty and staff. Specifically, the Complainant alleges that while the Student was in the faculty lounge taking a make-up test, the Director described "in great detail the Director's sexual escapades" from the previous night. The Complainant contended that the Director's discussion of her sexual conduct lasted about 20 to 25 minutes, and was loud, graphic and upsetting to the Student. According to the Complainant, the Student's make-up exam consisted of three "no miss" test questions and the Student was required to retake a test if she missed a question. Due to the loud and graphic comments by the Director, the

¹ OCR's 2001 Sexual Harassment guidance notes for example, that a hostile environment may be created for a student who witnesses sexual comments targeted toward another student.

Student reportedly had difficulty focusing and required three attempts to complete the exam. During an interview with OCR, the Student provided examples of the Director's sexually explicit comments. She also said that hearing the Director's comments in the lounge made her nervous and after the incident she did not want to be on campus unless she had to be there.

Additionally, the Complainant alleged that she filed a racial and sexual discrimination grievance on multiple occasions following the October 2013 incidents. However, the College ignored her allegations until the Student hired an attorney. The College terminated the Director's employment on February 28, 2014 due to poor performance.

FACTUAL FINDINGS AND ANALYSIS

Notice of Non-discrimination & Title IX Coordinator

Information concerning the College's notice of non-discrimination is included in the first six pages of the Student Catalog. The Catalog contains statements of non-discrimination that specifies the basis for non-discrimination on Pages 2 and 4. The statement on Page 2 lists, among other things, race, color, national origin, and sex as bases for non-discrimination. There are two non-discrimination notices on Page 4. The first is listed under the heading "Accommodations for Students with Disabilities." It states that the College does not discriminate in the recruitment and admission of students with respect to (in relevant part) color, national origin, and sex; this statement does not include race as a protected basis. The second statement on page 4, labelled "Non-Discrimination Statement," states, in relevant part, that the College does not discriminate on the basis of gender or race in its admission to the College or treatment in its programs, activities, advertising, training, placement, or employment; this statement does not include color or national origin as protected bases. Moreover, the College lists the specific non-discrimination statutes with which it adheres on Page 2 but does not include Title VI in that list. While a reference to the statutes is not required by OCR regulations, if the College lists the statutes, Title VI should be included on the list.

The Campus President serves as the College's Title IX Coordinator. OCR requires that the coordinator not be an official who may have a conflict of interest with the coordinator role in case of an appeal of a Title IX coordinator's decision.² Since a College president is often the last line of review for such matters, this designation creates a conflict of interest. Additionally, the Catalog identifies the Campus President as the Title IX Coordinator on Page 4 of the Catalog. The Campus President's address is provided on Page 3; however, the telephone number for the Campus President is not included. Consequently, OCR finds that the College is not in compliance with Title IX with respect to the designation of a Title IX Coordinator.

To come into compliance, the College will designate a Title IX Coordinator whose job responsibilities do not pose a conflict of interest, provide the Coordinator training on the

² OCR's April 24, 2015 Dear Colleague Letter concerning Title IX Coordinators notes that designating administrators such as a dean of students, superintendent or principal may pose a conflict of interest. While that guidance document does not reference college presidents in this regard, the rationale of the foregoing caution applies equally to the chief administrator at a college campus.

responsibilities of a Title IX Coordinator and include the telephone number for its Title IX Coordinator in all publications in which the Title IX Coordinator is listed.

College's Grievance Procedures

The College has a general grievance procedure which can be used to address any concern regarding "any aspect of ... [a student's] ... educational experience" including misapplication of campus rules, policies, regulations and procedures or unfair treatment by an instructor or other campus employee. The procedures require a complaining party to initially discuss the complaint or grievance with the other party and to address the matter verbally with the Dean of Education if it cannot be resolved with the other party. If the matter is not resolved by the Dean of Education the next step is an appeal to the School President or Director and the gathering of data begins at this step of the process. The third step is an appeal to the Regional Vice President of Education Affiliates, followed by an appeal to the Corporate Vice President of Education Affiliates. If a matter remains in dispute it may be appealed to the State licensing authority and the College's accrediting body. Decisions at the second, third and fourth steps of the process must be rendered in writing to the complainant within seven days of the appeal.

The College's grievance procedures fail to include several elements that OCR examines when reviewing Title IX grievance procedures. The procedures do not state that the procedures apply to complaints alleging discrimination, including harassment, and do not state that they apply to discrimination or harassment carried out by other students or third parties. They also fail to state that both parties will have the opportunity to present witnesses and other evidence. Additionally, the grievance procedures provide for written notice of the outcome of the complaint to the complaining student only and do not include an assurance that the school will take steps to prevent recurrence of any harassment and to correct discriminatory effects on the complainant and others, if appropriate. Also, the procedures fail to contain any of the elements that should be included if procedures are used to address reports of sexual violence.

Moreover, OCR noted that the grievance procedures only allow students seven calendar days in which to file a complaint. OCR finds that this is an unreasonable time requirement for filing grievances. Finally, the procedures do not specify that attempting informal resolution with the other party is purely voluntary and do not specify that informal resolution does not apply to cases involving allegations of sexual violence. Based upon the foregoing, OCR finds that the College's general grievance procedures, which can be used to address discrimination under multiple statutes enforced by OCR, are not in compliance.³

College's Response to the Student's Complaints

³ Grievance procedures that provide for the prompt and equitable resolution of complaints of discrimination are required under the regulations implementing Section 504 of the Rehabilitation Act of 1973 (Section 504), Title II of the Americans with Disabilities Act of 1990 (Title II), and the Age Discrimination Act of 1975 (Age Act) as well as Title IX. Section 504 and Title II prohibit discrimination on the basis of disability, while the Age Act prohibits discrimination on the basis of age. See 34 C.F.R. § 104.7(b), 106.8(b), and 110.25(c); 28 C.F.R. § 35.107(b). Pursuant to the Resolution Agreement resolving this complaint, the College commits to complying with the grievance procedure requirements under all of these statutes, which OCR enforces.

The Complainant alleged that the College did not act on the Student's discrimination grievance until she retained the Complainant as Counsel. According to the Complainant, the Student first attempted to address concerns about the Director when she returned to campus the day after the incident in the faculty lounge, saw the Director on campus and concluded that the other faculty members present in the lounge had apparently not reported the Director's conduct. The evidence shows that the Student attempted to discuss her issues with her Instructor, who is also the program director for the College's Allied Health Program (Instructor/Program Director). The Campus President's investigative report acknowledges that the Student went to the Instructor/Program Director after the incident and requested to speak to her, but she was busy and could not speak with the Student at that time. The Student told OCR that at some point she did speak with the Instructor, who had been present during the incident in the lounge, and asked to meet with the Instructor and the Campus President; the Instructor responded that the President would be out for two weeks. The Campus President's investigative report acknowledges that the Student went back to the Instructor/Program Director, requested a meeting⁴ and was informed that the Campus President was out of town. At no point did the Instructor/Program Director attempt to follow-up with the Student.

The Complainant contends that the Student also sought to raise her concerns when she completed a written end-of-course student survey that is customarily given to students upon the completion of courses.⁵ In her survey responses, the Student asked to speak with someone concerning the behavior of staff. On the end-of-course survey related to one Instructor, the Student commented that advisors engaged in "inappropriate behavior" that needed to be and should have been addressed. However, there was no mention of sexual comments or race-based comments by the Director or any other College personnel. On a survey regarding a second Instructor, the Student suggested that the College have a "State doctor" mentally evaluate instructors and staff and "ensure that they put out what they expect from students."

On or around November 12, 2013, the Complainant sent the College a letter on behalf of the Student, detailing the incidents and requesting that an investigation be conducted. The only statute referenced in the letter was Title IX; however, the discussion of the race-based comments explicitly described the comments as racially inappropriate and racially insensitive. Once the Complainant sent a letter to the Campus President, the College had its Campus President and Regional Vice-President (RVP) conduct an investigation. The evidence shows that the Campus President interviewed the Allied Health Program Director, Director of Education, an Administrative Assistant, and the Director. The RVP also interviewed the Director of Education, the Director, and the Campus President. However, the Student was not interviewed or permitted to present witnesses and other evidence. The College provided OCR with a copy of an investigation report completed by the former Campus President dated November 29, 2013 and a summary of investigation completed by the Regional Vice President dated December 20, 2013.

⁴ The investigative report reflects that the Student asked to meet with the Campus' Director of Education (DOE) as well as the Instructor and the Campus President.

⁵ The comments in the surveys did not provide notice to the College that the Student's concerns related to possible harassment or discrimination based on race or sex.

The Campus President's report reflected that the Director acknowledged making the racial remarks reported by the Student and said that she used this kind of "coaching session" because prejudice is still extensive and she wants graduates to "deal with the reality of the situation they are facing in interviewing for jobs." The RVP reported that the Director explained that she used the term "whitey" to explain how to make a strong impression with the employer.

The President's report reflects that the Director also acknowledged having a loud "sexually orientated [sic]" conversation in the lounge and said she had not seen that there was a student there taking a test. According to the report, a department head who was present during the incident corroborated that there was a loud conversation in the lounge and that it was sexual in nature; this witness reported that she asked the conversing staff members to "quiet down." The President's report further reflects that during the investigation the Director of Education was embarrassed to report what she learned about the conversation and when she did provide one detail, the President "could see why she would be embarrassed."

The December 2013 investigation report concluded that the Director used poor judgment and made inappropriate statements in an effort to coach the Student in preparing for job interviews. The investigation determined that the Director, although misguided, acted with the intent to help the Student. The Director was also counseled regarding boundaries relating to conversations in the workplace. The RVP strongly recommended issuance of a formal written discipline/coaching for the Director.

In a letter dated December 26, 2013, a corporate attorney with Education Affiliates responded to the Complainant's letter on behalf of the College. The College's response stated that the Student had not followed the grievance procedures in the Student Catalog, but that the College had treated the Complainant's letter as a grievance. The letter further stated that the College conducted an investigation and found that no unlawful action occurred, but the Director had acted inappropriately. The response also stated that disciplinary action had been taken against the Director. The letter included an apology for any discomfort or embarrassment that the Student had experienced, noted that it is the College's understanding that there had been no further incidents and encouraged the Student to speak with the Campus President if she believed there had been further incidents.

In a disciplinary counseling report dated January 6, 2014, the Director received a written and final warning about using racially inappropriate language and maintaining professional demeanor and communications at all times. The Director was further informed that if she is determined to continue the unacceptable behavior that she could be terminated. According to the current President of the College (who did not serve in that capacity at the time of the College's investigation), the Director had been terminated when he assumed his position in April 2014.

While the Student's concerns were investigated after her attorney wrote to the College, and the Director received a disciplinary counseling because of her behavior, the Student's initial efforts to address her concerns by meeting with the Instructor and other staff members were ignored. The College did not initiate an investigation until the Student's attorney submitted a letter to the College, approximately one month after the Student first attempted to address her concerns.

Further, the College did not interview the Student, provide her an opportunity to present evidence or witnesses or assess the impact of the incidents upon the Student. Based on the above, OCR finds the College did not provide a prompt and equitable response to the Student's complaint.

Hostile Environment:

OCR next examined whether, because of the College's delayed response or flawed procedures, the Student was allowed to remain in a hostile environment and whether the College ultimately remedied any hostile environment that may have been created.

Hostile Environment Based on Race

In advising the Student, who is African-American, concerning her career, the Director used a racially offensive term and equated a professional demeanor with "acting white." The Student alleges this happened every time the Complainant went to the Director's office and that as part of her professional development course she was required to meet with the Director. The Student states that the Director's comments led to the Student feeling inadequate and she was nervous during interviews. The Student also felt that she could not benefit from the Director's advice. OCR notes that the College's RVP told the Director that the language she used in counseling the Student was racist and she should have instead provided the Student guidance on grammar, vocabulary, how to dress and the difference between social and professional settings. While the Director did not use racial slurs and may have intended to help the Student, her language denigrated the Student's interviewing demeanor based on her race. In light of the advisory role served by the Director, the requirement that the Student meet with the Director on multiple occasions, the repeated race-based comments during the course of the term and the reported impact upon the Student, the acts could constitute a hostile environment based on race.

According to the Complainant's OCR complaint, the last act of discrimination occurred on October 11, 2013; the Student's first attempt to address the harassment occurred after October 11, 2013, and as noted above, the Student graduated in December 2013. Thus, the Student did not continue to experience a hostile environment because of the delay in responding to her initial complaints. However, as noted in the legal standards, a recipient is responsible for harassing acts of employees acting in the scope of their employment and that responsibility includes remedying the effects of harassment. The College did not fully remedy the effects of the Director's repeated race-based comments during her career advising sessions with the Student. While the College apologized for the Director's comments and encouraged the Student to provide notice of any further incidents, the Student was not offered appropriate career guidance or any other remedy for the race-based harassing acts which directly impacted the Student's receipt of educational benefits.

Hostile Environment Based on Sex

While the Director's conduct was an isolated incident and was not directed toward the Student, it consisted of loud conversation, lasted approximately 20 minutes, and involved sexually charged

language which the Director of Education could not repeat to the President without embarrassment. While this conversation was occurring, the Student was attempting to take a make-up test, had difficulty focusing because of the upsetting language, and passed the test only on her third attempt. OCR finds that the conduct could be sufficiently serious to create a sexually hostile environment. This incident occurred on October 11, 2013 and there is no evidence of any sexually harassing incidents occurring subsequent to that date. Thus, the Student did not continue to experience a hostile environment because of the delay in responding to her initial complaints. During the OCR interview the Student stated that the sexual comments impacted her ability to benefit from advice from the Director. As noted in the discussion above the College did not fully remedy the effects of the Director's conduct upon the Student's receipt of the benefits of career advisement.

CONCLUSION

Based on the preponderance of the evidence, OCR finds that the College is in noncompliance with Title VI and Title IX with respect to the issues investigated. To remedy this non-compliance, the College has entered into a Resolution Agreement, which requires the College to, among things, offer the Student career advisement services for a period of up to six months; revise its grievance procedures; have the President of the College issue a statement to all faculty, staff and students that will be printed on the College's website, stating that the College does not tolerate racial or sexual harassment; and make its staff available for training by OCR regarding the College's responsibilities to ensure that students are not excluded from participation in, denied the benefits of, or otherwise subjected to discrimination on the basis of race, color, national origin, or sex.

This concludes OCR's investigation of the complaint and should not be interpreted to address the District'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.

Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the Complainant may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records, upon request. In the event that OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy. A complainant may have a right to file a private suit in Federal court whether or not OCR finds a violation.

OCR Complaint #04-15-1402
Newton County School District, Georgia
Page 13 of 13

OCR is committed to a high quality resolution of every case. If you have any questions regarding this letter, please contact Daiquiri J. Steele, Esq. at 404-974-9342 or Virgil Hollis, Team Leader, at 404-974-9366.

Sincerely,

Melanie Velez
Regional Director

Enclosure

cc: MyEsha Craddock, Esq.
Education Affiliates, Inc.
Counsel for the College
VIA EMAIL: MyEshaC@edaff.com