



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

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ALABAMA
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April 4, 2016

Dr. Alvetta Peterman Thomas
Atlanta Technical College
1560 Metropolitan Parkway SW
Atlanta, GA 30310-4446

Re: Complaint # 04-14-2424

Dear Dr. Peterman Thomas:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed on June 25, 2014, against Atlanta Technical College (College) alleging discrimination on the basis of sex, race and retaliation. Specifically, the Complainant made the following allegations:

1. From November 2013-May 2014, the College discriminated against her on the basis of sex by not investigating a sexual harassment complaint (Complaint) she filed against her Radiology Professor (Professor). Specifically, the Complainant alleged that the Professor engaged in the following harassing behaviors: (a) in November 2013 (and several times thereafter) the Professor placed her leg on the Complainant's leg in a sexual manner; (b) from November of 2013-Spring 2014, the Professor periodically "place[d] her face" on the Complainant's face; (c) in Spring 2014, the Professor asked the Complainant to give her a massage¹; (d) in April 2014, the Professor "slapped [the Complainant] on the butt" and then subsequently made reference to doing so during the Complainant's Radiology Course (Course); and, (e) in May 2014, the Professor kissed the Complainant on the cheek.
2. In Spring 2014, the College discriminated against the Complainant on the basis of race when the grade grievance (Grievance) she filed with the College was not investigated. The Grievance contained allegations that during the Complainant's Clinical Lecture Course (Lecture Course) she was graded differently than other students based on her race.
3. In April 2014, the College discriminated against the Complainant on the basis of race when the Professor graded her differently in her Radiology Course (Course) than a white student with regard to the ability to retake quizzes; additionally, the Complainant alleged

¹ The Complainant originally alleged that the Professor requested the massage; however, during OCR's investigation, the Complainant stated that it was in fact an instructor (Instructor) who requested a massage. OCR interviewed both the Professor and the Instructor regarding the specific allegations that were made against each.

that the Professor grades African American students more harshly than non-African American students.

4. In May 2014, the College retaliated against the Complainant because she verbally complained to the Commission on Dental Accreditation (CODA) that the College routinely treats people differently based on their race; as a result of her complaint, the Professor lowered her grade in the Course.

OCR is responsible for enforcing:

- Title IX of the Education Amendments of 1972 (Title IX), as amended, 20 U.S.C. §§ 1681 *et seq.*, and its implementing regulation, 34 C.F.R. Part 106. Title IX prohibits discrimination on the basis of sex in any education program or activity operated by a recipient of Federal financial assistance; and
- 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. Title VI prohibits discrimination on the basis of race, color or national origin by recipients of Federal financial assistance.

As a recipient of Federal financial assistance from the Department and a public entity, the College is subject to these laws. OCR, therefore, has jurisdiction over this complaint.

Accordingly, OCR investigated the following legal issues:

1. Whether the College discriminated against the Complainant on the basis of sex by failing to provide a prompt and equitable response to her complaints of sexual harassment from November 2013 to May 2014 in noncompliance with Title IX implementing regulation 34 C.F.R. § 106.31.
2. Whether the College discriminated against the Complainant on the basis of race in Spring 2014 by not investigating her complaint that the Professor subjected her to racially discriminatory grading in noncompliance with the Title VI implementing regulation at 34 C.F.R. §§ 100.3 (a) and (b).
3. Whether the College subjected the Complainant to different treatment on the basis of race during Spring 2014 when the Professor of the Course graded her and other African American students more harshly than their non-African American counterparts in noncompliance with the Title VI implementing regulation at 34 C.F.R. §§ 100.3 (a) and (b)(1).
4. Whether the College retaliated against the Complainant in May 2014 when the Professor lowered her final grade in the Course because she complained of racially unfair treatment to CODA in noncompliance with the Title VI implementing regulation at 34 C.F.R. §100.7 (e).

In reaching its determination, OCR reviewed and analyzed documents pertinent to the complaint issues and conducted interviews with the College's Title IX Coordinator (Coordinator), a Clinical Instructor at the College (Instructor), the College's Vice President of Academic Affairs (Vice President), the College's Dean of Health Sciences (Dean), the College's Special Assistant to the President (Special Assistant), the College's Vice President of Student Affairs (VPSA), the Professor, and three witnesses identified by the Complainant.²

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, such as the College, failed to comply with the laws or regulations enforced by OCR or the evidence is insufficient to support such a conclusion. Based on its investigation, and applying the preponderance of the evidence standard, OCR has determined that the College violated Title IX and its implementing regulations when it failed to provide a prompt and equitable response to the Complainant's complaints of sexual harassment; however, there is insufficient evidence to support a finding of noncompliance with respect to issues 2-4. The bases for this determination are set forth below.

Legal Standards

Title IX

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 Federal financial assistance. Further, the implementing regulation at 34 C.F.R. § 106.31(b)(1)-(7) provides that 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, (7) otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

The Title IX implementing regulation at 34 C.F.R. § 106.8(a) and (b) 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 or alleging any action which would be prohibited by Title IX. The recipient shall notify all its students and employees of the name, office address and telephone number of the employee or employees appointed.

The Title IX implementing regulation at 34 C.F.R. § 106.9 (a)(1) provides in relevant part that each recipient shall implement specific and continuing steps to notify applicants for admission and employment, students and parents of elementary and secondary school students that it does

² The Complainant provided OCR with a list of seven people she wanted OCR to interview; however, after multiple attempts OCR was only able to reach three of the seven witnesses provided by the Complainant.

not discriminate on the basis of sex in the educational program or activity which it operates, and that it is required by Title IX and this part not to discriminate in such a manner.

The regulation implementing Title IX at 34 C.F.R. § 106.8(b) requires that each recipient adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints under Title IX. A number of factors are considered in evaluating whether a recipient's grievance procedures are prompt and equitable, including whether the procedures include or provide for: notice to students and employees of the procedure, including where complaints may be filed; application of the procedure to complaints alleging harassment carried out by employees, other students, or third parties; adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence; designated and reasonably prompt timeframes for the major stages of the complaint process; notice to the parties of the outcome of the complaint; and, an assurance that the recipient will take steps to prevent recurrence of any harassment and to correct its 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 school's jurisdiction over Title IX complaints; adequate definitions of sexual harassment (which includes sexual violence) 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) (i.e., more likely than not that sexual violence occurred) in resolving a complaint; notice of potential remedies for students; notice of potential sanctions against perpetrators; and, sources of counseling, advocacy, and support.

Sexual harassment that creates a hostile environment is a form of sex discrimination prohibited by Title IX. Sexual harassment of a student creates a hostile environment if the conduct is sufficiently serious to limit to deny a student's ability to participate in or benefit from the recipient's program. A recipient 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 recipient bus, or through graffiti in public areas. In these cases, the obvious signs of the harassment are sufficient to put the recipient on notice. In other situations, the recipient 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 these responsibilities over students, engages in sexual harassment generally this means harassment that is carried out during an employee's performance of his or her responsibilities in relation to students, including teaching, counseling, supervising, advising, and transporting

students 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.

When responding to harassment, a recipient must take immediate and appropriate action to investigate or otherwise determine what occurred. The specific steps in a recipient'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 recipient, and other factors. In all cases, however, the inquiry should be prompt, thorough, and impartial.

A recipient should take steps to stop further harassment, eliminate any hostile environment, and as appropriate, remedy its effects. The recipients should also prevent any retaliation against the person who made the complaint (or was the subject of the harassment) or against those who provided information as witnesses. At a minimum, the recipient's responsibilities include making sure that the harassed students and their families know how to report any subsequent problems, conducting follow-up inquiries to see if there have been any new incidents or any instances of retaliation, and responding promptly and appropriately to address continuing or new problems.

Title VI

The Title VI implementing regulation at 34 C.F.R. § 100.3(a) provides that no person in the United States 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 educational program or activity to which Title VI applies.

The Title VI implementing regulation at 34 C.F.R. §100.3(b)(1) provides that a recipient may not, directly or through contractual or other arrangements, on ground 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; (iii) subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit; 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. Racially based conduct that has such an effect and that consists of different treatment of students on the basis of race by recipients' agents or employees, acting within the scope of their official duties, violates Title VI.

Retaliation

The regulation implementing Title VI at 34 C.F.R. § 100.7(e) provides that a recipient shall not intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the laws enforced by OCR, or because he or she has made

a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing.

In investigating allegations of retaliation, OCR examines whether: 1) the Complainant engaged in a protected activity and whether the College was aware of the Complainant's participation in the protected activity, 2) whether the College took an adverse action against the Complainant contemporaneous with or subsequent to the participation in the protected activity, and 3) whether a causal connection between the adverse action and the Complainant's participation in the protected activity can be reasonably inferred. If these elements are established, OCR determines whether the College has a legitimate, non-discriminatory reason for its action that is not a pretext for retaliation.

Background

The Complainant is an African American woman who began attending the College in the summer 2013 semester in the Dental Hygiene Program. She is currently not attending the College.

Findings of Fact & Analysis

- 1. Whether the College discriminated against the Complainant on the basis of sex by failing to provide a prompt and equitable response to her complaints of sexual harassment in noncompliance with Title IX implementing regulation 34 C.F.R. § 106.31.**

The Complainant alleged that the College discriminated against her on the basis of sex when she was sexually harassed by her Professor and after making her Complaint to the Title IX Coordinator in May 2014, regarding the sexual harassment by the Professor her complaint was not adequately investigated. Specifically, the Complainant alleged that none of the witnesses she presented were allowed to give testimony during the investigation regarding her allegations against the Professor.

The College's Sexual Harassment Grievance Procedure & Investigations

College's Revised Procedures & Continuing Procedural Deficiencies

The College's non-discrimination statement is published on its website and in its Student Handbook, and covers all protected categories. OCR reviewed the College's published "Grievance Procedure" and "Unlawful Harassment and Discrimination of Students" procedures (Procedures, herein, refers to both) as a part of its investigation. The Procedures are published in the College's student handbook and on the College's website. The Procedures cover all required protected classes, identify the College's Coordinator for reporting incidents of harassment and discrimination and includes contact information for the Coordinator. The Procedures also delineate the steps one takes to file a complaint with the Coordinator.

The Procedures were being revised at the time of the College's investigation of the issues raised in this complaint and have since been revised. Prior to the College's revisions, a student could

file a complaint of discrimination under both the Grievance Procedures and the Unlawful Harassment and Discrimination of Students procedures. The Procedures contained different time frames, and the Unlawful Harassment and Discrimination of Students procedures, which cover sexual harassment, did not include a statement that the College would take steps to prevent the recurrence of discrimination/harassment. Moreover, the Procedures only provided students with 60 days from the date of the alleged incident to file a complaint, which raises concerns with regard to the reporting of incidents. The College's revisions to the Procedures corrected the above-referenced concerns. In addition, the revised Unlawful Harassment and Discrimination procedures include a definition of sexual harassment that includes sexual violence, reporting protocols that include confidential reporting, information about the right to file a criminal complaint, interim measures to protect the student, notice of potential sanctions, and state that the College will take all reasonable steps to limit the effects of the alleged harassment and prevent recurrence.

However, the revised Procedures do not include sources of counseling, advocacy and support for complainants. Further, the revised Procedures contain language that may deter a person from filing a complaint of sexual harassment. Specifically, the procedures state that "any student who knowingly makes a false charge of harassment/discrimination or retaliation...may be subject to disciplinary action, up to and including, dismissal". Although the College stated that the language is not intended to deter reports of harassment or discrimination, the language may have a "chilling effect" on complainants-- discouraging complainants from filing complaints for fear that they may be disciplined if the College is unable to substantiate their complaint allegations.

Finally, although the former and current procedures state that a written determination will be provided to the complainant once an investigation is complete, and the College provided such information to the Complainant in this matter, there is no evidence that the College provided complainants and accused in other investigations involving allegations of sexual harassment over the last three years with written investigative findings (discussed below). Further, there was no evidence that the College provided written investigative findings to the Professor in the instance case, although the Professor did state that she was made aware of the findings (discussed below).

Investigative Standard Applied to the College's Investigations

OCR interviewed several of the College's administrators regarding the standard the College applies when investigating allegations of sexual harassment to determine whether the College was applying the appropriate standard. Two administrators stated that the College applies the "clear and convincing" standard to investigate sexual harassment complaints; and another administrator stated that she was unaware of the standard that should be used. Although the Procedure (former and revised) does correctly state that the appropriate evidentiary standard is the preponderance of the evidence standard, interviews with several administrators indicate that the College has not been following that practice.

Deficiencies in Application of Procedures to Other Reported Sexual Harassment Incidents

OCR requested from the College data on complaints of sexual harassment filed in the last 3 years. The College provided OCR with information regarding three sexual harassment

complaints that were filed during that time. The first of these complaints was filed on November 13, 2013. An instructor reported that a student was making inappropriate comments of a sexual nature during class and had become very disruptive. The Title IX Coordinator promptly initiated an investigation of the allegations, but it appears the investigation only consisted of a conversation with the student. The student was told to review the Student Code of Conduct; specifically, the student was referred to sections “XII. Unbecoming student behavior” and “XVI(b) Failure to dress appropriately.” There is no documentation showing that witnesses were interviewed, that a finding was made, nor documentation reflecting whether the complainant was made aware of any findings.

The second complaint in this time-period was filed on December 12, 2013. On that date, a student filed a sexual harassment complaint against another student, who was an elected Student Government Officer. The complaint was promptly investigated by the Title IX Coordinator. The Title IX Coordinator requested that the alleged harasser be relieved of his duties until the full investigation was completed. Witnesses were interviewed and statements taken. The alleged harasser never made himself available for an interview and moved out of state. There is neither documentation to show that a finding was made nor whether the complainant was made aware of any findings.

The third complaint in this time period was filed on January 17, 2014. On that date, a student reported that a professor was making inappropriate comments of a sexual nature towards her. The complaint was investigated by the Title IX Coordinator. A statement was taken from the complainant and witnesses identified by the complainant. Based on emails from the complainant to the Coordinator it does not appear that she was kept abreast of the investigation. The complainant was also being escorted to class by her husband for safety reasons. Once the College became aware of this they met with campus police to put into place a plan to ensure that the complainant felt safe. The documentation does not state what if anything was put in place to ensure her safety. After the investigation was completed, a letter was sent to the complainant which merely stated that the investigation found that there was insufficient evidence to support the allegations.

Based on the foregoing, the evidence shows that the College’s investigation of these other allegations of sexual harassment did not meet the requirements of Title IX regulations nor the College’s internal procedures. Specifically, the documentation provided by the College does not reflect that the College conducted complete investigations of the incidents. Additionally, because the College’s documentation is not detailed, OCR could not fully determine whether the College took appropriate steps to protect the alleged victim(s) during the course of their investigations. Further, as discussed above, the College’s records do not reflect that notice of the findings of the investigations was provided to the alleged victim or harasser at the conclusion of each investigation.

College’s Investigation of Complainant’s Sexual Harassment Allegation

Information obtained from the College shows that the College conducted two investigations of the Complainant’s allegations of sexual harassment in May 2014. The College investigated the Complainant’s allegation that the Professor “slapped [her] on the butt”, had inappropriate “face

to face” (kissed her on the cheek), and “hand to hand contact” with her. However, as noted below, the Complainant also alleged that an Instructor asked her to give her a massage and touched her leg.

The first investigation was completed by the Title IX Coordinator and the Dean and involved the Complainant’s allegation that the Professor “slapped [her] on the butt.” The Coordinator’s investigation included a discussion with the Professor, the Complainant and two witnesses provided by the Complainant. When she interviewed the Professor, the Professor stated she initially did not remember whether she touched the Complainant’s butt; however, she subsequently stated that she “may” have, but did so “in a playful, nonsexual, manner”.

The Dean also investigated whether the Professor “slapped [the Complainant] on her butt,” and whether the Professor had “her face close to the [Complainant’s]” face. According to the Dean, she interviewed student witnesses suggested by the Complainant; these students were unable to confirm that the Complainant was “slapped” on the butt by the Professor.³ Since the Professor did state to the Dean that she touched the Complainant on the butt or lower back, the Dean concluded that the touch did in fact take place. The Dean’s investigation did not find that the touch was of a sexual nature. Since the Dean did not find that the touch was sexual in nature, she concluded that no sexual harassment had occurred. The Dean did not identify any evidence to substantiate the allegation that the Professor “placed her face on [the Complainant’s] face”. The Dean’s determination was sent to the President’s office. Although the Dean determined that the investigation did not substantiate the Complainant’s allegations, the Professor was still required to participate in sexual harassment training as a result of the allegations.

The Complainant was not satisfied with the outcome of the investigation and wrote several emails to the Dean, Vice President, and President of the College expressing concern. As a result, the College conducted a second investigation. The Special Assistant did a review of the original investigation. The Special Assistant stated that she took a look at the sexual harassment allegations with “fresh eyes”. The Special Assistant stated that the Complainant alleged that the Professor touched her on her behind, hand, and face. After interviewing student witnesses, the Special Assistant determined that the allegations concerning touching the Complainant’s hands and face were related to the type of instruction given in the dental hygiene program which by its nature required the instructor to touch a student’s hands and face at times for instructional purposes. The Special Assistant stated she investigated the allegation regarding the Professor slapping the student on the butt as well. The Special Assistant stated that she interviewed student witnesses whose names were provided by the Complainant and then met with the Complainant again to ask if there was anything else she wanted to share.⁴ OCR interviewed students from the class and no one witnessed the Professor touch the Complainant on the butt.

The Special Assistant was also aware that the Complainant filed a criminal assault complaint against the Professor. The criminal complaint filed against the Professor was dismissed by the

³ These student witnesses informed OCR that they do not remember being interviewed by the Dean; however, the Dean’s account of their statements is consistent with the information the witnesses shared with OCR.

⁴ As is the case with the Dean, the witnesses allegedly interviewed by the Special Assistant informed OCR that they do not remember being interviewed by the Special Assistant; however, the Special Assistant’s account of their statements is consistent with the information the witnesses provided to OCR.

Court. The Special Assistant found that the Complainant's allegations of sexual harassment were unsubstantiated. Specifically, the Special Assistant determined that that while the Professor did touch the Complainant, the contact was not of a sexual nature. The College characterized the uninvited contact as a "playful touch"; thus, the Special Assistant concluded that sexual harassment had not occurred.

OCR's investigation determined that the College investigated some of the allegations raised by the Complainant's sexual harassment complaint against the Professor. The College's investigations included an interview with the Complainant, the Professor, and two of the Complainant's witnesses. Based on the evidence, OCR finds that the College investigated the Complainant's allegations of sexual harassment that she made at the time—namely, a "slap on the butt", "face to face" contact, and "hand to hand contact". However, OCR's review of the Complainant's complaint to the College shows that she also alleged that an Instructor asked her to give her a massage and touched her leg which it does not appear the College investigated. Therefore, with respect to the Complainant's allegation that the College failed to investigate her complaint, the evidence is sufficient to support her allegation since the College did not investigate all of her allegations. Additionally, the evidence shows that the College used the incorrect standard of proof during the investigations of the Complainant's allegations; the College did not provide the Professor with written investigative findings; and the College's procedures include language that may deter students who wish to file complaints of sexual harassment from doing so. Therefore, OCR finds that the College's procedures and its investigations of sexual harassment complaints do not comply with Title IX.

Whether the College's Failure to Properly Investigate the Complainant's Sexual Harassment Allegation Subjected the Complainant to a Hostile Environment

The College failed to use the legal standard required by Title IX, the preponderance of the evidence standard, and failed to investigate whether the Instructor asked the Complainant for a massage and touched her leg. Therefore, OCR investigated the Complainant's allegations to determine whether the College failure to provide a prompt and equitable response to the Complainant's allegations subjected the Complainant to a hostile environment.

OCR's investigation included reviewing the College's internal investigation, interviewing the Complainant, Professor, Instructor, Dean, Special Assistant, Coordinator, Vice President, and three Complainant Witnesses. OCR reviewed the College's investigation of the Complainant's allegations to determine whether the College provided a prompt and equitable response to the Complainant's allegations. OCR's investigation also included reviewing the College's internal investigation, interviewing the Complainant, Professor, Instructor, Dean, Special Assistant, Coordinator, Vice President, and three Complainant Witnesses.

The Professor denied kissing the Complainant, "slapping" her on the butt, "placing her face on [the Complainant's] face" and requesting a massage from her. Although the Professor denies "slapping" the Complainant on the butt, she did admit to "playfully" brushing the Complainant on her lower back in an effort to prod the Complainant to get to class. The Professor also stated that since she and the Complainant sit across from one another in a clinical setting that their legs could have touched, but according to the Professor it would not have been in a sexual manner.

OCR also interviewed the Complainant's Witnesses. Witnesses 1 and 2 did remember a time when the Professor physically shook the Complainant by her shoulders; both stated that they did not believe that this act was sexual in nature. Witnesses 1 and 2 also stated that while they remember the Complainant making reference in class to the Professor touching the Complainant on the butt, they did not witness the touching. The Witnesses also stated that they never witnessed the Professor kissing the Complainant. One witness stated she saw the Professor kiss other students but was not sure if this made them uncomfortable, while another witness stated she did not see the Professor kiss any student. OCR found insufficient evidence to support the Complainant's allegations of the Professor placing her leg on the Complainant's leg "in a sexual manner"; the Professor "placing her face on the Complainant's face in a sexual manner," or kissing her on the cheek. However, by the Professor's own statement, the Professor did touch the Complainant on the back to prod her into class, although it is unclear whether it was the lower back or the butt.

The Instructor stated that she may touch a student's shoulders when instructing on sitting with proper posture and that touching may occur when instructors are demonstrating how to use an instrument or technique when performing a procedure on a patient. The Instructor denies that she asked for and received a massage from the Complainant. However, one witness stated that she witnessed the Instructor ask the Complainant for a massage and witnessed the Complainant giving the Instructor a massage.

Based on a review of the evidence, OCR finds that based on the preponderance of the evidence, there is insufficient evidence to support a conclusion that the Complainant was subjected to sexual harassment as alleged. However, as noted above, the College's sexual harassment policy and procedures are not in compliance with Title IX. Specifically, the College does not use the correct standard of proof when investigating complaints and the College did not appear to conduct complete investigations of the incidents including interviews of relevant witnesses, as in the Complainant's case.

2. Whether the College discriminated against the Complainant on the basis of race in Spring 2014 by not investigating her complaint that the Professor subjected her to racially discriminatory grading in noncompliance with the Title VI implementing regulation at 34 C.F.R. §§ 100.3 (a) and (b).

The College's Dean handles complaints involving academic matters, and if a complaint is not resolved at that level, it is sent to the Vice President. The Complainant originally filed the grade grievance (Grievance) with the College in May 2014; the Grievance was clarified in a June 2014 meeting between the Complainant and the Vice President. In her Grievance, the Complainant alleged the following: 1) in an effort to lower her grade the Professor altered the points on a final exam that was originally worth 124 to 100; 2) the Complainant inappropriately received a letter grade drop in a Tooth Anatomy class; 3) the Complainant's overall grade in a Lecture Course was dropped a letter grade; and, 4) the Professor electronically changed a correct answer on her final exam so that the answer would show as incorrect.

OCR interviewed the Vice President and the Dean about the investigation of the Grievance. The Vice President confirmed that the Complainant appealed her grade. The Dean stated that she conducted an investigation of the Complainant's complaint concerning her grade. The Dean stated that the Complainant appealed grades she received from the Professor and from the Instructor. The Dean investigated the Grievance as a grade appeal by reviewing the gradebook, looking at assignments that the Complainant turned in, and interviewing the Complainant, the Professor, and the Instructor. The Dean stated that she also reviewed grades of current and former students. According to the Dean, a review of the grades did not show that there were any inaccuracies in the calculation of grades with regard to the Professor.

The College also requested that the network administrator (Administrator) of the College's record keeping system check to see if anyone logged in and changed the Complainant's grade; the Administrator concluded that "The Final Exam Part I does not appear to be altered". However, the Dean's review of the Complainant's grade in a Tooth Anatomy Course did show that the Complainant's grade was improperly rounded. According to the Dean, the Complainant's grade should not have been rounded up as there is a no rounding policy in the College of Health Sciences. The Dean informed OCR that the Professor improperly rounded the Complainant's grade of a 79.99, which is a grade of C to a grade of 80.00, which constitutes a grade of B. The Dean informed OCR that the Professor was reprimanded for violating the no rounding policy. The Professor confirmed to OCR that she received a reprimand for violating the College's no rounding policy. The Professor stated that she had not rounded grades in the past, but did so on this occasion in an attempt to help the Complainant.

OCR also spoke with the Instructor of the Lecture Course who confirmed that the Complainant received a letter grade drop in her class because of her lack of attendance. According to the Instructor, the Complainant missed more than the allotted amount of absences for the semester which by rule required the Instructor to drop the Complainant a letter grade. Students can only miss three days of class prior to receiving a reduction in their grade.

Both the "no rounding" and "attendance" policies are included in the syllabi provided to students at the beginning of each semester. OCR reviewed the attendance sheet and the Complainant was the only student who missed 3 or more days from the class. The Instructor did not have any other students who violated the attendance policy. The Complainant told OCR that her grade complaint included allegations that there was unequal grading based on race. However, the Complainant did not make any allegations related to unequal grading between African American and white students in her grievance, and a review of the Grievance filed by the Complainant also did not indicate a reference to grades being allocated differently based on race.

After the conclusion of the investigation the Vice President sent a letter on June 12, 2014, to the Complainant summarizing the findings related to the Grievance. The Vice President's letter included the following findings: 1) there was no inaccuracy with regard to her final exam grade in the Professor's course as the final exam was always worth 124 points, and any reference otherwise was a clerical error; 2) the Complainant's grade in a Tooth Anatomy course was improperly rounded up and thus would have to be replaced with the grade she earned (from a B to a C); the Professor rounded the grade and violated the College's "no rounding" policy, 3) the Complainant's grade in the Lecture Course was reduced by a letter grade because of her

absenteeism; and, 4) there was no evidence that the Professor went back in the College's electronic system and changed the Complainant's grade.

OCR provided the Complainant with an opportunity to rebut the conclusions reached by the College regarding her Grievance. The Complainant responded by stating that she may have proof that other students' grades had been rounded in the past; however, she stated that she would not be able to provide the proof to OCR. The Complainant does not deny that she missed more than three days of class; however, she also stated that she believes that other students have been allowed to miss class without consequence. The Complainant was unable to produce any evidence to support this assertion. The Complainant also did not provide OCR with any evidence that the Professor subsequently changed an answer on her exam, or that the Professor changed the amount of points the final exam was worth.

Accordingly, OCR finds that there is insufficient evidence to support a conclusion that the College discriminated against the Complainant by not investigating her Grievance. There is no evidence that the College failed to investigate the Complainant's grade appeal because of her race. OCR's investigation showed that once the Complainant filed the Grievance the College interviewed all appropriate parties, reviewed all pertinent evidence, and provided the Complainant with an opportunity to present evidence. After the conclusion of the College's investigation it provided the Complainant with the outcome of its investigation.

3. Whether the College discriminated against the Complainant on the basis of race during Spring 2014 when the Professor of the Radiology Course graded her and other African American students more harshly than their non-African American counterparts in noncompliance with the Title VI implementing regulation at 34 C.F.R. §§ 100.3 (a) and (b)(1).

The Complainant alleged that the Professor discriminated against her in the Course; specifically, she stated that she was not allowed to retake quizzes that Caucasian students were allowed to retake. As a part of its investigation OCR interviewed the Professor, the three Witnesses provided by the Complainant, and reviewed data submitted by the College.

During an interview with OCR, the Professor stated that no students are allowed to retake quizzes in the Course; however, she did allow the Complainant to retake a quiz on one occasion in an attempt to help her pass the Course. She stated that she also allowed students to retake a midterm, but limited the retake to re-answering missed questions. Witness 2 recalls that all students in the class who failed the midterm were allowed to re-take the midterm except for the Complainant. However, she did not attribute this to the Complainant's race. OCR notes that only two of the nine students in the class were white. Witness 1 recalled that the Professor let everyone who had failed the exam retake it except the Complainant. African American students were allowed to re-take the exam. Witness 3, a white student, stated that she did not retake quizzes or a midterm.

OCR reviewed the grades of the students in the Course as a part of its investigation. Although the Complainant's grade in this course was a "C," a review of the grades did not show a disparity in the grades between African American students in the Course and white students. The average

numerical grade of the African American students in the Course was 83.37; the average numerical grade of the Caucasian students in the Course was 83.27. Additionally, a review of the grades submitted by the College does not show that the Complainant missed any quizzes nor that she was penalized for taking any quiz late.

OCR also interviewed the Complainant's witnesses regarding whether they believed that the Professor graded African American students more harshly than white students. Witness 1 stated that she believed that white students were allowed to violate the College's tardy policy without penalty and also received extra points on grades. Witness 1 could not state how she knew if other students were not penalized for violating the tardy policy. OCR reviewed the attendance records and the records show that the Complainant was the only student who missed 3 or more days. With regard to the allocation of extra points, Witness 1 did state that African American students also got extra points in the Course. Witnesses 2 and 3 stated that they did not believe that the Professor graded differently based on race.

OCR provided the Complainant an opportunity to provide evidence that other students were allowed to retake quizzes and that she was not. The Complainant maintained that she was not allowed to retake quizzes but could not provide evidence that Caucasian students were allowed to retake quizzes. OCR also provided the Complainant with an opportunity to specify the ways in which the Professor graded Caucasian students differently than African American students. The Complainant was unable to provide any evidence to support that Caucasian students were graded differently than African American students.

Accordingly, OCR finds that there is insufficient evidence to support the Complainant's allegation that the Professor graded her (and other African American students) differently based on their race in noncompliance with Title VI. OCR's investigation found no evidence that similarly situated white students were graded in a manner differently from the Complainant with regard to the ability to retake quizzes or any other matter related to the calculation of grades in the Course.

4. Whether the College retaliated against the Complainant in May 2014 when the Professor lowered her final grade in the Course because she complained of racially unfair treatment to CODA in noncompliance with the Title VI implementing regulation at 34 C.F.R. §100.7 (e).

As noted above, evaluation of a retaliation claim first requires a determination regarding whether the facts establish a prima facie case of retaliation. To determine that there is a prima facie case of retaliation, it is necessary to find by a preponderance of the evidence that: (1) the Complainant engaged in a protected activity; (2) the recipient was aware of the protected activity; (3) the recipient took an adverse action against the Complainant contemporaneous with or subsequent to the participation in a protected activity; and, (4) there is a causal connection between the adverse action and the protected activity. If these four elements are established, OCR proceeds to determine if the recipient has a legitimate, non-discriminatory reason for its actions that is not a pretext for retaliation.

In this case, the Complainant originally alleged that she informed CODA in spring 2014 of what she believed to be different treatment based on race occurring at the College. The Complainant informed OCR that she verbally communicated her concerns to a CODA official. The Complainant informed OCR that she believes that the Instructor and/or the Professor were made aware of her comments by other students at the College. The Complainant alleged that as a result of her verbal complaint to CODA the Professor retaliated against her by lowering her grade in the Course in May 2014. OCR interviewed both the Professor and the Instructor regarding the Complainant's allegation. Both denied retaliating against the Complainant and stated that no one at the College ever informed them of the Complainant's complaints to CODA. In addition, both stated that they were not present during the times in which students could bring complaints to CODA and had no knowledge about any conversation the Complainant had with CODA officials.

OCR provided the Complainant an opportunity to rebut the assertions of the Professor and the Instructor. During this follow-up conversation, the Complainant informed OCR that she could not remember complaining to CODA of different treatment based on race, and retracted her prior statements to OCR. Rather, the Complainant stated that she informed CODA that the College lacked supplies, had bad teaching methods, has a bad student to teacher ratio, and that students are shown favoritism based on whether a particular instructor likes a given student.

The complaints the Complainant made to CODA are not considered "protected activity" under Title VI. A complainant engages in a protected activity when he or she communicated, formally or informally, a belief that a recipient's act or policy is discriminatory on one of the bases enforced by OCR or he or she made a complaint, testified, assisted, or participated in any manner in an OCR investigation proceeding or hearing under the statutes enforced by OCR. Based on the Complainant's admission that she did not complain to CODA about race discrimination, OCR concludes that the Complainant has failed to establish that she engaged in a protected activity. Accordingly, the Complainant has failed to establish a prima facie case of retaliation. Thus, OCR finds that there is insufficient evidence to determine that the Complainant was retaliated against in noncompliance with Title VI.

Conclusion

Based on the investigation, OCR has determined that the College violated Title IX and its implementing regulations by failing to provide a prompt and equitable response to the Student's complaints of sexual harassment from November 2013 to May 2014 (Issue 1). In addition, OCR found that there is insufficient evidence of noncompliance with respect to Issues 2-4.

The College has entered into a Resolution Agreement pursuant to which the College will revise its harassment and discrimination procedures, and will also initiate annual training for all individuals who handle or investigate complaints pursuant to the College's revised Procedures.

OCR will monitor the College's implementation of the Resolution Agreement to ensure that the commitments made are implemented timely and effectively. 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. 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 we receive 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.

Intimidation or retaliation against complainants by recipients of Federal financial assistance is prohibited. No recipient may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the laws OCR enforces, or because one has made a complaint, or participated in any manner in an investigation in connection with a complaint.

This concludes OCR's consideration of this complaint, which we are closing effective the date of this letter. If you have any questions regarding this matter, please contact Mr. Art Manigault, Compliance Team Leader, at (404) 974-9376.

Sincerely,

Melanie Velez
Regional Director

Enclosure:
Resolution Agreement

cc:
Linda Osborne-Smith, LOsborne-Smith@tcsg.edu