



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

1244 SPEER BLVD, SUITE 310
DENVER, CO 80204-3582

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December 1, 2016

Dr. Maria Puzziferro, Interim President
Santa Fe University of Art and Design
1600 St. Michael's Drive
Santa Fe, NM 87505

Re: Santa Fe University of Art and Design
OCR Case Number: 08-16-2209

Dear Dr. Puzziferro:

This is to advise you of the resolution of the above-referenced complaint that was filed with our office. The complainant alleged that her daughter (the Student) was subjected to sexual harassment by a peer during the 2016 spring semester and when the Student reported it the University did not provide a prompt and equitable response.

We investigated this complaint pursuant to Title IX of the Education Amendments of 1972 and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in education programs and activities that receive Federal financial assistance from the Department. As a recipient of Federal financial assistance from the Department, the University is subject to this law and regulation.

During our investigation, we interviewed the complainant, the Student and University staff. We also reviewed documents submitted by the complainant and the University. Our investigation found sufficient evidence to demonstrate that the University is not in compliance with Title IX and its implementing regulation.

Facts

On February 5, 2016, the Student sent an email to the stage manager complaining that another student and fellow cast member in a campus musical (male student) had hugged and tickled her in the cafeteria and after asking for her cell phone, failed to return her phone and when she twice asked him to return it, told her to get on her knees.

On February 8, 2016, the stage manager forwarded the Student's email to the director of the musical production (Director) who in turn forwarded it to the Chair of the Performing Arts Department (Department Chair). The Department Chair forwarded the email to the then Student Affairs Executive Director (Executive Director). The Executive Director consulted with the former Title IX Coordinator who recommended a conversation with the Student to clarify the incident. The Executive Director decided that Student Services would speak to both students separately and inquire whether the Student wished to file a written complaint. University staff

stated they confirmed that the Student and the male student lived in different areas of campus and did not take any of the same courses.

On or about February 11, 2016, the Student met with a Campus Life Coordinator. The former Campus Life Coordinator spoke with her regarding the incident for which she said she provided a detailed account. According to the University, the Campus Life Coordinator also reviewed the University's sexual harassment policy and advised the Student of the option to file a Title IX complaint. Although she said she told him she felt she had been sexually harassed, the Student denied that the former Campus Life Coordinator told her how to file a Title IX complaint. The University stated the Student told the former Campus Life Coordinator that since February 8, the male student had not approached her or engaged in inappropriate behavior.

On February 17, the Department Chair and the Director met with the male student and his mother. He expressed that he was upset by his peers' perceptions of him and rumors about his behavior toward women. On February 19, the now former Assistant Director of Student Affairs (Assistant Director) met with the male student and his mother. During the meeting the male student expressed frustration that the Student did not tell him that she did not want to be hugged and found his teasing inappropriate. The Assistant Director reviewed the University's sexual harassment policy with the male student and explained to him that his behavior could be construed as sexual harassment.

On February 18, 2016, a dance instructor reported her concerns about the male student's behavior. The instructor explained that the male student seemed not to be respecting normally expected boundaries and was making her and other students uncomfortable. She stated that she had seen the male student hugging/massaging the female students in class without their permission and making them visibly uncomfortable.

On February 23, 2016, an acting instructor reported that she was concerned about the male student. She said he had become more withdrawn than he was at the beginning of the semester. She explained that initially, he was "jovial and physically communicative giving lots of hugs, especially to the female students." At the time of her report, she stated that he didn't seem to have many friends and was quiet and uncommunicative. The Assistant Director said he took this report as a sign that the male student had taken their conversation to heart.

By the end of February, rehearsals for the musical had begun. Although both students were present at rehearsals, the Department Chair stated that they rearranged rehearsal schedules so the Student and the male student would not be on stage at the same time. Because of tension in the cast, theater faculty suggested that Student Services conduct a mediation meeting between the students to address any remaining concerns.

Both students agreed to attend the mediation which was held on March 2, 2016. The Executive Director and the Assistant Director facilitated the meeting between the students. They encouraged both students to share their perceptions of the incident. At some points, the meeting became intermittently heated with raised voices and the Student breaking down in tears. Both students agreed not to have contact outside their participation in the musical. The Executive Director said she met with the Student individually after the mediation and again advised her that

she could file a written Title IX complaint and explained the procedure to her. The Student stated that she did not recall that the Executive Director explained how to file a complaint.

On March 2 after talking with the Student about the mediation, the complainant emailed the Executive Director and the Assistant Director (copied to the Department Chair) expressing concern for the Student's safety, inquiring whether the musical rehearsals were supervised and if there was any procedure the University could implement to prohibit the male student from approaching the Student. The complainant also asked whether the University had investigated whether the male student had or had access to any weapons.

The Department Chair responded to the complainant stating that rehearsals are supervised by multiple faculty or staff at all times. The Executive Director responded that both students discussed no contact outside the play; that the University had 24-hour security on campus that could escort the Student and based on its investigation, the University found no concern that weapons were involved. The complainant responded that she was flying to the University the next day to meet with administrators and she asked the University to issue a no contact order.

On March 3, the University issued a no contact order to the male student. The University's Interim President and the Assistant Director also met with the complainant and the Student. The Interim President advised the complainant and the Student of the University's Title IX policy and the procedures for filing a written complaint. According to the University, the complainant stated that they would consider filing a complaint. The complainant and the Student also met with the Department Chair. The complainant told the Department Chair that they were considering filing a Title IX complaint against the male student.

On March 9, the Interim President said she emailed the Student to inquire how she was doing and if there had been any other incidents with the male student. The Student did not respond. At the end of March, the Executive Director followed up with the Department Chair and Director on how things were going and whether there were any remaining concerns. The Executive Director was advised that the situation had improved.

Analysis and Conclusions

Title IX and its implementing regulation at 34 C.F.R. Part 106 prohibit discrimination on the basis of sex in education programs or activities operated by recipients of Federal financial assistance. Sexual harassment is unwelcome conduct of a sexual nature and is a form of sex discrimination prohibited by Title IX. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature.

Sexual harassment of a student can result in the denial or limitation, on the basis of sex, of the student's ability to participate in or receive education benefits, services, or opportunities. When a student sexually harasses another student, the harassing conduct creates a hostile environment if the conduct is sufficiently serious to interfere with or limit a student's ability to participate in or benefit from the school's program. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the harassment is

physical. Indeed, a single or isolated incident of sexual harassment may create a hostile environment if the incident is sufficiently severe. For instance, a single instance of rape is sufficiently severe to create a hostile environment.

Under Title IX, once a recipient has notice of possible sexual harassment between students, it is responsible for determining what occurred and responding appropriately. The recipient is not responsible for the actions of the harassing student, but rather for its discrimination in failing to respond adequately. A recipient may violate Title IX and the regulation if: (1) the harassing conduct is sufficiently serious to deny or limit the student's ability to participate in or benefit from the educational program; (2) the recipient knew or reasonably should have known about the harassment; and (3) the recipient fails to take appropriate responsive action. These steps are the recipient's responsibility regardless of whether the student who was harassed makes a complaint or otherwise asks the recipient to take action.

OCR evaluates the appropriateness of the responsive action by assessing whether it was prompt, thorough, and effective. What constitutes a reasonable response to harassment will differ depending upon the circumstances. However, in all cases the recipient must conduct a prompt, thorough, reliable and impartial inquiry. If harassment is found, it should take reasonable, timely, age-appropriate, and effective corrective action, including steps tailored to the specific situation. The response must be designed to stop the harassment, eliminate the hostile environment, and remedy the effects of the harassment on the student who was harassed. The recipient must also take steps to prevent the harassment from recurring, including disciplining the harasser where appropriate. A series of escalating consequences may be necessary if the initial steps are ineffective in stopping the harassment.

Other actions may be necessary to address sexual harassment. These may include special training or other interventions, the dissemination of information, new policies, and/or other steps that are designed to clearly communicate the message that the recipient does not tolerate harassment and will be responsive to any student reports of harassment. The recipient also should take steps to prevent any retaliation against the student who made the complaint or those who provided information.

The complainant alleged that the Student filed a complaint of sexual harassment with the University and that the University failed to provide a prompt and equitable response to that complaint. The University acknowledged that it received notice of the incident of alleged sexual harassment from the Student, but denied that the notice was presented in the form of a formal Title IX complaint.

It is undisputed that the Student sent the stage manager an email on February 5, 2016, detailing the circumstances of the incident involving the male student.¹ The University asserted that despite repeated explanations from University staff and administrators on how to file a sexual harassment complaint, the Student did not file a complaint.

¹ OCR noted that the Student's email was forwarded to several staff members before it was sent to the Executive Director who in turn consulted with the Title IX Coordinator. In interviews with theater department staff, there was confusion among staff about to whom sexual harassment complaints should be referred. In fact, the Assistant Director stated that instructors did not know what to do with complaints of sexual harassment. Under Title IX, recipients need to ensure that their employees are trained so that they know to report harassment to appropriate officials.

The University's sexual harassment policy, which was published in the 2015-16 Student Handbook provided that incidents of sexual harassment should be reported to the Executive Director or Assistant Director of Student Affairs or a Campus Life Coordinator. When a student reported an incident of sexual harassment, the policy provided that s/he must complete and sign a written report of the incident. The written report was to include: the identity of the alleged perpetrator; the frequency, details, intensity and duration of the harassment; the emotional or physical harm resulting from the incident and the remedial action sought. After the written report was received, University administration was to notify the alleged perpetrator of the complaint and convey the substance of the complaint.

Although the Student did not complete the University's form, she sent an email that contained sufficient information to put the University on notice of the alleged sexual harassment. It identified the male student, it detailed his actions and it described the emotional impact it had on her. The Student stated that when she sent the email, she intended to file a sexual harassment complaint. The University's requirement that a victim of sexual harassment complete a written, signed report of the incident is a matter of form over substance and imposes an additional burden on victims of sexual harassment. When the University was put on notice that the Student may have been subjected to sexual harassment, it had the responsibility to take further action, regardless of whether the Student filed a written, signed complaint as required by the University's procedures.²

We next considered whether the University took appropriate responsive action after receiving the Student's complaint. We noted that within less than two weeks of the Student sending her email, the Executive Director had consulted with the Title IX Coordinator regarding the complaint and confirmed that the Student and the male student were not in the same classes and did not live in the same area on campus. The Student met with the Campus Life Coordinator to relate the details of the incident and the Assistant Director met with the male student and his mother. The Assistant Director stated that he continued to meet with the male student to provide him with advice and guidance twice a week until the end of the semester. The theater department rearranged rehearsal schedules so the Student and the male student would not be on stage at the same time. Additionally, the University issued a no-contact order to the male student. The University also reached out to the Student multiple times after she reported the harassment to check on the Student's well-being and offer its support. The Student confirmed that after she reported the incident, the male student "pretty much left her alone." University staff reported that they received no other complaints about the male student's behavior toward the Student or other females beyond the single faculty referral received in mid-February 2016.

Based on the evidence, we determined that the University provided a prompt and equitable response to the Student's complaint of sexual harassment. Its response was reasonably calculated to determine what had happened and to end the harassment, prevent it from recurring and eliminate the effects of the hostile environment on the Student.

The complainant also expressed concern about the mediation meeting held on March 2, 2016. She said the male student yelled at the Student and berated her, terrifying her and causing her great emotional

² During our investigation, the University provided to OCR a copy of the University's revised sexual harassment policies effective at the beginning of the 2016-17 school year. The new policy no longer requires victims of sexual harassment to complete a written signed report when reporting an incident to the University. Under the new policy, a victim need only contact the Title IX Coordinator to initiate the complaint process.

distress. The University stated that the mediation was conducted at the urging of the theater department and both students agreed to participate.

The University's sexual harassment policy provides that the Executive Director of Student Affairs will attempt to resolve a complaint informally in a manner acceptable to all parties. Under the policy, if the victim does not agree to an informal resolution or if informal resolution is unsuccessful, the Executive Director will begin a formal investigation of the allegation.

Under Title IX, grievance procedures generally may include voluntary informal mechanisms (*e.g.*, mediation) for resolving some types of sexual harassment complaints. However, OCR advises that it is improper for a student who complains of sexual harassment to be required to work out the problem directly with the alleged perpetrator and certainly not without appropriate involvement by the school.

We found that the students voluntarily agreed to participate in the mediation meeting which was facilitated by both the Executive Director and the Assistant Director. Although University staff said they thought the mediation was a success, the Student shared that she felt the mediation made everything worse and she regretted reporting the incident. The Assistant Director said the male student found the meeting helpful because he was able to understand the Student's perception of the incident. While it is regrettable that the Student had a negative experience during the mediation meeting, we found that the University's informal resolution process did not violate Title IX. The Student explained that rehearsals went better than she thought and that the male student kept his distance from her and sat by himself most of the time. She added that he pretty much left her alone.

In conclusion, we determined that the University provided a prompt and equitable response to the Student's complaint of sexual harassment. We also determined, however, that the University's grievance procedures in effect at the time the Student made her report incorrectly required victims of sexual harassment to complete a written, signed report when reporting an incident to the University. Additionally, we concluded that staff in the University's theater department is not knowledgeable about the University's Title IX/sexual harassment procedures especially about to whom to refer a complaint of sexual harassment. Accordingly, we concluded the University violated Title IX and its implementing regulation.

As noted earlier, during our investigation we learned that the University voluntarily revised its sexual harassment policy effective at the beginning of the 2016-17 school year. The University's policy no longer requires victims to submit a written report to the University. The new policy simply provides that victims contact the University's Title IX Coordinator to report incidents of sexual harassment or sexual violence. Consequently, we determined the University resolved our compliance concern with respect to its sexual harassment policies.

We thank the University for voluntarily entering into an Agreement to provide training to University staff, faculty and administrators on the University's new sexual harassment policy. This concludes OCR's investigation of this complaint and should not be interpreted to address the University's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This case is now in the monitoring phase. The monitoring phase of this case will be completed when OCR determines that the University has fulfilled all terms of the Agreement. When the

monitoring phase of this case is complete, OCR will close case number 08-16-2209 and will send a letter to the University, copied to the complainant, stating that this case is closed.

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 University 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. In addition, 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. 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.

We thank you for the courtesy and cooperation extended to us during the processing of this case. If you have any questions regarding this matter, please feel free to contact XXXXXXXXX, Attorney Advisor, at XXXXXXXXXXXX, or me at 303-844-5027.

Sincerely,

/S/

Thomas M. Rock
Supervisory General Attorney

Enclosure

cc: Alexandra C. Relias, University representative