



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

REGION IX
CALIFORNIA

50 UNITED NATIONS PLAZA
MAIL BOX 1200; ROOM 1545
SAN FRANCISCO, CA 94102

October 24, 2017

VIA ELECTRONIC MAIL

Mark Rocha, Ph.D.
Chancellor, City College of San Francisco
Office of the Chancellor
50 Phelan Avenue, E200
San Francisco, CA 94112

(In reply, please refer to case no. 09-16-2123)

Dear Dr. Rocha:

This letter is to advise you of the conclusion of OCR's investigation of the above referenced case, which was opened on February 17, 2016 in response to a complaint filed with the U.S. Department of Education, Office for Civil Rights (OCR), against City College of San Francisco (College). The complainant, a student (Student)¹ at the College, alleged that 1) they were discriminated against on the basis of sex when campus police harassed them based upon their failure to conform with sex stereotypes by detaining them without justification, using unnecessary force, and referring to them by the wrong gender pronouns; and that 2) the College failed to respond appropriately to notice of the harassment.

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 at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in programs and activities receiving financial assistance from the U.S. Department of Education (the Department). The College is a recipient of financial assistance from the Department, and is subject to Title IX and its implementing regulation as enforced by OCR.

To investigate this complaint, OCR gathered evidence by interviewing the Student, another student who witnessed the alleged harassment (Student 2), and by reviewing information and documents provided by the Student and the College. During the course of OCR's investigation, the College expressed interest in voluntary resolution of the matter, and OCR determined that it

¹ OCR notified the College of the identity of the Student when the investigation began. We are withholding the Student's name from this letter to protect the Student's privacy.

was appropriate. As a result, OCR did not complete its investigation and did not make a determination regarding the allegations. On October 16, 2017, the College entered into a Resolution Agreement to address the concerns raised by OCR's investigation to date. The applicable legal standards, factual findings, and OCR's resolution of each issue investigated is summarized below.

Legal Standard

The regulations implementing Title IX, at 34 C.F.R. § 106.31, prohibit discrimination based on sex by recipients of Federal financial assistance. Colleges are responsible under Title IX and the regulations for providing students with a nondiscriminatory educational environment. Gender-based harassment of a student, including harassment on the basis of failure to conform with sex stereotypes, 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.

Colleges provide program benefits, services, and opportunities to students through the responsibilities given to employees. If an employee who is acting, or reasonably appears to be acting, in the context of carrying out these responsibilities engages in gender-based harassment that is sufficiently serious to deny or limit a student's ability to participate in or benefit from the program, the college is responsible for the discriminatory conduct whether or not it has notice.

Under Title IX and the regulations, if a student is harassed based on gender by an employee, the college is responsible for determining what occurred and responding appropriately. OCR evaluates the appropriateness of the responsive action by assessing whether it was prompt and effective. What constitutes a reasonable response to harassment will differ depending upon the circumstances. However, in all cases the college must conduct a prompt, adequate and impartial inquiry designed to reliably determine what occurred. 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, prevent the recurrence of harassment, and remedy the effects of the harassment on the student who was harassed. A series of escalating consequences may be necessary if the initial steps are ineffective in stopping the harassment.

To carry out these requirements, Title IX implementing regulations, at 34 C.F.R. § 106.8(b), also require a recipient to adopt and publish grievance procedures providing for a prompt and equitable resolution of student and employee complaints alleging sex discrimination.

Factual Findings

The Student told OCR that they do not identify within the gender binary of either male or female, and that they use plural (they/them) instead of gendered pronouns. The Student reports having legally changed their name to a traditionally female name with a non-traditional spelling. The Student said that people assume that they are male based on their general appearance and cultural conditioning but that they sometimes, including at the time of their encounter with College police in the library that is the subject of their OCR complaint, present as more stereotypically feminine. The Student described their appearance on the day of the incident as feminine, including because they were wearing lipstick, eyeliner, and other makeup.

The Student told OCR that on September X, 2015, they and a female friend (Student 2) were talking in the College library when another student (Student 3) asked them to keep their voices down, and that they agreed to do so. The Student told OCR that they then became bored waiting for Student 2 to finish copying their notes, so the Student used a small screwdriver they had with them to adjust the bolt of a knife the Student also had with them. The Student provided the same account in their hand-written Incident Report Statement (incident report) dated September X, 2015 and completed at the campus police station. The Student's incident report statement also states that they did not look at anyone while adjusting their knife.

The Student described the rest of the encounter to OCR as follows: two College police officers, who OCR found were employees of the College, entered the section of the library where the students were seated, and one officer had his baton out and acted aggressive. The police officers escorted the Student and Student 2 to the lobby, where one officer tightly held the Student's left bicep and right wrist, bending it back, and also placed their foot behind the Student's so that the Student could not step back. The officers asked if either of the students had a knife; Student 2 said no and the Student said yes, and one officer then kicked the Student's feet to force them apart and handcuffed and searched the Student. The officers would not let the Student sit down, and one officer cursed. The officers checked the Student's I.D., which the Student stated had a male gender marker because a designation of non-binary was not available at that time.² The police detained the Student and Student 2 at the library for 10-15 minutes and then brought both students to the campus police station, where both students were held for an additional 30 minutes. The Student alleged to OCR that the officers treated Student 2 disrespectfully but did

² At the time of the Student's OCR complaint, the College did not have a system to memorialize a student's preferred name (if not legally changed) or preferred pronouns on their records. However, on August 25, 2017 the College informed OCR that it had created a task force for this purpose, and that its Information Technology department was in the process of updating the College's information systems to allow students to indicate their preferred name and gender on their records. On August 24, 2017, the Student informed OCR that they were aware of a student who had already updated their records pursuant to this new process.

not use the same amount of force detaining her because she conformed with sex stereotypes, whereas the Student did not.

Student 2 would not speak with OCR but provided a written description of the incident, including that “the male officer asked [the Student] to spread their legs and even though [the Student] obliged, the officer began kicking [the Student’s] ankles to spread them with force.” Student 2’s description also included that after she responded that she did not have a knife, the police did not handcuff or search her. Student 2 also completed a handwritten incident report statement at the police station on September X, 2015. Student 2’s incident report did not include information that the police allegedly kicked the Student’s ankles and that she was not searched. It stated only that she was copying the Student’s notes in the library; she and the Student responded “okay”, when asked by Student 3 to lower their voices; and she was unaware until the police arrived that anything had happened or that the Student had a knife.

Student 3’s hand-written incident report statement included that she contacted the police because she felt threatened and scared when she saw the “guy” was holding a black pocket knife and both students were staring at her intensely shortly after she had requested that they be quiet in the library.

The Student told OCR that the police referred to them with male pronouns (“misgendered” them) when talking with Student 2. Student 2 confirmed this in her written description of the incident, as well as described that while she was at the police station in a room with two officers writing her incident report statement, one officer asked her, “this guy isn’t your boyfriend, is he?” and she replied, ‘No, [the Student] goes by they/them pronouns.’” The Student told OCR that the police responded to Student 2 by saying, “Who’s they? Who are you talking about?” Student 2’s description did not include this information but stated that the officers referred to the Student using a male pronoun on “multiple other occasions,” and that she corrected them, but that they ignored her corrections. Student 2’s written description did not provide additional details as to whether Student 2 was present when the misgendering allegedly occurred.

The police officer’s incident report statement included that the Student was “slightly uncooperative” because they initially refused to answer questions before disclosing that they had a knife; the Student was handcuffed after disclosing that they had a knife in order to ensure the officers’ safety while searching the Student; the subsequent search yielded an additional knife and a Taser. The Student was detained in the library while the officers checked to see if the Student had a police record, and they found that the Student did not have one. The incident report also stated that the students were taken to the police station for further investigation, and that Student 2 was polite and cooperative throughout the entire investigation. The police officer’s incident report records the Student’s gender as male and refers to the Student with male pronouns.

The Student told OCR that College police told the Student and Student 2 when they were released that they were suspended on an interim basis until they met with the Vice Chancellor. The Student said that they met with the Vice Chancellor on September X, 2015, six days later. At the meeting, the Student was asked to, and did, sign a document acknowledging their acceptance of the College's Rules of Student Conduct (SCC) in order to end the suspension. Student 2's written description states that she was not required to sign any document. The Student told OCR that during the meeting they orally complained to the Vice Chancellor that the police had misgendered them and mistreated them, that the Vice Chancellor asked for more information about how the Student was mistreated in ways related specifically to their gender, that the Student explained in more detail, and that at the conclusion of the meeting the Vice Chancellor gave the Student a web link through which, the Vice Chancellor allegedly said, the Student could file a complaint. The Student told OCR that they do not remember which grievance procedure – the College's or a local human rights commission's – the web link was for, and that they did not access it to make a complaint and instead contacted OCR.

The College agrees that the Vice Chancellor met with the Student, although its records show that the meeting took place on September X, 2015. The College provided OCR with copy of an entry in the Vice Chancellor's calendar on that date describing the meeting and including this information: "Matter resolved informally: reminded student of student code of conduct [and] connected student to: Student Health Services, Student Activities, [and] Complaint/Grievance Process." The Vice Chancellor left employment at the College after spring 2017.

OCR reviewed the College's "Policy and Procedures For Handling Complaints of Unlawful Discrimination and Harassment Under . . . Title IX, Education Amendments of 1972, 20 U.S.C. Sections 1681, et seq.", which states that informal charges of discrimination should be brought to the attention of the College's responsible officer/Title IX Coordinator, who oversees the resolution process.³ It also specifies that the College must informally or formally resolve complaints within 90 calendar days. On March 11, 2016, the College's Title IX Coordinator⁴ informed OCR that there were no other documents apart from the Vice Chancellor's calendar notation about the incident in the library, and the College's response to it, including any inquiry or response related to the concerns raised by the Student or Student 2 about the incident. On September 19, 2017, the College's Title IX Coordinator told OCR that she was aware of the incident in the library but could not remember whether the Vice Chancellor had informed her of the Student's oral complaint. The Student told OCR that they never heard from the Vice Chancellor or anyone else at the College regarding their oral complaint.

³ http://www.ccsf.edu/Offices/Title_IX/AAO_Policy_and_Procedures_for_Handling_Complaints-091014.pdf

⁴ The College's Title IX Coordinator is also Counsel for the College.

The Student told OCR that while they were detained by the police and during the interim suspension, they missed several classes. After the detainment, they felt unsafe and anxious around campus police.

Analysis

With respect to the second allegation, the Student told OCR that they orally complained to the Vice Chancellor during their September X, 2015 meeting that the College police had mistreated them due to their gender presentation, and that the Vice Chancellor asked for more information and then provided the Student with a web link through which the Student could make a complaint. The Vice Chancellor's September X, 2015 calendar entry confirms that the Student complained during their meeting and that the Vice Chancellor responded by, among other things, "connect[ing] the student to . . . Complaint/Grievance Process."

Once a school has notice that a student has experienced possible harassment based upon sex, it should take immediate and appropriate steps to determine what occurred. If it determines that harassment on the basis of sex has occurred, it must take prompt and effective steps reasonably calculated to end the harassment, prevent its recurrence, and eliminate its effects. These steps are the school's responsibility whether or not the student who was harassed makes a formal complaint.

In this case, the evidence shows that the Student made an oral complaint to the Vice Chancellor during their September X, 2015 meeting about the September X, 2015 incident in the library. Although the Vice Chancellor's calendar entry does not state the subject matter of the Student's complaint, OCR found the Student's statement credible that they complained about gender-based harassment by the police. Although the calendar entry indicated that the Vice Chancellor provided the Student with information about a grievance process of some kind, OCR is concerned that there is no evidence showing that the Vice Chancellor notified the Title IX Coordinator of the Student's oral complaint, or that the College, once aware of the oral complaint, took any steps to investigate it, even though the College's Title IX grievance process required such steps. The College told OCR that it has no other documents, apart from calendar entry, regarding the College's response to complaints or concerns raised by the Student or Student 2 about the alleged police harassment. The Title IX Coordinator told OCR that she was aware of the incident in the library involving the Student, but could not recall if she was told by the Vice Chancellor specifically that the Student had orally complained about the police officers' alleged gender-based harassment. Accordingly, based on the facts gathered to date, OCR had a concern that the College did not provide any statements or documents showing that it had investigated or responded to the oral complaint. However, OCR did not finish its investigation into this allegation prior to the College expressing an interest in voluntary resolution, and OCR agreeing that it was appropriate to proceed with such a resolution.

With respect to the first allegation, that the Student was subjected to harassment by College police based upon their failure to conform with sex stereotypes by detaining them without justification, using unnecessary force, and referring to them by the wrong gender pronouns, OCR determined that the initial response of the police officers (locating the Student and Student 2 in the library and escorting them to the lobby to answer questions) was not evidence of harassment given that Student 3 had complained that she felt threatened by the Student allegedly brandishing a knife. However, OCR could not determine without further investigation whether the College police treated the Student as alleged, and if so, whether that treatment was based upon sexual stereotyping rather than other factors, such as the officers need to ensure safety, and whether such treatment was sufficiently serious to constitute sex-based harassment. Accordingly, OCR has not reached a compliance determination with respect to this matter.

Conclusion

On October 16, 2017, the College entered into the enclosed voluntary Agreement with OCR that is aligned with the allegations investigated, and the information obtained by OCR during the investigation. In summary, pursuant to the voluntary Agreement, the College will 1) remove references to discipline or a disciplinary response related to the incident in the library; 2) report to OCR for a period of one year allegations of sex-based police harassment of the Student, as well as any complaints of sex-based harassment made by other students against College police officers and how the College responded to the allegations; 3) review and revise, if necessary, the College's policies and procedures and guidance documents to ensure they comply with Title IX and its implementing regulation, as well as to ensure that they include information that students may make sex-based harassment complaints if they have been discriminated or harassed on the basis of their gender and/or failure to conform with sex stereotypes; and, 4) provide training to administrators with responsibility for receiving and responding to gender-based harassment complaints, as well as to campus police/security officers designed to improve their understanding of and work with gender nonconforming students.

This concludes OCR's investigation of the complaint and should not be interpreted to address the College's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. OCR is closing the investigation of this complaint as of the date of this letter, and notifying the Student concurrently.

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.

When fully implemented, the voluntary Agreement is intended to address all of OCR's compliance concerns in this investigation. OCR will monitor the implementation of the Agreement to ensure the College is in compliance with Title IX and its implementing regulation, which were at issue in this case. The Student may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the College may not harass, coerce, intimidate, retaliate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the Student 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.

Thank you for your assistance in resolving this complaint. If you have any questions please contact OCR attorney Matthew Wood at 415-486-5591 or Matthew.Wood@ed.gov.

Sincerely,

/s/

Brian Lambert
Acting Team Leader

Encl.