



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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REGION IX  
CALIFORNIA

November 30, 2017

**SENT VIA EMAIL**

Renee D. Martinez  
President  
Los Angeles City College  
855 North Vermont Avenue  
Los Angeles, California 90029

(In reply, please refer to case no. 09-17-2399.)

Dear President Martinez:

This letter is to inform you of the disposition of the above-referenced complaint filed against Los Angeles City College (College) with the U.S. Department of Education (Department), Office for Civil Rights (OCR) on April XX, 2017, alleging discrimination on the basis of race. The Complainant (hereafter Student)<sup>1</sup> alleged that the College discriminated against her on the basis of race. OCR investigated whether the Student was subjected to race harassment when a student made a noose in the costume shop of the College's Theatre Department and the College failed to respond to her complaint.<sup>2</sup>

OCR investigated the complaint under the authority of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, and its implementing regulation, 34 C.F.R. Part 100. Title VI prohibits discrimination on the bases of race, color, or national origin in programs and activities operated by recipients of Federal financial assistance. The College receives funds from the Department and is subject to Title VI and the regulation.

To investigate this complaint, OCR conducted interviews and reviewed documents and other information provided by the Student and the College. Prior to completing the investigation, the College voluntarily agreed to enter into a Resolution Agreement (Agreement), which when fully implemented, is intended to resolve the concerns raised in this case. The legal standards, facts gathered, and the reasons for our determinations are summarized below.

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<sup>1</sup> OCR previously provided the College with the identity of the Student. We are withholding the Student's name from this letter to protect the Student's privacy.

<sup>2</sup> The Student also alleged to OCR that she was subjected to race harassment when an instructor repeatedly referred to her as the "Obama Administration." OCR found that this allegation was untimely as it allegedly occurred during the 2014-2015 school year, more than 180 days from the filing of the OCR complaint. As such, OCR did not investigate the "Obama Administration" allegation.

**Issue:** *Whether the Student was subjected to discrimination on the basis of race when a student made a noose in the costume shop of the College's Theater Department and the College failed to respond to the Student's complaints.*

**Legal Standard:**

The regulations implementing Title VI, at 34 C.F.R. § 100.3(a) and (b), prohibit discrimination based on race, color or national origin by recipients of Federal financial assistance. Colleges are responsible under Title VI and the regulation for providing students with a nondiscriminatory educational environment. Harassment of a student based on race, color or national origin can result in the denial or limitation of the student's ability to participate in or receive education benefits, services, or opportunities

A college violates Title VI and the regulations if the evidence shows that: (1) the harassing conduct (physical, verbal, graphic, or written) on the basis of race, color, or national origin is sufficiently serious -- severe, persistent, or pervasive -- so as to limit or deny a student's ability to participate in or benefit from the services, activities or privileges provided by a college; (2) the college had actual or constructive notice about the harassment; and (3) the college failed to take an appropriate, timely, and effective responsive action that is within its authority to end the harassment, eliminate any hostile environment that has been created, prevent its recurrence, and, where appropriate, remedy the effects of the harassment on the student who was harassed.<sup>3</sup>

Under the Title VI and the regulations, once a college has notice of harassment of a student on the basis of race, color or national origin by another student that took place in a college program, it is responsible for determining what occurred and responding appropriately. The college is not responsible for the actions of the student but rather for its own discrimination in failing to respond adequately. Once the college has notice of harassment, the responsibility to take appropriate and effective action is the college's responsibility whether or not the student who was harassed makes a complaint or otherwise asks the school to take action. So long as an agent or responsible employee of the college received notice, that notice will be imputed to the college.

In analyzing claims of harassment under Title VI, OCR first considers the totality of the circumstances to determine whether a hostile environment has been created, *i.e.*, whether the harassing conduct is sufficiently severe, persistent or pervasive that it denies or limits a student's ability to participate in or benefit from the recipient's program. These circumstances include the type of harassment, context, nature, scope, frequency and severity, age, race, duration, and location of the harassment incidents, as well as the identity, number, and relationships of the persons involved. It also considers whether other incidents motivated by race, color or national origin have occurred at the college to this complainant or others.

OCR evaluates the appropriateness of the responsive action by assessing whether it was timely and effective. What constitutes a reasonable response to harassment will differ depending upon the circumstances. However, in all cases the college must promptly conduct an impartial inquiry

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<sup>3</sup> For further explanation, please see the 1994 Investigative Guidance entitled, "Racial Incidents and Harassment Against Students at Educational Institutions," Part X, Federal Register, Vol. 59, No. 47, March 10, 1994, 11448-11454.

designed to reliably determine what occurred. If a college grievance procedures encompass race, color, and national origin discrimination, it must apply such procedures consistently and in a manner that does not constitute Title VI discrimination.

The response must be tailored to stop the harassment from recurring, eliminate the hostile environment, and remedy the effects of the harassment on the student who was harassed. The steps taken should be reasonable, timely, age-appropriate, tailored to the specific situation, and effective. A series of escalating consequences may be necessary if the initial steps are ineffective in stopping the harassment.

Other actions may be necessary to ensure a nondiscriminatory educational environment. 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 college does not tolerate harassment and will be responsive to any student reports of harassment. The college also should take steps to prevent any retaliation against the student who made the complaint or those who provided information.

**Facts:**

The following facts are relevant to OCR's analysis.

- The Student attended the College's Theater Academy from 2014 to the present. She was initially enrolled with the College in 2003.
- The Student alleged that during the 2016-2017 school year, she was subjected to discrimination on the basis of race when another student (Student 2, who is Latino) made a noose in the costume shop of the College's Theater Department. The Student alleged that an Instructor told Student 2 that he should make nooses at home, and that the Instructor told her that Student 2 was "just blowing off steam."
- On November XX, 2016, the Student filed a Campus Incident Report with the Campus Police, which stated that the Student had several altercations with an instructor from the Theater Arts Department (Instructor 1), and other Theater staff who allegedly treated her unfairly based on race.
- After November XX, 2016, the Student went to see a College Administrator (Administrator) who is African American, regarding the status of the Campus Incident Report. The Administrator told OCR that during their meeting the Student berated him verbally, and accused him of not doing anything to help black people.
- On November XX, 2016, the College's Office of Special Services referred the Student to the College's Life Skills Program after the Student came to the counseling office extremely distraught, and accused the Counselor of being a racist. The Counselor told OCR that he was unaware of the noose incident until the OCR complaint.

- On XXX XXXXXXX of December X, 2016, during a Theater Arts class about props and sets, students, including Student 2, were taught how to tie knots with rope for the purpose of manipulating props for performances.
- That same day, during lunch in the prop room, Student 2 had a light, 4-inch rope, on which he tied knots, and then formed into a noose. The Student, District<sup>4</sup> Investigator, who is African American, from the Office of Diversity, Equity and Inclusion (Office for Diversity) and contemporaneous written notes submitted to OCR state that the Student asked Student 2, “Is that a n----- noose?” Student 2 did not respond. The Student told OCR that she repeated the question and Student 2 responded, yes, and chased her around the Theater Department’s costume shop. According to the Student, a Theater Arts Instructor (Instructor 2) entered the room as the Student was leaving, and told Student 2 he should not do that in class. The Student thought Instructor 2 was implying that making a noose was appropriate at home, behind closed doors. According to the Student, another Theater Arts Instructor (Instructor 3) arrived and took the Student and three other students (including Student 2) out of the classroom to discuss the incident. The Student stated to OCR that Instructor 2 said Student 2 was “just blowing off steam,” but that there would be a meeting about the incident, which did not occur.
- Student 2 told OCR that making the noose was not racial. Rather, he was under stress due to the pressures of school, and was making a dark joke about hanging himself, asking his classmates, “who’s next?,” as he practiced the clove hitch and bowline knots he learned in his theater shop class that morning. Student 2 told OCR that he approached three classmates (who he described as friends, including a third student (Student 3), who is African American) with the noose, but that he did not chase them. Student 2 stated to OCR that the Student was not among the students he approached, as she was on the other side of a large room. Student 2 told OCR that Instructor 3 spoke with him in his office after the incident and expressed disappointment with his actions. Student 2 told Instructor 3 that making the noose was a morbid joke directed more at himself than anyone else, and was sent back to the classroom. Student 2 told OCR the meeting with Instructor 3 was very brief. Student 2 was not interviewed by anyone at the College or District regarding the incident.
- Of the three student witnesses whom Student 2 approached with the noose, only Student 3 was African American. Student 3 told OCR that neither he nor the Student was chased by Student 2, and that he did not take offense to Student 2 making the noose. He stated to OCR that he did not understand Student 2’s actions to be racial, and that there was no discussion or context related to race prior to the incident. He stated to OCR that it was the Student herself who escalated the situation by asking if the noose was an n-word noose. Student 3 was not interviewed by anyone at the College or District regarding the incident.
- On December X, 2016, the Administrator learned of the incident by receiving written notes, from the Student about the noose incident. The Administrator stated to OCR that he was not sure why the incident was brought to his office; he assumed it was because he is African American.

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<sup>4</sup> The College is part of the Los Angeles Community College District.

- On December X, 2016, the Administrator had a meeting with Instructor 1. The Administrator stated to OCR that he told Instructor 1 that, in order to obtain more information about the noose incident, he wanted to meet with all Theater staff who had contact with the Student. Instructor 1 told OCR that she does not recall discussing the noose incident with Theater faculty, but that she does recall discussing concern for the Student's wellbeing. Instructor 1 told OCR that several students came to her with complaints that they had been verbally abused by the Student, and requested not to be assigned projects with her. The College submitted to OCR documentation of these complaints. Instructor 1 stated to OCR that she did not see it as her role to convey the Student's concerns about the noose to the Dean. Instructor 1 did not engage in any follow-up regarding the noose allegation after she was contacted by the Administrator.
- On December X, 2016, the Administrator met with two instructors (Instructor 2 and Instructor 3). According to the Administrator, and confirmed by his contemporaneous notes, Instructor 2 came to his office and confirmed that there was an incident involving the Student and Student 2, and a noose. Instructor 2 stated that while "distasteful," the incident was not about race until the Student made comments about lynching Black people. Instructor 2 told the Administrator that he reprimanded Student 2. The Administrator stated to OCR that Instructor 2 told him that other students view the Student as hostile, violent and prone to over-reactions, and that he was concerned about the Student's attitude toward others. He stated that she had performed poorly in at least one other class because she did not take direction well, and was not trusted to use equipment (i.e. saws and drills) safely.
- On December X, 2016, according to the Administrator, Instructor 3 told him that he taught Student 2 and the rest of the Theater class how to make a noose as skill for performance props. The Administrator told OCR that he questioned the appropriateness of using a noose as a prop.
- Instructor 3 stated to OCR that the Student had taken approximately XX classes with him since 2014. He described the Student as a good student at times based on test performance, but that she was inconsistent and sometimes was volatile. Instructor 3 stated that he had taught students to tie knots for rigging and making props fly on stage during Theater Arts Shop Class XXX or Theater XXX the XXXXXXXX XX December X, 2016, the day of the incident. Instructor 3 stated to OCR that he had never taught any student to make a noose, nor did he ever use a noose in a College theater production. Instructor 3 stated to OCR that on December X, 2016, he walked into the shop classroom, where scenery was built for College theater productions, as the Student was walking out. Instructor 3 was aware that the Student was upset because her jaw was clenched, and she was cursing. Instructor 3 stated to OCR that he saw a noose in Student 2's hand and reprimanded Student 2 by stating, "you know better than this; she's so touchy. You know how she takes things." Instructor 3 denied saying to Student 2 that he should do that (make nooses) at home, and also denied that he stated that Student 2 was "just blowing off steam." Instructor 3 told OCR that instead of focusing on what he experienced to be the Student's emotional response, he could have focused more on the historical meaning of the noose as a symbol of racial hatred.

- On December X, 2016, after speaking with Instructor 2 and Instructor 3, the Administrator contacted the Director of the District's Office for Diversity, which is responsible for responding to discrimination complaints on the College's behalf, because of the racial issues implicated in the incident. According to the Administrator, the Director (who retired July, 2017) told him to send the Student a complaint form, which he did via email on December X, 2016. The District Office for Diversity took over for further coordination and response.
- On or around December X, 2016, Instructor 3 stated to OCR that in the hallway during lunch he told the Student that Student 2 did not mean to make the noose as a statement against Black people.
- Student 2 told OCR that beginning a week after the noose incident the Student repeatedly (at least five times) called him a racist and cursed at him, though he did not report the name-calling to the College or District.
- On December XX, 2016, the Student sent an email to the College's Diversity Program, stating that in the Theater Department there were virtually no African American students or instructors.
- The Administrator told OCR that on January XX, 2017 he placed a follow up call to the Student who told him she was working with the Dean of Student Services, and that his assistance was no longer needed.
- On January XX, 2017, the Administrator received a written race discrimination complaint from the Student regarding the events of December X, 2016. On January XX, 2017 the Administrator forwarded the complaint to the District Office for Diversity for coordination and response.
- The January XX, 2017 complaint was investigated from January XX, 2017 to March XX, 2017. The Investigator requested and reviewed documents sent to the District Office for Diversity by the College, and conducted in person site interviews of the Student and the Administrator on March X, 2017. The Investigator told OCR that the Student was agitated and had difficulty providing specifics about the allegations under investigation. The Investigator told OCR that she did not remember taking notes during or after the interview of either the Student or the Administrator. The District did not provide OCR with any notes. The Investigator did not attempt to interview Student 2, Student 3, Instructor 1 or Instructor 2. The Investigator told OCR she did not view the noose incident as racial because it was the Student who used the racial epithet, not Student 2.
- On February X, 2017, the Student sent an email to the College's Diversity Program, stating that Instructor 3 had accused the Student of being a distraction. The email explained that the Student believed she was seen as a distraction because she was a Black woman trying to graduate.
- On February X, 2017, the Student went to the office of the Administrator asking to meet with him. The Administrator's typed chronology of events stated that he told the Student that his

office stopped resolving the complaint when the Student told him she was working with the Dean of Student Services, and no longer needed his assistance. The notes state that the Administrator offered to continue working on the complaint, but would need to contact the Dean for an update. The Student left his office upset.

- On February XX, 2017, the College sent the Student a letter introducing the District Investigator assigned to the Student's complaint, and requesting responses to 14 follow-up questions.
- On February XX, 2017, the College received the Student's written responses to the Investigator's follow-up questions.
- On March X, 2017, the College received supplemental written information from the Student regarding her allegations, including a description of Student 2 sitting in a chair across from the Student, making a noose, which he allegedly dangled back and forth in front of the Student. The supplemental written information re-iterated that Student 2 chased another African American student (Student 3) around the classroom with the noose; that the Student asked Student 2 if that was a noose to hang n---s with? And, that after asking three times, Student 2 respond, "yes." In addition, she alleged that Instructor 1 stated to Student 2 that he was supposed to do that at home, behind closed doors.
- On March X, 2017, the Student went into the President's office and dropped off paperwork regarding her discrimination complaint. The President's staff informed the Student that the investigation was pending.
- On March XX, 2017, the Student went into the President's office again to drop off additional paperwork, which was duplicative of the Student's previously submitted type written notes.
- On March XX, 2017, the Student was suspended (for disorderly conduct, threatening behavior, unsafe conduct, assault or battery, interference of performance of duties of an employee, disruption of classes), referred to mental health services and escorted off campus. The suspension period extends for three semesters - Spring 2017, Summer 2017 and Fall 2017.
- On March XX, 2017, the College notified the Student, in writing, of the results of the investigation. The four-page letter included a written determination on each of the Student's eight allegations, which included an allegation regarding the noose incident (which the College found was not racial discrimination). The letter also included information regarding the Student's right to appeal.
- The College has adopted Administrative Regulation C-14, Procedures for Prohibited Discrimination, Unlawful Harassment, and Sexual Misconduct Complaints (Procedures). Informal complaint procedures state, in pertinent part, that:
  - They are voluntary and shall not exceed 30 days after the filing of the informal complaint;
  - Complainants must be notified of the formal process;

- Complainants are not required to resolve the complaint directly with the accused;
  - Complainants must be advised of the right to file with the Equal Employment Opportunity Commission (EEOC) or OCR as appropriate;
  - Any party is entitled to a College or District advocate; and,
  - If a resolution is reached, the Compliance Officer will draft a settlement agreement to be signed by the parties and monitored by the Compliance Officer.
- The formal complaint procedure for race discrimination complaints state, in pertinent part, that:
  - They can be filed verbally or in writing, and do not have to be on a prescribed form;
  - Complaints shall be filed with a year from the date the complainant knew or should have known of the discrimination;
  - Notice of complaint receipt should occur with 5 business days;
  - Investigations should be completed with 60 days;
  - A written report shall be sent to the College President or Deputy Chancellor within 60 days. Within 15 days of receiving the report, the College President or Deputy Chancellor shall send the report to the complainant, with notice that s/he can make an oral statement to the College President or Deputy Chancellor; and,
  - A written decision, which included appeal rights, shall be made within 90 days from the date the complaint was filed, and sent to the parties.
- The Student's Counselor, Instructor 1 and Instructor 3 stated to OCR that they did not know what the College's policy and procedure was related to race discrimination complaints. The Investigator was aware that the College had policies and procedures related to the resolution of race discrimination complaints, but she was unaware of the timeframes and informal process contained therein. The Investigator did not know if the College's complaint forms were online, or if Colleges can adopt their own procedures separate from District procedures.
- The President stated to OCR that except for the Student's complaint, there have been no race discrimination complaints in the Theater Department.
- As a result of the noose incident, the Student told OCR that she experienced anxiety. She became disillusioned with the College, who she believed did nothing to resolve the incident. The Student told OCR that the incident had a devastating impact on her as she is no longer making progress at the College towards her educational goals because she has been suspended.

### **Analysis:**

OCR found that Student 2 made a noose in a theater arts shop class. Because the symbol of the noose is inextricably connected to a history of racial violence and hatred, a single incident involving a noose can be so severe so as to meet the severe, persistent, or pervasive legal standard. With regard to symbols such as nooses, OCR will consider whether circumstances indicate that the recipient should recognize that the conduct was in fact, or was reasonably likely to have been, based on race (e.g. the hanging of nooses).



In this case, there was no alleged underlying racialized discussion or indicia in the shop room prior to the noose incident. Rather, tying knots on rope was part of the shop class curriculum taught the same XXXXXXXX as the noose incident, though using ropes and knots to make nooses was not. The noose incident happened once (although once could be sufficient depending on the facts), and the only other African American student who witnessed the noose incident (Student 3) told OCR that he was not offended by the noose, though he stated that it was in poor taste. If the incident took place as described by the Student, it could have created a hostile environment for the Student. Specifically, the Student alleged that Student 2, after jokingly acting as if he was hanging himself, asked other students, including African American students (i.e. the Student and Student 3), “Who’s next?” Second, Student 2 was alleged to have chased two African American students with the noose (the Student and Student 3). Third, the Student alleged that Student 2, upon being asked if the noose was a n-word noose, responded affirmatively. A classmate making a noose, asking African American students to hang themselves with it, chasing them with it, and agreeing that it was a n-word noose, could create a hostile environment. In this case, based on the facts gathered to date there is a dispute. While the Student states that Student 2 approached and chased her and Student 3 with the noose, and responded affirmatively to questioning about the noose being a n-word noose, Student 2 denies having done so. As a result of the noose incident, the Student told OCR that she experienced anxiety. She became disillusioned with the College, which she felt did nothing to resolve the incident.

The College had notice of the noose incident on December X, 2016 when Instructor 3 saw Student 2 with a noose in his hand. Instructor 3’s response was to suggest that the Student was overly sensitive rather than to treat it as a potentially discriminatory incident. The College also had notice of the noose incident on December X, 2016 when the Student submitted typed notes describing the noose incident to the Office of the Vice President. The College had further notice of the noose incident when the Student filed a formal written complaint on January XX, 2017, which was delivered to the Office of the Vice President.

In response to notice of the noose incident, the College began conducting an investigation, which involved the Administrator talking with Instructors 1, 2, and 3. These conversations were documented with contemporaneous hand-written notes, and occurred promptly – within a day – of the incident. Prior to reaching a conclusion, the Administrator requested that the District Office of Diversity take over the coordination and resolution of the incident. On January XX, 2017, the District began responding to a formal complaint involving the noose incident, but only interviewed two individuals – the Student and the Administrator. The District did not interview any of the student witnesses. The Office of Diversity Investigator, Instructors and the Counselor interviewed by OCR were unaware of the College’s procedures for filing and resolving race discrimination complaints.

Based on the facts gathered to date OCR has concerns that the determination that no harassment took place ignored the historic symbolism of a noose, and overly relied on the fact that the Student herself said the n-word, while failing to recognize that regardless of her statement, the Student may have been subjected to a hostile environment based on race. OCR also has concerns that, had harassment occurred, the Diversity Investigator’s investigation was not adequate as it consisted of interviewing only the Student and the Administrator, failing to

interview other student witnesses or instructors, was not adequately documented as the Investigator took no interview notes (although the Administrator did during the College's initial investigation before the complaint was turned over to the District), and was not based on the District's applicable anti-discrimination policy.

**Conclusion:**

OCR has not yet completed its investigation. To do so, OCR would need to interview Instructor 2, the Director of District Office of Diversity Inclusion and Equity, who oversaw the investigation, and the approximately four other students who witnessed the noose incident.

Prior to OCR making a determination, pursuant to OCR's Complaint Processing Manual at Section 302, the College voluntarily agreed to take action to resolve OCR's concerns in this matter. OCR determined that such a Section 302 resolution was appropriate in this case. Pursuant to the Section 302 Resolution Agreement, the College voluntarily committed to: send a letter to the Student reaffirming its obligations to provide an educational environment free from discrimination for all its students, post an anti-harassment statement in visible places on campus and online, send written guidance to all staff in the Theater Arts Department, and train students and staff, especially those with specific responsibility to resolve discrimination complaints on its race discrimination policy and procedures.

Based on the commitments made in the enclosed Agreement, OCR is closing the investigation of this complaint as of the date of this letter, and notifying the Student concurrently. When fully implemented, the Agreement is intended to address all of OCR's compliance concerns in this investigation. OCR will monitor the implementation of agreement until the College is in compliance with the Title VI and its implementing regulation, which were at issue in the case.

This concludes OCR's investigation of the complaint and should not be interpreted to address the College's compliance with any regulatory provision or to address any issues other than those addressed in this letter. The Student may have the right to file a private suit in federal court whether or not OCR finds a violation.

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 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 Complainant may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by the law, personally identifiable information that, if

released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact Civil Rights Attorney Rhonda Ngom at (415) 486-5540 or Rhonda.Ngom@ed.gov.

Sincerely,

/s/

Brian Lambert  
Acting Team Leader

Enclosure

cc: Kevin Jeter, District Counsel