



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

March 16, 2020

Sent via electronic mail

Ms. Juana Roman
Owner
American Beauty College
XXXXXXXXXXXXXXXXXX

(In reply, please refer to case no. 09-19-2405)

Dear Ms. Roman:

The U.S. Department of Education (Department), Office for Civil Rights (OCR) has resolved the above-referenced complaint against the American Beauty College (College) filed on August 26, 2019. The Complainant alleged that the College discriminated against her¹ on the basis of sex and age. Specifically, OCR opened for investigation the following two issues:

1. Whether the Complainant was subjected to harassment based on sex when the College allowed sexually explicit music videos to be shown in class and failed to respond effectively to notice of the alleged discrimination; and
2. Whether the Complainant was subjected to harassment based on age by students and staff, and the College failed to respond effectively 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 Federal financial assistance from the the Department. OCR is also responsible for enforcing the Age Discrimination Act of 1975 (AgeDA), 42 U.S.C. § 6100 et seq., and its implementing regulation at 34.C.F.R. Part 110, which prohibit discrimination based on age in programs or activities that receive Federal financial assistance from the Department. The College is a recipient of financial assistance from the Department. Therefore, OCR had jurisdiction to investigate this matter under Title IX, the AgeDA, and their implementing regulations.

OCR conducted its investigation by gathering and reviewing documents and correspondence provided by the Complainant and the College and interviewing the Complainant. After careful review of the information gathered in the investigation, OCR is dismissing Issue #1. Prior to OCR completing its full investigation, the College voluntarily

¹ OCR notified the College of the identity of the Complainant when the investigation began, and we are withholding names from this letter to protect personal privacy.

agreed to address OCR's area of concern with respect to Issue #2. This letter summarizes the applicable legal standards, the facts gathered to date during the investigation, OCR's conclusion and the terms of the resolution reached with the College.

Legal Standards

Title IX

The regulation implementing Title IX, at 34 C.F.R. § 106.31(a), states as follows: "Except as provided elsewhere in this part, 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."

Sexual harassment 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, such as sexual assault or acts of sexual violence. In determining whether sexual harassment based on sex exists, OCR looks at the totality of the circumstances, and considers a variety of factors, including the degree to which the conduct affected one or more students' education; the type, frequency, and duration of the conduct; the identity of and relationship between the alleged harasser and the subject or subjects of the harassment; the number of individuals involved; the age and sex of the alleged harasser and the subject of the harassment; the size of the school, location of the incidents, and the context in which they occurred; other incidents at the school; and whether there were also incidents of sex-based but non-sexual harassment. OCR examines the conduct from an objective perspective and a subjective perspective.

AgeDA

The regulations implementing the AgeDA at 34 C.F.R. § 110.10(a) state that no person shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity of a recipient of federal funds. Under § 110.10(b) a recipient may not treat individuals differently on the basis of age with regard to any aspect of the services, benefits, activities, or opportunities it provides. Subsequent sections set forth exceptions to the rules against age discrimination.

Colleges and universities are responsible under the AgeDA and the regulations for providing students with a nondiscriminatory educational environment. Harassment of a student based on age can result in the denial or limitation of the student's ability to participate in or receive education benefits, services, or opportunities.

Under the AgeDA, once a college has notice of possible age-based harassment between students, it is responsible for determining what occurred and responding appropriately. A college is not responsible for the actions of a harassing student, but rather for its own discrimination in failing to respond adequately. If an employee who is acting, or

reasonably appears to be acting, in the context of carrying out his/her responsibilities engages in age-based harassment that is so severe, persistent, or pervasive to deny or limit a student's ability to participate in or benefit from the program, a college is responsible for the discriminatory conduct whether or not it had notice.

A college may violate the AgeDA and the regulations 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) a college knew or reasonably should have known about the harassment; and (3) a college fails to take appropriate responsive action. These steps are a college's responsibility whether or not the student who was harassed makes a complaint or otherwise asks the school 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 a college must promptly conduct an impartial inquiry designed to reliably determine what occurred. The response must be tailored to stop the harassment, eliminate the hostile environment, and remedy the effects of the harassment on the student who was harassed. A college must also take steps to prevent the harassment from recurring, including disciplining the harasser where appropriate.

The AgeDA regulations at 34 C.F.R. § 110.25(a), (b), and (c) contain procedural requirements for colleges. These requirements include the designation of at least one employee to coordinate a college's efforts to comply with the AgeDA's requirements, including investigation of complaints, and notification to students about this employee(s). Also, the requirements include the adoption and publication of grievance procedures providing for the prompt and equitable resolution of complaints of age discrimination.

Issue 1: Whether the Complainant was subjected to harassment based on sex when the College allowed sexually explicit music videos to be shown in class and failed to respond effectively to notice of the alleged discrimination.

Factual Finding

The Complainant stated that from May X, 2019 until June X, 2019 – a duration of about four weeks – the Instructor played from her laptop, music videos in the classroom from 8:00am until 9:00am when they were turned off, and the Instructor would speak. The Complainant said that during the second week, she told the Instructor that the music was too loud, she found it offensive, and could not concentrate. She stated to OCR that after she told this to the Instructor, the Instructor left the classroom to find an employee who could help turn off the music videos. She stated that no music videos were played in class by the Instructor during class time, which ended at 12:00pm. The College described the 8:00am to 9:00am period as student practice time.

Analysis and Conclusion

In this case, assuming that the allegations about the music videos raised by the Complainant were true, these facts on their own do not provide sufficient evidence such that OCR can infer that discrimination occurred. OCR interviewed the Complainant and obtained further information regarding her allegations about the music videos and whether any other alleged conduct occurred that was of a sexual nature. The Complainant asserted no other examples of conduct of a sexual nature that took place during the period under OCR's investigation.

Under Section 108(b) of OCR's Case Processing Manual, OCR will dismiss an allegation if the allegation, on its face or as clarified, lacks sufficient factual detail (e.g., who, what, where, when, how), or is so speculative, conclusory, or incoherent that OCR cannot infer that discrimination may have occurred or may be occurring.²

Accordingly, OCR is dismissing the sexual harassment allegation as of the date of this letter.

Issue 2: Whether the Complainant was subjected to harassment based on age by students and staff, and the College failed to respond effectively to notice of the harassment.

Factual Findings to Date

The Complainant, a XX-year-old woman, enrolled in the College's XXXXXX Cosmetology program (program) and attended classes from May X, 2019 until she was withdrawn from the program by the College on August X, 2019. Classes were held weekly Monday through Thursday.

The Complainant stated she had not seen the music videos before they were shown in class, that they had nothing to do with the lessons, and that they were offensive to her. The Complainant told OCR that on May XX, 2019, while in the Financial Aid Officer's office with the Instructor, she verbally complained that she objected to music videos being shown in class. She stated that the Instructor replied, saying it was the Complainant's "priority to endure a younger environment in the classroom." The Complainant stated that the Financial Aid Officer told her that it was ". . . hard for [the Complainant] to be older than other students who are the same age as the Complainant's children." The Financial Aid Officer stated that on May XX, 2019, after the Instructor joined her and the Complainant, the Complainant said that she felt badly for the Instructor who had to teach adults who were acting like "high school students."

The Complainant told OCR that on May XX, 2019, after she asked the Instructor to move to a different classroom to avoid the videos, the Instructor said the other classroom was available not for day students but for night students, and further asked the Complainant if she wanted to attend the night classes where ". . . other students [were] more [her] age." The College informed OCR that when the Complainant asked the Instructor to move to

² See, <https://www2.ed.gov/about/offices/list/ocr/docs/ocrspm.pdf>. (March 16, 2020).

another classroom, the Instructor recommended a transfer to the night program because the night class of students might be “. . . more mature in terms of behavior or attitude as they are mostly full-time working individuals, or parents.”

The Complainant said that on May XX, 2019, she spoke by telephone with the Assistant Director about the music videos being shown in the classroom and the Assistant Director offered the Complainant two choices: Attend classes at the College’s other location or attend night classes. The Complainant said the Assistant Director described night classes as having 95 percent of students who were “. . . older just like you.”

The Complainant informed OCR that at the start of class on May XX, 2019, Student #1 and Student #2 made the comment to her that the Complainant had the problem with music in class because the Complainant was “so old.” The Complainant said Student #3, Student #4, and the Instructor overheard the comment.

The Complainant informed OCR that while she was speaking with the Instructor on June X, 2019, she heard Student #1 and Student #2 make a comment that the Complainant was “old.” The Complainant said that Student #3 grimaced, laughed, and “twerk danced” next to her, and when she complained to the Instructor about Student #3, Student #3 laughed, and commented about it being “. . . funny that old people [referring to the Complainant] are jealous.” The Complainant said that the Instructor, who heard Student #3’s comment, made a hand gesture with two fingers pointed first at the Instructor’s eyes, and then toward Student #3.

According to the Instructor’s notes, dated July XX, 2019, the Complainant talked to her about Students #1 through #4, who the Complainant said were looking at her in a negative way and making fun of her. The Instructor’s notes indicated that she spoke with the students and they told her the Complainant said “offensive things” and “was loud.” The Complainant wrote and filed with the Financial Aid Officer a five-page complaint on August X, 2019. In the complaint, she identified Students #1 through #3, and wrote that the campus was hostile and unprofessional. The remainder of the complaint made no reference to any alleged comment about her age being made by any College employee or any student. The complaint referred to “music of profanity” in the classroom and to “rap videos” being removed from the classroom. The complaint referred to Student #1, Student #2, and Student #3 as engaging in bullying behaviors and hostility.

According to the College, an incident took place on August X, 2019 involving the Complainant and Student #3, who the Complainant alleged, pointed a running blow dryer at her while Student #3 and Student #2 laughed. The Assistant Director, Complainant, and Financial Aid Officer met on August X, 2019 to discuss the Complainant’s five-page complaint. The Assistant Director wrote in her meeting notes that the Complainant referred to Students #1 through #4 as “high school kids” because of their music selections and comments. The notes indicated that the Assistant Director told the Complainant her concerns were being addressed because music was no longer being played in class, because students were told to wear ear buds instead, and because the College provided the Complainant seating preferences in the classroom to make her feel more comfortable.

The notes stated that the Assistant Director would meet with other students to learn more about the August X incident. The notes did not include any discussion of the Complainant's concern over the music videos or age-related comments made to the Complainant from College employees or students.

The Assistant Director stated in the College's response to OCR that prior to the Complainant's August X, 2019 complaint, Students #1 through #3, and #5 reported their concerns about the Complainant to the College.

The same four students, plus four others (Students #4, 6, 7, and 8), filed incident reports on August X, 2019 and on the same day, the Assistant Director interviewed the eight students about their incident reports. The Assistant Director described to OCR that she asked each student if they had seen bullying or harassment toward any student (no basis was mentioned), if they knew of anything going on between the Complainant and Student #1, #2, and #4, if they saw them harassing the Complainant, or if they wanted to report anything else they saw or heard. The notes from these interviews contain no evidence that the Assistant Director was conducting an investigation of harassment either on the basis of sex or age.

The information in the student incident reports combined with the notes of the Assistant Director's student interviews generally showed that the students consistently referred to the tension between the Complainant and some or all of Students #1 through #4. Nothing in the students' incident reports or in the Assistant Director's interview notes provided any details about the issue of harassment on the basis of sex or age. None referred to the music videos or the comments or other conduct of other students directed toward the Complainant based on the Complainant's age. Several student incident reports referred to the Complainant's comments to Students #1 through #4 that they were acting like "high school students," and were "brats." While the student incident reports and the Assistant Director's student interview notes referenced bullying and harassment, those terms were connected to what the students described as what the Complainant said to them. Students #6 and #7 – who were not students identified by the Complainant as having made age-related comments to her – described in their incident reports that it was the Complainant who targeted Students #1, #2, and #4 and not the other way around.

In an August X, 2019 letter from the Assistant Director and Financial Aid Officer to the Complainant, the College withdrew the Complainant from the program because of her "actions and inappropriate behavior" on August X, 2019. The letter described the Complainant's conduct as disrespectful towards the instructor and her peers. The Complainant filed her OCR complaint on August XX, 2019. The Complainant told OCR the funds received by the College from her through a federal student aid program were returned and made available to her should she enroll at a different college. The Complainant has informed OCR that she does not seek to return to the College.

The College's catalog has a statement of non-discrimination that includes a prohibition of discrimination on the bases of age and sex. At the beginning of the investigation, the College did not have an AgeDA coordinator, and had not provided notification to students

of an AgeDA coordinator. During the investigation, the Assistant Director informed OCR that she is the College's new AgeDA coordinator. The College provided to OCR a copy of its sexual harassment policy in response to a request for complaint procedures for harassment on the basis of sex and age, but it provided no grievance procedures to OCR for the resolution of age discrimination complaints.

Determination and Conclusion

The Complainant alleged that negative references about her age were made to her by three College employees. The College acknowledged to OCR that the Instructor, in a conversation with the Complainant, referred to its night class as being more mature, an age-related term defined as of, relating to, or being an older adult. The College acknowledged that it has no means for students to complain about age discrimination or existing grievance procedures for the resolution of age discrimination complaints. The Complainant also alleged that pejorative age comments were made to her by peers. Prior to the conclusion of OCR's investigation, the College indicated its interest in voluntary resolution regarding the issue, and OCR agreed that such a resolution would be appropriate to resolve the issue. On March 3, 2020, the College entered into the attached Resolution Agreement (Agreement), which when implemented, is intended to resolve the concerns identified by OCR regarding the issue that was under investigation. Under the terms of the Agreement, the College agreed to provide notice of its AgeDA Coordinator by updating its College Catalog, and by making an oral announcement once in each class in which students are enrolled. The College agreed to adopt and publish grievance procedures providing for prompt and equitable resolution of complaints of age discrimination, and to train the AgeDA Coordinator and any other employees with AgeDA compliance responsibilities on the AgeDA.

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 Complainant concurrently. When fully implemented, the Agreement is intended to address the complaint's AgeDA allegation. OCR will monitor the implementation of the Agreement until the College is in compliance with the terms of the Agreement. Upon completion of the obligations under the Agreement, OCR will close the case.

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.

The Complainant has a right to appeal OCR's determination regarding Issue #1 within 60 calendar days of the date indicated on this letter. In the appeal, the Complainant must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal. If the Complainant appeals OCR's determination, OCR will forward a copy of

the appeal form or written statement to the College. The College has the option to submit to OCR a response to the appeal. The College must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the College.

Please be advised that the College 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 individual 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 that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions about this letter, please contact the case resolution team.

Sincerely,

/s/

Kana Yang
Team Leader

Enclosure

cc: Angelyne Roman (*via email only*)
Assistant Director