



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

915 2ND AVE., SUITE 3310
SEATTLE, WA 98174-1099

June 16, 2016

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WASHINGTON

Ms. Jennifer Deitz
President
Alaska Career College
1415 E. Tudor Road
Anchorage, Alaska 99507

Re: Alaska Career College
OCR Reference No. 10152169

Dear President Deitz:

The U.S. Department of Education, Office for Civil Rights (OCR) has completed its investigation of the referenced complaint against Alaska Career College. The complaint allegations OCR investigated were whether the college (1) designated and provided notice of a Title IX Coordinator; (2) adopted grievance procedures that provide for the prompt and equitable resolution of complaints of discrimination based on sex; and (3) provided adequate notice that it does not discriminate on the basis of sex in its educational program or activities.

OCR enforces title IX of the Education Amendments of 1972 and its implementing regulation at 34 C.F.R. Part 106. Title IX prohibits discrimination on the basis of sex in programs and activities that receive federal financial assistance from the U.S. Department of Education. The college is a recipient of federal financial assistance from the Department; therefore, it is subject to this regulation.

Based on its investigation, OCR determined that there was sufficient evidence to support a conclusion that the college failed to comply with the Title IX procedural requirements at 34 C.F.R. 106.8 and 106.9. After notifying the college of the identified violations, OCR entered into discussions with the college regarding a Settlement Agreement (Agreement) that would serve to voluntarily resolve these violations. The college has made a commitment in the Agreement to undertake action that, when completed, will fully address the violations identified by OCR.

OCR's findings of fact, analyses, and conclusions set forth below are based upon information and documents provided by the college, as well as a review of the college's publicly-accessible website.

Findings of Fact - Designation and Notice of Title IX Coordinator

1. In a letter to OCR dated July 28, 2015, the college indicated that its Campus Director is the Title IX Coordinator for the college. The letter detailed the e-mail address and telephone number for this individual.
2. To determine whether the college properly designated and provided notice of a Title IX Coordinator, OCR reviewed the following: Alaska Career College Catalog and Student Handbook (student handbook); Section III of the Policy and Procedure Manual: Employee Handbook (employee handbook); portions of the college's publicly accessible website (website); and photographs of notices posted on the student and staff bulletin boards.
3. In the student handbook, OCR could not find information that specifically identified a Title IX Coordinator. The section of the student handbook titled, "Harassment Policy" indicates that individuals are encouraged to report discrimination as a result of harassing behaviors to either the Campus Director or Human Resources, but the office address, telephone number, and e-mail address is not provided for the Campus Director or Human Resources. The student handbook also indicates that the Campus Director is responsible for receiving reports of violations of the academic integrity policy; responding to concerns raised under the student complaint and grievance policy and procedure; addressing requests for withdrawal and readmission; receiving reports from college staff and faculty members of any on-campus sexual offenses; and fielding questions or concerns about campus safety, but no contact information for the Campus Director is provided.
4. In the employee handbook under the section, "Harassment Policy," employees are directed to report instances of discrimination or harassment to the Campus Director, but the section does not include the office address, telephone number, or e-mail address of the Campus Director. The employee handbook also indicates that the Campus Director is responsible for receiving reports of violations of the Employee Code of Conduct, and addressing questions regarding the conflict of interest policy, but the office address, telephone number, and e-mail address for the Campus Director is not provided in these sections.
5. OCR reviewed the college's website and could find no information identifying or providing contact information for a Title IX Coordinator on the homepage, admissions page, or accreditation and disclosures pages of the website.

6. OCR reviewed the notices posted on student and employee bulletin boards and could find no information identifying or providing contact information for a Title IX Coordinator for the college. One of the notices indicated that a complaint of discrimination could be submitted to the U.S. Department of Labor, Civil Rights Center, and a mailing address and telephone number for this entity is included.

Analysis and Conclusion - Designation of Title IX Coordinator

The regulation implementing Title IX at 34 C.F.R. 106.8(a) requires that each recipient designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX. (These designated employees are generally called Title IX coordinators). The regulations and OCR policy require the recipient to notify all students and employees of the name, office address, telephone number, and e-mail address of the designated employee.

OCR has concluded that the college has not met the procedural requirements in designating the Campus Director as its Title IX Coordinator because the student and employee handbooks, the college's website, and the posted notices on the bulletin boards failed to contain the requisite contact information for the person designated by the college to act as its Title IX Coordinator.

Findings of Fact - Adoption of Grievance Procedures

1. OCR found three grievance procedures detailed in the documents the college provided to OCR: (a) Student Complaint and Grievance Policy and Procedure in the student handbook; (b) Employee Code of Conduct: Employee Grievance in the employee handbook; and (c) Complaint and Grievance Procedure in the employee handbook.
2. The Student Complaint and Grievance Policy and Procedure in the student handbook states that an aggrieved student should bring his or her complaint to the instructor, and, if not resolved, to the attention of the Campus Director or other administrator with whom the student feels comfortable. No contact information is provided for the Campus Director. The remainder of the student grievance policy indicates that if the student does not feel the college has adequately addressed the concerns, the student may contact the Alaska Commission on Postsecondary Education or the Accrediting Commission of Career Schools and Colleges. Mailing addresses and telephone numbers for both entities are included.
3. The employee handbook contained two grievance procedures. The section on employee grievances in the "Code of Conduct" section provides that an

employee must follow the specified procedure should he or she have a concern, dispute, or complaint about an experience at the college. The first step in the procedure is to bring the concern to the attention of the individual most directly associated with the concern. The next step requires the employee to contact his or her manager. If the manager is unable to resolve the concern, then the employee is directed to contact the Campus Director. The procedure indicates that if the concern is a legal issue, then the employee must immediately contact the Campus Director, but no contact information for the Campus Director is provided.

4. The third grievance procedure is listed in a separate section of the employee handbook titled, "Complaint and Grievance Procedures." This policy states that if an employee believes any situation affecting the employee is unjust, inequitable, or creates a problem, the procedure is to discuss the situation with the employee's supervisor first. If this first level does not resolve the concern, the employee is directed to proceed to the next level of management up to and including the president of the college. Additionally, this section stipulates that all disputes arising from employment, including claims arising under federal law, must be submitted to arbitration.

Analysis and Conclusion - Adoption of Grievance Procedure

The Title IX regulation at 34 C.F.R. 106.8(b) requires that a recipient adopt and publish a grievance procedure providing for the prompt and equitable resolution of complaints that allege any action which would be prohibited under Title IX. OCR has identified a number of elements it uses when determining whether a recipient's grievance procedures provide for a prompt and equitable resolution of complaints of discrimination based on sex. The six elements a recipient's grievance procedures are required to include are as follows:

1. notice to students and employees of the grievance procedures, including where complaints may be filed;
2. application of the procedures to complaints alleging harassment carried out by employees, other students, or third parties;
3. adequate, reliable, and impartial investigation of complaints, including the opportunity for both parties to present witnesses and evidence;
4. designated and reasonably prompt time frames for the major stages of the complaint process;
5. notice to the parties of the outcome of the complaint; and

6. an assurance that the recipient will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate.

Additionally, as stated in its policy guidance, OCR strongly advises that a recipient's grievance procedures should include the following eleven items. Although some of these are mandatory obligations under Title IX, they are not required to be explicitly stated in the recipient's grievance procedures:

1. a statement of the school's jurisdiction over Title IX complaints;
2. clear and understandable definitions of sexual harassment (which include sexual violence);
3. reporting policies and protocols, including provisions for confidential reporting;
4. identification of the employee(s) responsible for evaluating requests of confidentiality;
5. notice that Title IX prohibits retaliation;
6. notice of a student's right to file a criminal complaint and a Title IX complaint simultaneously;
7. notice of available interim measures that may be provided to protect the student in the educational setting;
8. the evidentiary standard that must be used (i.e. preponderance of the evidence) in resolving a complaint;
9. notice of potential remedies for students;
10. notice of potential sanctions against perpetrators; and
11. sources of counseling, advocacy, and support.¹

¹ For further clarification and explanation, please review OCR's Dear Colleague Letter: Sexual Violence, dated April 4, 2011, *available at* <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html>; and Questions and Answers on Title IX and Sexual Violence, dated April 29, 2014, *available at* <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

OCR has determined that the college's grievance procedures identified above failed to include five out of the six required elements. Specifically, none of the grievance procedures included contact information of the Campus Director where complaints can be filed; information that the college will conduct an adequate, reliable, and impartial investigation of complaints, which includes the opportunity for both parties to present witnesses and evidence; timeframes for completion of the major stages of an investigation of the complaint; notice to the parties regarding the outcome; and assurances that the college will take steps to prevent recurrence of any harassment and correct its discriminatory effects on the complainant or others when appropriate. Because the college's procedures do not contain all of the required elements OCR finds necessary for a grievance procedure, OCR has concluded that the college has not met its obligation to adopt and publish a grievance procedure that provides for a prompt and equitable resolution of complaints filed under Title IX.

Findings of Fact - Notice of Nondiscrimination on the Basis of Sex

1. OCR located two sections in the student handbook that contained statements prohibiting discrimination or harassment on the basis of sex: (a) Non-Discrimination Policy and (b) Harassment Policy.
2. OCR found that the Non-Discrimination Policy does not provide contact information, which includes office address, telephone number, and e-mail address, for the person or persons responsible for addressing inquiries regarding the application of Title IX to the college or the contact information for OCR.
3. According to the student handbook's Harassment Policy, the college is committed to maintaining a learning environment and workplace free of discrimination and harassment based on race, color, religion, age, sex, national origin, disability, status as a veteran, or any other protected status. The policy states that it covers students, vendors, customers, or others who enter the campus, and employees. Administrative staff, faculty, or managerial personnel are responsible for taking action to end discriminatory and/or harassing behaviors. The policy provides that any person who believes he or she is being discriminated against due to harassing behavior is encouraged to report to the Campus Director or Human Resources. No contact information is provided for these respective staff members or for OCR.
4. OCR located four sections in the employee handbook that contained statements prohibiting discrimination or harassment on the basis of sex: (a) What You Can Expect from Alaska Career College; (b) Code of

Conduct: Nondiscrimination; (c) Equal Employment Opportunity; and (d) Harassment Policy.

5. In the section titled, “What You Can Expect from Alaska Career College,” the college establishes that it selects persons for employment without discrimination with regard to age, sex, color, race, creed, national origin, religious belief, marital status, political belief, or a disability that does not prohibit performance of essential job functions. No contact information is provided for any designated college employee responsible for ensuring compliance with nondiscrimination laws or for OCR.
6. The section “Nondiscrimination” in the Code of Conduct of the employee handbook states only the following: “Our college strives to provide all members of our community with a work and educational environment that is collegial and free of illegal discrimination or harassment based on race, sex, color, creed, religion, age, national origin, disability, marital status, status with regard to public assistance or sexual orientation, or membership in a local commission as defined by law.”
7. The section titled “Equal Employment Opportunity” of the employee handbook provides that the college’s employment practices are not influenced or affected by an applicant’s or employee’s race, color, religion, national origin, age, disability, or any other characteristic protected by law. Employees with concerns about discrimination or harassment are directed to contact their supervisor, the school director, or the school president. No contact information for any of these staff members or for contact information for OCR is provided.
8. The Harassment Policy listed in the employee handbook matches the harassment policy detailed in the student handbook with respect to the protected classes, the persons covered by the policy, and the college staff responsible for ending bullying or harassing behaviors. The employee handbook includes a section on how a person can report instances of discrimination or harassment, specifically that any person aggrieved or who witnesses discrimination or harassment must immediately notify the Campus Director, but no contact information is provided for this staff member or for OCR.
9. In the section of the employee handbook titled, “No Discrimination,” it states that the college provides for facilities and services for qualified handicapped persons, and does not address discrimination based on sex.

10. OCR did not find a nondiscrimination statement displayed prominently on any page of the college's publicly-accessible website.

Analysis and Conclusion - Notice of Nondiscrimination on the Basis of Sex

The regulation implementing Title IX at 34 C.F.R. 106.9(a)(1) requires recipients to implement specific and continuing steps to provide notice to applicants for admission and employment, students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of sex in the educational program or activity which it operates; that the prohibition against discrimination extends to employment; and that inquiries concerning the application of Title IX to the recipient may be referred to the recipient's designated employee or to OCR. The Title IX regulation at 34 C.F.R. 106.9(b)(1) requires that the notice be prominently included in each announcement, bulletin, catalog, or application form which the college makes available to the persons detailed above, or which is otherwise used in connection with the recruitment of students or employees.

The evidence established that the college has made a variety of differing statements regarding nondiscrimination or a desire to maintain a learning and working environment free from discrimination and harassment based on sex. However, OCR was not able to locate a single consistent statement of nondiscrimination that included a prohibition against discrimination on the basis of sex. A nondiscrimination statement was not displayed prominently in the student handbook, employee handbook, or on posters displayed on bulletin boards. Additionally, the college's nondiscrimination statements failed to include contact information for the designated employee responsible for ensuring compliance. None of the statements provided information that inquiries about an individual's rights under Title IX could be submitted to OCR. For all these reasons, OCR has determined that the college has not met its obligation to provide a notice of nondiscrimination on the basis of sex.

Based on the foregoing, OCR has concluded that the college has failed to comply with all of the procedural requirements in the regulation implementing Title IX.

The college has voluntarily agreed to resolve the above described violations as set forth in the enclosed Agreement which, when fully implemented, will resolve the identified violations. OCR will monitor the college's implementation of the Agreement and will close the complaint when OCR determines that the terms of the Agreement have been satisfied. The college submitted its first monitoring report on June 1, 2016.

This letter sets forth OCR's determination in an individual OCR case and should not be interpreted to address the college's compliance with any other regulatory provisions or to address any issues other than those addressed in this letter. 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 court whether or not OCR makes a determination.

Please be advised that the college may not harass, coerce, intimidate, or discriminate against any individual because he or she 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, 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 and your staff for your cooperation during the investigation of this complaint. If you have any questions regarding this letter, please contact Christina "Tina" Meade, attorney, by telephone at (206) 607-1604 or by e-mail at christina.meade@ed.gov.

Sincerely,

/ s /

Kelli Lydon Medak
Supervisory Attorney

Enclosure: Settlement Agreement