

March 4, 2002

Ref: 06012084

Ms. Elaine Gunn, Director
State Barber College
2514 South Agnew
Oklahoma City, OK 73108

Dear Ms. Gunn:

This letter is to notify you of the determination of the U.S. Department of Education, Office for Civil Rights (OCR), Southern Division, Dallas Office, regarding the above referenced complaint. In this complaint, which was filed on September 6, 2001, the complainant alleged that the State Barber College (SBC), Oklahoma City, Oklahoma, discriminated against her on the basis of race, in violation of Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. 2000d and its implementing regulation, at 34 C.F.R. Part 100 (2000); and on the basis of sex, in violation of Title IX of the Education Amendments of 1972 (Title IX), 42 U.S.C. 2000d and its implementing regulation, at 34 C.F.R. Part 106 (2000). Specifically, she alleged that the SBC discriminated on the basis of race by:

1. Treating her differently than black students by:
 - (a) clocking her out but allowing black students to leave campus and remain on the clock;
 - (b) the night instructor not evaluating nor helping her with her haircuts but checking and helping black students with their haircuts; and
2. Retaliating against her for reporting the above-mentioned incidents by suspending her from the school for two weeks.

Handwritten note:
by d. l. [unclear] T [unclear] 3-4-02
ocr case 3/5/02

In addition, she also alleged that the SBC discriminated on the basis of sex by:

3. Creating a sexually hostile environment by failing to take appropriate and effective action when notified of a sexual harassment incident which occurred on December 23, 2000, that resulted in continued sexual harassment, and;
4. Treating female students differently than male students by restricting the tasks that female students could perform (i.e. colors and perms).

This agency is responsible for determining whether organizations that receive or benefit from Federal financial assistance from the U.S. Department of Education or an agency that has delegated investigative authority to this Department are in compliance with Title VI and Title IX. In pertinent part, Title VI provides that:

No person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance . . .

Title IX, in pertinent part, provides that:

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 or benefits from Federal financial assistance . . .

OCR has determined that the SBC is a recipient of Federal financial assistance from the U.S. Department of Education. Therefore, OCR has jurisdiction to investigate this complaint under Title VI and Title IX.

Allegation 1(a)

Treating the complainant differently than black students by clocking her out but allowing black students to leave campus and remain on the clock.

During an interview with the complainant on October 5, 2001, she informed OCR that white students were being treated differently than black students at the SBC. Specifically, she stated that black students were not clocked out when they walked off the campus site, but that white students were immediately clocked out if they went out into the parking lot or into the neighboring donut shop.

OCR found that the students at the SBC have to use time cards that are punched in order to receive their proper credit for obtaining their licenses by the State Barber Board in Oklahoma. Students are in need of 1500 hours in order to apply for their license.

Through an interview with the Director of the SBC, OCR found that the students were required to punch their time cards in order to receive proper credit for their required attendance and education.

The Director also informed OCR that there was one occasion during the time the complainant was attending the SBC when she issued a verbal warning to all students to move their vehicles from the entrance to the SBC or their time cards would be punched to reflect that they were absent that day. To the Director's knowledge, the complainant was one of several students who had their car parked inappropriately. However, she stated that the complainant was not clocked out that day, but that the complainant did leave class that day after she had issued that warning.

In a telephone interview on February 19, 2002, the complainant acknowledged to OCR that she did not know for sure if any students, including her, were actually clocked out that day. Additionally, she stated that she had only heard from other students that the Director had already clocked her out. The complainant also stated to OCR, that because she understood that she had been taken off the clock, she decided to leave the school that day. Further, the complainant informed OCR that her time card was on the Director's desk the next day, but that no further action was taken regarding this incident.

OCR did not find any additional information as to any other occasion when the complainant or other white students were clocked out while other similarly situated students were not for the 2000-2001 school year. As such, OCR has determined that there is insufficient information to support the complainant's allegation that she was treated differently by the SBC by clocking her out but not clocking out black students. Therefore, OCR will take no further action regarding this allegation.

Allegation 1(b)

Treating the complainant differently than black students by (the night instructor) not evaluating nor helping her with her haircuts but checking and helping black students with their haircuts.

The complainant informed OCR that white students were being treated differently than black students at the SBC, because the night instructor at the school was not evaluating her haircuts nor providing any assistance. She alleged that she was repeatedly told by the night instructor to search for the other instructor, who was white, when she asked for assistance.

Information obtained from the school director during a telephone conversation on February 8, 2002, revealed that the night instructor was new to the school during the 2000-2001 school year. The school director informed OCR that the SBC knew that the students would have to adjust to their new instructor and vice versa. In addition, because she did not have the work experience that the prior director had, two months versus twenty-five years, the SBC also instructed the full time directors to provide training to the new instructor, and to assist where necessary.

Additionally, the SBC acknowledged to OCR that the complainant had voiced her concerns about the lack of attention from the new night director. However, the SBC stated that the complainant's concerns were race neutral, and that on one occasion, the complainant had reported that the night director had not given the proper attention to another student, who was a black male. The complainant acknowledged this incident, but stated that the night instructor's lack of assistance to this other student was negatively affecting her education because he kept asking her for assistance. Based on this information, OCR has determined that there is insufficient evidence to support the complainant's allegation that she was treated differently by the SBC by not evaluating nor helping her with her haircuts but checking and helping the black students with their haircuts. Therefore, OCR will take no further action regarding this allegation.

Allegation 2

Retaliating against the complainant for reporting the above-mentioned incidents by suspending her from the school for two weeks.

In the complaint letter filed with OCR, the complainant alleged that the owner of the State Barber College suspended her from the SBC after she approached him with numerous concerns involving the different treatment experienced by white students at the SBC. In order to establish that retaliation occurred, it is necessary for OCR to determine that: (1) the complainant participated in a protected activity; (2) the recipient was aware of the complainant's involvement in the protected activity; (3) the complainant suffered or was subjected to an adverse action; and (4) there is evidence of a causal connection (close proximity in time) between the protected activity and the adverse action. Retaliation is established if these elements are proven, unless the recipient provides a legitimate, nondiscriminatory reason for its action.

With regard to element number one, OCR could not establish that the complainant was participating in a protected activity. During a telephone conversation with the complainant on October 5, 2001, she informed OCR that she approached the owner of the SBC at a restaurant next to the SBC about numerous concerns. Although she stated that she was expressing her concerns about not receiving the proper attention from the night instructor at the SBC, the complainant stated that her concerns were not racial in nature or based on different treatment because of her sex.

On a follow-up interview with the complainant on February 19, 2002, she gave conflicting testimony and stated that her comments to the owner of the SBC were specific as to the different treatment she was receiving because of her race. However, in an interview with the owner of the SBC on February 21, 2002, he stated that the complainant was not voicing any concerns about different treatment but was upset about the loss of an instructor at the SBC and his subsequent replacement. OCR did not find any additional information, such as from any witnesses, to corroborate the complainant's assertions as to the specific concerns she raised at this time with the owner of the SBC. Therefore, because OCR could not establish that the complainant was involved in a protected activity, OCR would not proceed with the retaliation analysis. As such, there is

insufficient information to support her allegation that the SBC retaliated against her for reporting the incidents of different treatment as stated in allegation number one and will take no further action regarding this allegation.

Allegation 3

Creating a sexually hostile environment by failing to take appropriate and effective action when notified of a sexual harassment incident which occurred on December 23, 2000, that resulted in continued in sexual harassment.

The complainant alleged that the SBC created a sexually hostile environment when it failed to take action in response to a report of an incident of behavior of a sexual nature. Specifically, she alleged that the school failed to take action after a male student had put his hands on her legs in the break room at SBC on December 23, 2000. Further, the complainant alleged that she was sexually harassed on two other occasions when another male student also touched her in private areas on May 19, 2001, and again on June 22, 2001.

During the conduct of this investigation, OCR reviewed information and documentation provided by the SBC, to include pertinent SBC policies and procedures, discipline referrals, written statements prepared by school staff and information gathered during telephone interviews with SBC officials and the complainant. In the resolution of this complaint, OCR investigated the allegation of sexual harassment in accordance with its policy, "Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties." As a result of our investigation, OCR determined that the SBC took appropriate action regarding the alleged sexual harassment. Thus, there is insufficient evidence to support a violation of Title IX. Provided below, by question, is an explanation as to the basis for this determination.

OCR applied its sexual harassment policy to the facts gathered in this case. Specifically, in conducting this investigation, OCR considered whether: 1) the school had a policy prohibiting sex discrimination under Title IX and effective Title IX grievance procedures; 2) the school appropriately investigated to determine whether sexual harassment occurred or otherwise responded to the allegation of sexual harassment; and 3) the school took immediate and appropriate corrective action in response to hostile environment harassment.

Policy and Grievance Procedures

As it regards the Title IX grievance procedures, our review of the Student Catalog for the 2000 and 2001 school years at SBC and its Sexual Harassment Policy revealed that the grievance procedures and sexual harassment policy were lacking the address and telephone number of the designated employee(s) with whom a complaint may be filed. Additionally, the sexual harassment policy failed to indicate its application to incidents of discrimination by third parties (other than students and employees). Upon notice of the requirements of Title IX, the SBC Director provided OCR with a written statement that the grievance

procedures and sexual harassment policy were being revised to reflect the inclusions, and would be provided to OCR and all students in its revised form.

Our review of the grievance procedures did reveal, however, that the procedures provided for the adequate, reliable and impartial investigation of complaints with designated and reasonably prompt time frames. The procedures also provided for notification of the parties of the outcome of the investigation and provided for an appeal process should the student not be satisfied with the resolution of the complaint.

Further review of the information submitted by the SBC revealed that the complainant had received a copy of the SBC's Sexual Harassment Policy, evidenced by her signature on October 24, 2000. As discussed previously, the procedures specifically outlined the complaint process, including how to file a complaint and the available appeal process. The sexual harassment policy also detailed the disciplinary action that would be taken in substantiated cases of discrimination.

Appropriate Investigation or Response

OCR found that the SBC received notice of an alleged incident of behavior of a sexual nature on December 23, 2000, when the complainant informed school officials that a male student had inappropriately touched her legs in the break room earlier that day.

OCR reviewed written documentation submitted by the SBC that included the "Student Grievance Form" filled out by the complainant, as well as an "Advisement Documentation" form issued to the individual accused of the harassment. OCR also reviewed a written statement prepared by school officials in response to our data request, and also reviewed information obtained during telephone interviews with school officials and the complainant. Our review revealed that the school director held separate conferences with the complainant and the other student involved on the day of the incident.

Based on the above, OCR determined that the school's response was prompt, in that the investigation commenced on the same day the administration received notice of the alleged conduct and the investigation was completed within eight hours of receiving notice of the alleged incident. Further, OCR found that all parties were allowed input.

Immediate and Appropriate Corrective Action

OCR's review of the "Student Grievance Form" and "Advisement Documentation" form revealed that both students acknowledged the alleged behavior, and resulting verbal confrontation. Further, both students were instructed to stay apart from each other, and refrain from speaking to each other; and the accused individual was instructed to refrain from touching the complainant. Interviews with the complainant and the school's director confirmed the actions outlined in these reports. Further, the school director informed OCR that the students were monitored during the course of the spring semester in order to prevent any further incidents, and that no further incidents were reported regarding these two students.

The complainant also alleged that on two separate occasions, another male student had inappropriately touched her private areas. Specifically, on May 19, 2001, a male student touched her private area in the parking lot on their way into the school. The same student also touched the complainant inappropriately while she was sitting on a curb outside the school on June 22, 2001. However, during a telephone conversation on October 5, 2001, the complainant acknowledged that she did not report these two incidents to school officials, and did not know if any other students had made SBC school officials aware of these incidents. The SBC Director informed OCR that no official had received any reports of the alleged incidents.

Therefore, in summary, based on the above, OCR determined that there is insufficient evidence to support the complainant's allegation that the SBC failed to take appropriate action in response to the allegations of behavior of a sexual nature, which occurred on December 23, 2000, May 19, 2001, and June 22, 2001. In reference to the Title IX procedural requirements regarding the grievance procedures and sexual harassment policy, the SBC will provide OCR with its revised forms and publications by April 30, 2002.

Allegation 4

Treating female students differently than male students by restricting the tasks that female students could perform (i.e. colors and perms).

In the complaint letter, the complainant stated that female students were being treated differently than male students because only female students were being required to perform certain haircutting tasks such as colors and perms. In a telephone conversation with the complainant on October 5, 2001, she clarified that this practice interfered with the education received by the female students in that they were not learning how to perform other haircuts, while they were restricted to colors and perms.

In response to this allegation, the SBC provided written documentation, which reflected that both male and female students had performed various hairstyling and haircutting tasks throughout the 2000-2001 school year. Further, in a telephone conversation with the complainant on February 5, 2002, she acknowledged that both male and female students performed various types of hairstyling and haircutting tasks, but that female students were largely performing all of the colors and perms. Based on this information, OCR has determined that there is insufficient evidence to support the complainant's allegation that female students were treated differently than male students by the SBC by restricting the tasks that female students could perform. Therefore, OCR will take no further action regarding this allegation.

In summary, OCR determined that there is insufficient evidence to support allegations numbered 1a and 1b, regarding different treatment based on race, allegation two regarding retaliation, and allegations numbered 3 and 4, regarding discrimination based on sex. This concludes OCR's review of this matter.

This letter is not intended nor should it be construed to cover any other matters that may exist regarding compliance with Title VI and Title IX and are not specifically discussed herein. 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 cooperation and assistance in addressing this complaint. If you have any questions, please call me at (214) 880-9474 or George Cole, Program Coordinator, at (214) 880-2476.

Sincerely,

Rey de la Garza
Attorney
Dallas Office