



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
37 OLD SLIP, 26TH FLOOR
NEW YORK, NEW YORK 10005

November 9, 2006

RANDOLPH E. WILLS
DIRECTOR
NEW YORK OFFICE
EASTERN DIVISION

Stephen R. Greenwald, President
Metropolitan College of New York
75 Varick Street
New York, NY 10013

Re: Case No. 02-06-2093
Metropolitan College of New York

Dear Mr. Greenwald:

This letter is to notify you of the determination of the U.S. Department of Education, New York Office for Civil Rights (OCR) regarding the above-referenced complaint. The complainant alleged that the Metropolitan College of New York did not take appropriate actions after she complained to the College that (1) a student at the College sexually assaulted her and (2) professors sexually harassed her.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 *et seq.*, and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in programs and activities receiving financial assistance from the U.S. Department of Education. OCR has determined that the College receives financial assistance from the Department and, therefore, is subject to the provisions of Title IX.

In its investigation, OCR interviewed the complainant and the general counsel of the College. OCR also reviewed documentation submitted by the complainant and the College.

With respect to Allegation 1, OCR's Revised Sexual Harassment Guidance states that once a school has notice of possible sexual harassment of students – whether carried out by employees, other students, or third parties – it should take prompt and appropriate steps to investigate or otherwise determine what occurred and take prompt and effective steps reasonably calculated to end any harassment, eliminate a hostile environment if one has been created, and prevent harassment from occurring again.

OCR determined that on March 6, 2006 and March 13, 2006, the complainant notified the College that a student in her class (Student 1) sexually assaulted her, but the College did not attempt to investigate the complainant's allegation until three to four weeks after it received notice of the alleged assault. The College advised OCR that on March 6, 2006, the complainant verbally told an advisor in student services that Student 1 raped her.¹ OCR determined that the advisor did not promptly report the assault to the dean of students, the administrator responsible

¹ Though the date is unclear, documentation submitted by the College indicates that the complainant also reported the alleged assault to at least one of her professors in early March 2006.

for receiving student complaints, but asked the complainant to put her allegation in writing.² On March 13, 2006, the complainant e-mailed the student advisor and the director of the Emergency Disaster Management program³ that she wished to “take an incomplete” in classes she shared with Student 1 because Student 1 date-raped her and threatened to hurt her family if she told anybody about the assault. On the same day, the student advisor forwarded the complaint to the dean of students, the assistant director of student services, and the director of the program.⁴ The College advised OCR that because of an “administrative miscommunication,” the College did not attempt to obtain additional information about the assault allegation until April 3, 2006.

Although there is no evidence that the College intentionally delayed its response to the complainant’s verbal and written allegations, OCR determined that the College’s three to four week delay in responding to a serious allegation, such as one of sexual assault, does not satisfy the College’s obligation to take prompt and appropriate steps to investigate or otherwise determine what occurred.⁵

On November 8, 2006, the College agreed to implement the enclosed resolution agreement, which resolves Allegation 1. OCR will monitor the implementation of the terms of the resolution agreement. Should the College fail to implement its terms, OCR will immediately resume its investigation of the complainant’s allegations.

With respect to Allegation 2, the complainant alleged that College professors engaged in sexually harassing behavior by insisting that her class go out for drinks and favoring students who did so. The complainant also alleged that a professor (Professor 1) “basically mandated” that she plan an after-school party. She also stated that during an after-school party, another professor (Professor 2) told a student that he “walk[s] around butt naked in the house,” asked her to take a picture with him, and asked the complainant and another female classmate to go to a dance club with him. The complainant also alleged that Professor 2 became upset when she declined to go out with his friend. OCR considered whether the professors’ alleged comments and actions created a hostile environment. A hostile environment occurs where harassing conduct based on sex is sufficiently severe, pervasive or persistent that it interferes with or limits

² Although the College stated that the student advisor waited for the complainant to provide him a written summary of her allegation, the advisor did not report the assault to the dean of students or the director of the program for a week after learning about the alleged assault. Under OCR policy, the school has notice of harassment if a responsible employee “knew, or in the exercise of reasonable care should have known,” about the harassment. A responsible employee would include any employee who has the authority to take action to redress the harassment, who has a duty to report to appropriate school officials sexual harassment or any other misconduct by students or employees, or an individual who a student could reasonably believe has this authority or responsibility. OCR concluded that the student advisor was a responsible employee, or at least an individual the complainant reasonably believed had the authority or responsibility to report her allegations to the appropriate school officials.

³ The complainant was enrolled in the Emergency and Disaster Management Program at the Metropolitan College School of Public Affairs and Administration during the 2005-2006 school year.

⁴ The director was also an original recipient of the complainant’s email.

⁵ The College advised OCR that on April 3, April 5, May 1, May 2, May 8, and May 15, 2006, the College asked the complainant to meet with the dean of students and provide further information about her allegation, including when and where the assault took place. The College stated that the complainant declined to meet with the dean of students or provide additional information about the assault. OCR determined that the complainant continued corresponding with the College in April and May 2006, but the communications did not provide information sufficient for the College to commence an investigation.

the ability of an individual to participate in or receive benefits, services or opportunities in the institution's program. In determining whether a hostile environment has been created, OCR considers all relevant circumstances. Generally, the alleged harassing conduct must consist of more than casual or isolated incidents.

OCR determined that the alleged acts and comments of the College professors did not create a hostile environment. Although the complainant alleged that professors insisted on after-school parties, the complainant stated that the invitations were extended to the entire class and the complainant did not allege that women who attended the parties were treated differently from men who attended the parties. Though the complainant alleged that Professor 1 instructed her to plan a party, the complainant did not provide information to indicate that she was instructed to plan the party because of her sex.

With respect to Professor 2, the complainant alleged that he became upset when she would not date his friend, but the complainant did not indicate that Professor 2 treated her differently afterward. The complainant also alleged that Professor 2 acted improperly at one after-school party. OCR determined that the professor's alleged behavior at one after-school party was not severe, persistent or pervasive enough to create a sexually hostile environment that interfered with the complainant's ability to participate in or receive the benefits, services or opportunities of the College's programs.

The complainant alleged that she complained to the dean of students and the director of her program about the professors' behavior in January or February 2006. OCR was unable to determine whether the complainant made an oral complaint as she alleged, but reviewed the written documentation submitted by the complainant and the College. Based upon that review, OCR determined that the complainant did not present her allegations regarding Professor 2 to the College, and that she did not clearly and coherently assert her other sexual harassment allegations regarding the professors in writing until March 31, 2006 and April 4, 2006. The College advised OCR that beginning on April 3, 2006, the College attempted to obtain additional information about the allegation from the complainant, but she did not provide sufficient additional information to investigate the allegation further. OCR determined that upon learning of the complainant's sexual harassment allegation, the College promptly responded to the complaint's allegation, as required by Title IX and OCR policy.⁶ Therefore, OCR determined that there was insufficient evidence to support Allegation 2.

This letter is not intended, nor should it be construed, to cover any issues regarding the College's compliance with Title IX that may exist, but are not discussed herein. OCR offers technical assistance regarding questions you or your staff may have about any of the regulations OCR enforces. If you would like such assistance, please contact Ramona Nicholson, Compliance Team Attorney, at (646) 428-3882.

OCR reminds the College that a U.S. Department of Education regulation prohibits the College from harassing or intimidating an individual who has filed a complaint or participated in actions to secure protected rights.

⁶As described above, the general counsel made numerous attempts to obtain further information from the complainant but the complainant did not provide further relevant information about her complaint.

Under the Freedom of Information Act, 5 U.S.C. § 552, 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, personal information that, if released, could constitute an unwarranted invasion of privacy.

Thank you for your cooperation during this investigation. If you have any questions regarding this matter, please contact Michael Goldberg, Senior Equal Opportunity Specialist, at (646) 428-3817, Ramona Nicholson, Compliance Team Attorney, at (646) 428-3882, or me, at (646) 428-3835.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Rachel Pomerantz', with a long horizontal flourish extending to the right.

Rachel Pomerantz
Compliance Team Leader

RESOLUTION AGREEMENT
Metropolitan College of New York
Case No. 02-06-2093

To resolve the allegations in the above-referenced case, Metropolitan College of New York assures the U.S. Department of Education, New York Office for Civil Rights that, pursuant to the requirements of Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq., and its implementing regulation at 34 C.F.R. Part 106, it will do the following:

The College will train all relevant staff, including but not limited to professors, student advisors, and administrators, on the procedures for addressing student allegations of harassment or discrimination on the basis of sex. The College will also distribute a copy of its sexual harassment and discrimination grievance policies and procedures to all relevant staff.


The agreement to conduct such training is not an admission by the College of any liability, breach of duty or obligation, whether under statute, contract, law or otherwise.

Reporting Requirement

By January 30, 2006, the College will provide OCR with (a) the name(s) of the individual(s) who conducted the training described above, (b) a list of the individuals who attended the training and their positions at the school, (c) the date and location of the training, and (d) copies of training materials disseminated and the date and method of dissemination.

Date

11/8/06


Stephen R. Greenwald
President

Metropolitan College of New York