



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

REGION IX

Old Federal Building
50 United Nations Plaza, Room 239
San Francisco, California 94102

April 29, 1994

Dr. Ruben Armiñana
President
Sonoma State University
1801 East Cotati Avenue
Rohnert Park, CA 94928

(In reply, please refer to Docket Number 09-93-2131.)

Dear Dr. Armiñana:

The Office for Civil Rights (OCR), U.S. Department of Education (Department), has completed its investigation of the complaint filed against Sonoma State University (SSU) by [REDACTED] (complainant) on behalf of two undergraduate students (Students 3 and 4) and all women students and staff at SSU. The complainant alleged that SSU violated Title IX of the Education Amendments of 1972. Specifically, she alleged that SSU failed to adequately address allegations of sexual harassment and sexual assault of six female SSU students by a male SSU student (Student 1) during the Fall 1992 semester. She also alleged that the failure to implement appropriate resolutions to incidents of sexual harassment has created a hostile environment that threatens the safety of women on the SSU campus.

In investigating the complainant's allegations, OCR sought to determine whether students at SSU were denied an educational environment free from sexual harassment, including sexual assault by the SSU failure to adequately address allegations of sexual harassment/assault. Specifically, OCR investigated (1) whether SSU's designated procedures for complaints of sexual harassment/assault meet the requirements of Title IX; and (2) whether SSU promptly and equitably investigated complaints of sexual harassment/assault.

OCR found that SSU violated Title IX in that it denied students an educational environment free from sex discrimination because: (1) SSU procedures designated for sexual harassment/assault fail to meet the requirements of Title IX; and (2) SSU failed to investigate complaints of sexual harassment/assault promptly and equitably, including six separate complaints alleging sexual assault by the same male student during the Fall 1992 semester. OCR found that SSU's failure to promptly and equitably resolve complaints of sexual harassment/assault and provide equitable procedures under Title IX created and perpetuated a hostile environment on the basis of sex, in particular for the individuals who filed complaints of sexual assault in the Fall of 1992 (SSU complainants).

On April 15, 1994, SSU, without admitting any violations, signed a Compliance Agreement Plan (CAP) in which it agreed to undertake specific remedial actions to address the violations found by OCR during the course of the investigation. Contingent upon complete implementation of the signed CAP, OCR finds the violations described above to be corrected and SSU to be in compliance with Title IX as to the specific issues raised in this case.

This letter is a summary of the applicable legal standards, the findings of fact and the compliance determinations made regarding the complaint filed with OCR by the complainant.

LEGAL STANDARD

Section 106.31(b) of the regulation implementing Title IX prohibits recipients from denying or limiting, on the basis of sex, the benefits or services it provides to students, or providing them with different benefits, services or treatment, or imposing different conditions upon the treatment, benefits or services they receive. When individuals who are participating in a program or activity operated by an educational institution are subjected to sexual harassment, they are receiving treatment that is different from others on the basis of sex.

A student who is sexually harassed is denied equal access to educational opportunity on the basis of sex. Sexual harassment in the educational setting includes unwelcome sexual advances, requests for sexual favors, or other sex-based verbal or physical conduct. Sexual harassment constitutes unlawful discrimination under Title IX when (1) submission to such conduct is explicitly or implicitly made a term or condition of the individual's education; or (2) such conduct has the purpose or effect of unreasonably interfering with the individual's education by creating an intimidating, hostile, or offensive environment.

An educational institution may be found in noncompliance with Title IX and its implementing regulation as a result of such harassment if the institution knew, or had reason to know, of the harassment and failed to respond adequately. Under Title IX, a recipient will be held directly responsible for sexual harassment by its employees or agents acting within the scope of their duties. When sexual harassment is carried out by individuals who are neither employees nor agents, such as students, the recipient may be found in noncompliance with Title IX if the conduct was sufficiently pervasive and severe to create a hostile educational environment and it failed to respond adequately after notice of the harassment. The recipient will be considered to have responded adequately to knowledge of the harassment if it has conducted a thorough and objective investigation and has taken immediate effective action to fully remedy any harm that may have occurred and to prevent sexual harassment from occurring in the future.

Recipients must also meet certain other specific legal obligations concerning internal grievance procedures and notification of a non-discrimination policy. Even if there is not a hostile environment, the institution may be in noncompliance with Title IX for failure to respond to complaints of sexual harassment in accordance with 34 C.F.R. §106.8. Section 106.8(a) requires that the recipient designate at least one employee to coordinate its

responsibilities under Title IX, including investigation of any complaint of discrimination on the basis of gender, and notify all students of the name, office address and telephone number of the designated employee(s).

Section 106.8(b) requires that the institution adopt and publish a grievance procedure providing for the prompt and equitable resolution of complaints alleging any action prohibited by the regulation. In determining whether a recipient's grievance procedures meet the "prompt and equitable" requirement under section 106.8(b), OCR will look at whether the recipient has included elements such as 1) notice to students and employees of the procedures and where to file complaints; 2) mechanisms for a thorough and objective investigation of complaints including an opportunity for complainants to present evidence; 3) designated time frames for the investigation and resolution of complaints; 4) notice to complainants of disposition of complaints; and 5) the right to appeal findings. OCR also examines: 1) how information about the procedures is disseminated to students and staff, and 2) whether the relevant SSU personnel are trained to properly refer students with sexual harassment complaints.

Section 106.9 requires the recipient to publish a notice of non-discrimination on the basis of gender in publications made available to students or applicants for enrollment. The notice also must inform the reader that inquiries concerning the application of Title IX to the recipient may be referred to the designated employee or to OCR.

SUMMARY OF FACTS AND ANALYSIS

In investigating this complaint, OCR reviewed documents provided by the complainant and SSU. An on-site investigation was conducted on October 20-22, 1993. OCR also interviewed four students allegedly involved in incidents of sexual assault in October of 1992, including students identified below as Students 1, 2, 3, and 4. OCR also conducted telephone interviews with SSU students and staff, and members of the surrounding community who responded to the OCR notice of investigation.

The facts and analysis below are separated into two distinct areas: (1) the procedures available to SSU students in the event of a sexual assault or sexual harassment complaint; and (2) evidence of how those procedures are implemented, including how specific complaints of sexual assault alleged against Student 1 were handled by SSU.

Grievance Procedures Available for Complaints of Sexual Harassment

OCR examined all the SSU grievance procedures available to students, staff, and faculty for complaints involving sexual harassment. OCR found that SSU has a published notice of non-discrimination on the basis of sex and has a policy prohibiting sexual harassment. SSU also has designated an individual to be the Title IX coordinator. SSU has designated the Director of Affirmative Action (DAA) as the Title IX coordinator. While OCR found that SSU was in compliance with the most basic of the technical requirements of Title IX (published notice and policy, and designated Title IX coordinator), the SSU grievance

procedures as a whole were inadequate to meet the requirements of Title IX for the reasons explained more fully below.

Based upon interviews with the DAA and other SSU staff, OCR determined that SSU distinguishes between what it terms "sexual assault" and what it terms "sexual harassment" not rising to the level of criminal assault. Because SSU distinguishes between sexual assault and sexual harassment, and because SSU provides different procedures for sexual assault and sexual harassment, OCR investigated both procedures. OCR found that a fundamental flaw of the SSU procedures for sexual assault and sexual harassment is that they reflect a misunderstanding of the legal basis for sexual harassment. The existing procedures do not treat sexual assault as a form of sexual harassment. This approach to sexual assault fails to recognize the distinction between a Title IX complaint of discrimination alleging sexual assault and a criminal charge alleging sexual assault. A higher legal standard of proof is required to prove a case of criminal assault. A much different and lower standard is required for proving a case of sexual harassment, including assault, under Title IX.¹

OCR found that the procedures, as implemented, not only failed to recognize sexual assault as a form of discriminatory harassment, but also were misleading as to what may constitute sexual harassment. Specifically, the procedures for filing a complaint of sexual harassment with the Affirmative Action Office (AAO) contain language indicating that the result of the investigation of a complaint of sexual harassment may be that there has been a "miscommunication." A determination by SSU that there has been a "miscommunication" could likely result in excusing a harasser's actions and, in part, shifting blame to the victim. Under Title IX, the intent of what the alleged harasser meant to "communicate" is not relevant if the communication is offensive to a reasonable complainant and is sufficiently severe or pervasive to constitute a hostile environment on the basis of sex. Procedures which would dismiss a finding of sexual harassment because of "miscommunication" do not comply with Title IX.

OCR reviewed the SSU Sexual Assault Policy and Procedures (SAPP) in effect at the time of the alleged incidents and the adopted SAPP. The SAPP is not a self-contained procedure but instead references other procedures available for sexual assault complaints. These referenced procedures are: Residential Community Discipline Procedures (Housing Discipline); University Disciplinary Procedures (Student Discipline); student organization procedures if the accused is an organization, a criminal investigation through the Department of Public Safety (DPS); and two separate processes if the accused is an employee (the Collective Bargaining Agreements).

Finally, OCR reviewed the Sexual Harassment and Discrimination Complaint Procedures in effect at the time of the alleged incidents and two versions of the SSU Affirmative Action and Non-Discrimination Policies and Interim Discrimination Complaint Procedures currently

¹Conversely, OCR notes that SSU procedures may not provide complainants with notice that lesser forms of assault (and battery) than rape (such as fondling and touching) may also be criminally actionable.

in effect (collectively referred to hereinafter as the SHP). OCR found that the SHP appears to provide for resolutions of complaints by faculty and students against SSU faculty and staff only. The SHP creates at least three different avenues that an individual can pursue to resolve a complaint against a faculty member. The individual could either file a formal complaint with the AAO, file a complaint under Executive Order 419, or file a complaint under a Collective Bargaining Agreement.

OCR determined that there is little to no coordination between the different complaint processes available for sexual harassment. For example, the only formal mechanism for DPS to refer sexual harassment complaints to SSU is through an "Administrative Report". These reports are sent to SSU from DPS at the discretion of DPS. There is no formal mechanism for ensuring that DPS notify Housing or Student Discipline regarding alleged sexual harassment that is reported to DPS. Similarly, there is no formal mechanism for Housing Discipline to refer sexual harassment complaints to Student Discipline, the DAA, et. al. OCR found that the DAA does not investigate cases or address issues of sexual harassment that SSU classifies as criminal assault. In such situations, the DAA encourages the complainant to consult with DPS. Conversely, if the person is complaining of behavior that would not warrant criminal investigation, SSU informed OCR that the complainant is encouraged to complain to the DAA. However, OCR found that DPS uses discretion in sending Administrative Reports to SSU administrators.

OCR found that while some of the procedures available for sexual assault and sexual harassment complaints met some Title IX requirements, none of the procedures, as implemented, met all the requirements of Title IX. The following are some of the problems found in one or more of the procedures available for sexual assault and sexual harassment complaints:

- Failure to list the Title IX coordinator's name, title, location and telephone number;
- Failure to provide adequate timelines for the prompt investigation and resolution of complaints (some procedures had no timelines, another had timelines that were too short, another had timelines only in the event of a formal hearing);
- Failure to ensure that findings will be reached regarding complaints filed;
- Failure to define which sanctions are available through the various SSU procedures, how they may overlap, and under what circumstances they may be implemented;
- Failure to identify who is responsible for investigating complaints; and
- Failure to define the complainant's option of filing with OCR; (One procedure incorrectly infers that OCR only serves an appellate function that should be used once SSU procedures do not provide a satisfactory resolution. OCR's address and telephone number are incorrectly listed.)

Further, the sexual assault and sexual harassment procedures contain provisions which strongly discourage complainants from naming a harasser. Based on interviews with the SSU complainants and OCR's review of the procedures, OCR determined that these provisions could be viewed as coercive or intimidating by many complainants. OCR finds that any provision that encourages complainants to not provide the name of an alleged assailant may seriously impede a school's ability to effectively address Title IX complaints. If SSU dissuades complainants from identifying the harasser, it may become unaware of a pervasive problem with an individual on campus. SSU cannot dodge its responsibility to thoroughly and objectively investigate and address sexual harassment on campus by advising students to not name the harasser. Regardless of whether a harasser is identified, SSU has a duty to take immediate effective action to remedy any harm that may have occurred and prevent sexual harassment from occurring in the future. Failure to adequately address sexual harassment may perpetuate an existing hostile environment. In short, SSU has an affirmative obligation to provide a non-discriminatory educational environment, and has an affirmative responsibility once it has knowledge of sexual harassment to take action to end the discrimination.

OCR also found that SSU fails to provide appropriate Title IX procedures for students to allege peer sexual harassment that does not rise to the level of sexual assault. OCR found that student peer sexual harassment is typically referred to the Student Discipline process. When a school is asked by a complainant to address concerns or incidents of sexual harassment, if the school does not grapple with the discriminatory aspect of the behavior, the school has not done enough to address the harassment. The use of the Student Discipline process for sexual harassment complaints, while perhaps sufficient to address a discipline problem, is not sufficient to address the discriminatory nature of the harasser's behavior. As stated previously, under Title IX, SSU must take action to end sexual harassment on campus of which it has, or should have, notice. To ensure that sexual harassment does not recur, SSU must take deliberate steps to educate the harasser and the campus community that sexual harassment is not tolerated, constitutes unlawful discrimination, and is prohibited by federal law. Perpetrators of sexual harassment must understand the discriminatory nature of their behavior. Further, a hostile environment that is created not only affects the victims of the sexual harassment, but poisons the educational environment in general and must be addressed as such. OCR found that SSU's failure to have separate procedures for peer sexual harassment violates Title IX. OCR also found that the processes used to substitute for Title IX procedures, such as Student Discipline, fail to meet the requirements of Title IX.

Overall, OCR found that the multiplicity of SSU grievance procedures are excessively burdensome and confusing for complainants to such an extent that the procedures are inaccessible. Extensive investigation was required by experienced OCR staff to understand the various procedures and possible sanctions available for sexual harassment at SSU.

Because SSU has separate procedures for sexual harassment and sexual assault, and because each procedure references at least three to six others, a victim of sexual harassment would potentially have to file numerous complaints in order to obtain full investigation and resolution of a complaint. The decision of which options to pursue is left

to the alleged victim. Thus, if a student is assaulted in the residential community it is the student's responsibility to not only file a complaint through the Housing Discipline process, but also the student must separately file complaints with Student Discipline and with DPS if the student wants those procedures initiated. The investigation revealed that in practice, SSU will not investigate a complaint through all the relevant procedures unless and until a complainant files with each separately.

Although complainants are expected to initiate each individual process on their own, OCR determined that information to complainants of the procedures for sexual harassment had not been effectively disseminated to the campus community during the 1992-93 academic year. SSU informed OCR that information about sexual harassment and sexual assault is provided at student orientations and housing workshops to the campus community on a regular basis. However, during witness interviews, OCR was unable to confirm that any information about how to file a complaint was provided at any of these presentations during the 1992-93 academic year. Additionally, attendance at these orientations and workshops was not mandatory.

Interviews with SSU staff indicate that after the alleged incidents that gave rise to this OCR complaint, SSU created two documents to explain a three track system available to student complainants of sexual assault (Housing Discipline, Student Discipline and the DPS procedures). Staff described an "information campaign" by SSU to disseminate the information in the documents. Despite this "information campaign" and the orientations and workshops, most of the witnesses interviewed by OCR (students and staff) were not aware of the procedures available for sexual harassment complaints.

OCR found that the multiplicity of procedures along with their internal inconsistencies are difficult to understand even for SSU staff and administrators charged with responsibility for implementing procedures to ensure compliance with Title IX. In interviews with OCR, they were unable to explain all of the procedures available to students who want to file complaints of sexual harassment. At times their testimony as to the procedures conflicted; often it revealed an incomplete understanding of the procedures. OCR finds that not only is the current SSU process burdensome and confusing to complainants, but it impedes SSU's ability to effectively resolve Title IX complaints. OCR believes that had SSU provided staff, most particularly the DAA, with training and information regarding sexual harassment it would have been better equipped to appropriately address the concerns of the SSU complainants. SSU cannot be thorough and objective in addressing sexual harassment complaints and prevent sexual harassment from recurring if its designees for handling Title IX complaints do not understand sexual harassment or the SSU procedures.

The SSU SAPP contains a section titled "Informal Advice." Although the purpose of this section is not clearly articulated, it describes a referral process to complainants of sexual harassment. Similarly, the SHP suggests, but does not clearly delineate an informal discussion process available with one of four SSU administrators to persons who are not "comfortable" or who have been unsuccessful in confronting an alleged harasser. The SHP offers this informal resolution at the "lowest level possible and consistent with the desires of the person bringing forward the complaint," but provides no guidelines for how the informal resolution will be achieved. These "informal" procedures fail to meet the

requirements of Title IX. If procedures for enforcing rights protected by Title IX contain an informal process, that process must be pursued at the discretion of the complainant and must meet the minimum technical requirements of Title IX, including timelines and structured guidelines. OCR finds the SSU procedures fail to meet this requirement in that they are ambiguous.

Because SSU places the burden on the complainant to initiate all the relevant procedures to fully resolve a complaint of sexual harassment, it is inequitable to then have procedures that are ambiguous and inconsistent. The requirement in Title IX that procedures be equitable was not intended to place the burden of the process on a complainant's inner fortitude and tenacity. To the contrary, Title IX requires that recipients provide an equitable process through a system established, understood, and implemented by the recipient. This requirement is placed on a recipient, not on a complainant, because only the recipient is in a position to ensure that each and every complainant is given access to the same procedures for resolution of a discrimination complaint. The SSU procedures are on their face and in their application inequitable because each and every complainant is treated differently and because the confusing procedures function as a barrier to complainants. OCR finds that SSU's failure to provide students with an understandable sexual harassment procedure violates the requirements of Title IX.

SSU Investigation of Sexual Harassment/Assault Complaints

OCR sought to determine whether SSU investigated complaints of sexual harassment promptly and equitably and took the necessary corrective actions to end discriminatory harassment. To determine this issue, OCR investigated the SSU response to six alleged incidents of sexual assault during the Fall 1992 semester. Additionally, OCR reviewed complaints alleging sexual harassment, including sexual assault, filed with the AAO, DPS, Housing Discipline, and Student Discipline for the 1990-91, 1991-92, and 1992-93 academic years. OCR also conducted telephone interviews with SSU students and staff who responded to the notice regarding the OCR investigation.

OCR found that within the residential community the SSU complainants had to report their allegations to the following three individuals: [REDACTED]

and [REDACTED]. When the SSU complainants reported their allegations to the CSA, she in turn handed in written reports of these allegations to [REDACTED].² Only two of the SSU complainants pursued all three avenues (Housing Discipline, DPS, and Student Discipline) of redress. Although these two SSU complainants were required ultimately to retell their stories to five different individuals, not one of those five explained all of the different campus processes available to the SSU complainants. For example, not one of the individuals whom the SSU complainants spoke

²During OCR interviews, OCR found that [REDACTED] and [REDACTED] who initially received the complaints from the six SSU complainants, were not aware of the SSU sexual harassment procedures and were untrained concerning the legal basis of sexual assault and sexual harassment.

to referred the case to the DAA. OCR found that because the SSU complainants did not specifically seek to file a complaint of sexual harassment when filing their complaints of sexual assault, the DAA who is charged with accepting complaints of sexual harassment was never informed of the complaints during the course of the investigations. However, the DAA indicated that the only remedy she could obtain in cases of peer sexual harassment would be an oral warning handled as an educational session and that egregious peer sexual harassment complaints would be handled through the Student Discipline process. All five SSU staff members failed to address the two sexual assault complaints as complaints of sexual harassment.

OCR found that as to the alleged incidents giving rise to this OCR complaint, SSU staff responsible for providing information about the sexual assault procedures (DPS, DAA, [REDACTED], and the Associate Dean of Student Affairs) failed to comply with the notice requirements of 34 C.F.R §106.8. These individuals failed to provide the SSU complainants with notice of the procedures necessary for a prompt and equitable resolution of their complaints. OCR notes that even had they been given information as to SSU's myriad procedures, SSU lacks adequate procedures for peer sexual harassment complaints.

OCR determined that the two SSU complainants who pursued their complaints through the SAPP were not provided a thorough and objective investigation of their complaints as required by Title IX. The OCR review of the administrative investigations of the complaints of the two women who did pursue "formal" proceedings revealed a gross mishandling which seriously tainted the investigation at the outset.

The Housing Discipline process required that the complainants' allegations be placed in writing to [REDACTED] through the CSA. OCR found that specific factual assertions from these reports were read to the accused, Student 1, at the initial meeting concerning the complaints. In other words, prior to being questioned regarding the allegations, Student 1 was permitted to rebut specifics from the complainants' allegations. The complainants were never afforded a similar opportunity for rebuttal. SSU thereby precluded the possibility of conducting an impartial inquiry designed to determine the veracity of the allegations and credibility of the witnesses. OCR notes that this was done without notice to the complainants. OCR also notes that this was done prior to what [REDACTED] maintains was the "formal complaint" made to [REDACTED]. OCR found that from the point when Student 1 was permitted access to the complainants' specific factual allegations the investigation into their complaints was tainted because SSU could not complete a thorough and objective investigation without asking independent and objective questions. Student 1's answers were preordained by SSU's questions. Any possibility of making a determination of the credibility of the witnesses and the veracity of their testimony in this case was irreparably harmed at the outset.

The [REDACTED] was ultimately responsible for making a determination on the Housing Discipline complaints. The [REDACTED] letter to Student 1 defines rape in accordance with the Residential Community Handbook, finds facts supporting that definition of rape, but indicates that rape or sexual assault did not occur. OCR found that the [REDACTED] letter to Student 1 shows a bias and lack of objectivity favoring the male student. Specifically, his letter unnecessarily

focuses on and emphasizes the female students' alcohol consumption and whether or not there was a previous "romantic" relationship between the parties. He opined to OCR investigators that the type of sexual assaults described by the SSU complainants, including the rape, was taking advantage of "opportunities" created by the women. Also, the evidence showed a selective choice of witness testimony on the part of [REDACTED]. For example, although [REDACTED] acknowledged that three additional complaints were made against Student 1, he did not consider those complaints because those complainants did not file with him. Although several contemporaneous witnesses were named by the female students, OCR found that the only witness testimony referred to in the Housing Discipline letter was that provided by a witness named by Student 1. OCR found no evidence that [REDACTED] interviewed a witness who claims to have heard one of the SSU complainants say "No, [Student 1] stop" repeatedly to no avail.

OCR found that the [REDACTED] letter was given to Student 1, but was not given to the SSU complainants. The complainants eventually learned of the sanctions imposed on Student 1 "through the grapevine." This manner of receiving notice of the resolution of their complaints was not accurate and not sufficient under Title IX.

Although Housing Discipline is listed as offering a hearing procedure, no information is provided on how to file a formal housing complaint to trigger the hearing process. In the incidents giving rise to this complaint, although several students complained to staff at the residential community about sexual assault, there was no hearing.

The Associate Dean of Student Affairs (ADSA), who is responsible for the Student Discipline process, sent Student 1 a letter containing the results of his investigation into the sexual assault allegations. The letter indicated that Student 1 engaged in "abusive behavior" in violation of the Student Code of Conduct for "continuing to aggressively pursue sexual activities with women who express disinterest in same . . ." However, the ADSA did not find that sexual harassment/sexual assault occurred. The ADSA indicated to OCR that he did not investigate whether sexual harassment (including sexual assault) occurred. The Student Discipline process resulted in Student 1 receiving sanctions for "abusive behavior" in lieu of a hearing and without admitting fault. The complainants were not consulted regarding whether they wanted to pursue the hearing option.

As a result of the Housing Discipline and the Student Discipline processes, Student 1 was informed that he would be required to receive counseling, to attend sessions of "Sonoma County Men Evolving Non-Violently," was prohibited from visiting in the SSU complainants dorm complex or its immediate environs, and would be placed on both housing and discipline probation. One term of his probation was that if he violated the Student Code of Conduct, which includes a prohibition against threatening members of the campus community with physical abuse, he may be expelled. OCR found that he did not attend all the required counseling sessions. OCR found that the complainants did not receive notice of the content or basis of any of the sanctions imposed on Student 1.

OCR found that Student 1 was not counseled regarding his discriminatory behavior. Instead, Student 1 indicated to OCR that SSU staff suggested to him that he had been falsely accused because of racism by the SSU complainants. OCR finds that for SSU staff

to in the same instance administer Student 1 a slap on the wrists, while informing him he had been "victimized" renders hollow any determinations made and sanctions given. SSU failed to address the discriminatory aspects of Student 1's behavior by raising apparently false concerns of racism: this sophism offends Title IX. OCR found no evidence to support this assertion.

Further, OCR found that the SSU staff's lack of training and knowledge regarding Title IX and their duties under the Family Education Rights to Privacy Act (FERPA) interfered with SSU's obligation to inform the complainants of the results of their complaints. For example, the ADH failed to provide the complainants with notification of the results of their complaints because he erroneously believed that FERPA precluded him from doing so.³

OCR found that two of the SSU complainants made reports to the DPS. OCR determined that the investigating officer took written reports from students 3 and 4 and obtained the written reports of their interviews with [REDACTED]. The DPS officer also took a written report from Student 1.

OCR found that the investigating officer's narrative report contained several statements indicating a lack of objectivity in his interpretation of the facts presented to him. For example, his narrative report to the District Attorney contained statements indicating that the two complainants engaged in consensual kissing with Student 1. The complainant's written reports do not indicate any consensual kissing. One of the rape allegations is described in the officer's report as: "[she] also told me that on . . . she again had sex with [Student 1] . . ." OCR found nothing in the reports, the testimony of Student 3, or [REDACTED], who attended the initial meeting between the SSU complainants and the investigating officer, to support this description of consensual sex. Also, the officer described the use of alcohol by the woman as an "admission." Specifically, he states that "[b]y her own admission, [Student 3] stated that she felt extremely intoxicated" and that "[Student 4] admits that within an hour's time she did consume approximately 2 cans of beer." Overall, the DPS reports appear biased in that they describe rape allegations and forced kissing in terms commonly used to reference consensual sex and then make the alleged victims appear under investigation by describing aspects of their statements as "admissions."

OCR found that two SSU complainants complained to SSU regarding alleged misrepresentations and omissions in the DPS report. During interviews with OCR, Students 3 and 4 denied being involved in consensual sexual relations with Student 1. In response to their complaints, the Vice-President of Administrative Finance provided the two SSU complainants with a letter which indicated that the only procedure for them was to either meet with the investigating officer or to address further "personal questions" to the director of DPS. Witnesses interviewed by OCR expressed concern regarding the lack of

³The FERPA regulations at 34 C.F.R. Section 99.31 allow institutions of postsecondary education to disclose the results of a disciplinary proceeding conducted by the institution against an alleged perpetrator of a crime of violence to the alleged victim of that crime without the prior written consent of the alleged perpetrator.

sensitivity of DPS officers regarding sexual assault and sexual harassment. Several witnesses told OCR that women on campus do not feel comfortable reporting sexual assaults to DPS. OCR found that requiring the SSU complainants to directly confront the officer and treating their complaints as "personal questions" was an inadequate response to valid concerns.

OCR found that, subsequent to being placed on Housing and Student probation, complaints were made about Student 1. For example, the SSU complainants reported to ██████████ that Student 1 was seen in the SSU complainants' dormitory complex in apparent violation of a term of his probation. OCR found that their concerns were not addressed for over a month. They were eventually provided with a letter indicating that Student 1 would be permitted to walk through the dormitory. Additionally, a complaint against Student 1 for making a threat by insinuating to a female student that he had a gun in his room was not treated as a violation of the terms of his probation and was not reported by ██████████ to the Student Discipline process.

In addition to reviewing the investigations made regarding Student 1, OCR also reviewed files maintained by the DAA, Student Discipline, Housing Discipline and DPS for other sexual harassment complaints made during the three academic years from 1990 to 1993. OCR found that during this time frame, SSU rarely conducted full investigations or made findings regarding complaints of sexual harassment, including sexual assault. OCR found that sanctions for sexual harassment/assault have been light and not calculated to end the discrimination. For example, in the file review, OCR found at least eight complaints against the same professor over a three year period involving allegations of illegal conduct including demeaning comments of a sexual nature, sexual battery, and rape. Despite these complaints, OCR found no evidence of a thorough and objective investigation. Further, the strongest action taken against this professor was a warning letter which does not address the most egregious allegations.

Moreover, the OCR file review showed that the DAA, who is responsible for receiving complaints of sexual harassment, at different times has distinguished sexual assault from sexual harassment and has distinguished sexual harassment from sex discrimination. As previously noted, OCR found that the DAA has limited authority to impose appropriate disciplinary sanctions for sexual harassment. For example, the sanctions of expulsion, suspension and probation cannot be administered by the DAA. OCR found strong evidence that the DAA is inadequately trained regarding what constitutes sexual harassment and how to adequately address complaints of sexual harassment, and has not been given the requisite authority to perform her duties. Due to her lack of training, the DAA was unable to advise the institution of the requirements of Title IX, apprise SSU of the inadequacies in the existing procedures, implement a thorough and objective investigation of sexual harassment complaints, and properly train SSU staff regarding the requirements of Title IX. As a result, SSU failed to have an effective Title IX coordinator in violation of Title IX.

The OCR file review also showed that not all complaints of discrimination are maintained by the University. The records that are kept do not always contain all the relevant information regarding the complaint. For example, the records often did not indicate the

steps taken to resolve the complaint nor how and when the complaint was resolved. Also, DPS does not have a formal or consistent process for apprising the appropriate SSU administrator of incidents involving sexual harassment thereby erecting barriers to effective record-keeping. ██████ stated that he did not keep the initial reports of the six SSU complainants. OCR received witness testimony regarding other reports of sexual harassment made to ██████, yet upon a comprehensive file review OCR found no record of any of these reports. Finally, OCR found evidence that the DAA does not maintain complete records of sexual harassment complaints.

In conclusion, OCR found that although SSU had notice of the complaints of sexual assault made by the SSU complainants as early as October 20, 1992, SSU to this day has never conducted thorough and objective investigations to determine whether sexual harassment occurred. SSU failed to take steps reasonably necessary under Title IX to promptly and equitably resolve these complaints. It is especially inequitable for SSU to fail to address the complaints of sexual harassment, since at the time of the complaints (and to this date) there are no clear procedures for student to student sexual harassment.

OCR determined that the bases of the Housing and University Disciplinary sanctions against Student 1 were not clear, and in addition they were not sufficient to resolve the claims of sexual harassment. Sanctions appropriate under Title IX must be designed to end the sexual harassment and prevent it from recurring. Perpetrators of sexual harassment must understand the discriminatory nature of their behavior, and that the behavior will not be tolerated. A hostile environment not only affects the direct victims of the sexual harassment, but poisons the educational environment for all students and staff. Appropriate sanctions must be designed to persuade potential harassers to refrain from unlawful conduct and thus, cleanse the hostile environment.

OCR found that the discipline imposed on Student 1 reinforced a perception among female SSU students that complaints of sexual assault would not be treated seriously by SSU. The sanctions imposed were not adequate to address discriminatory conduct and Student 1 did not receive counseling regarding sexual harassment.⁴ OCR found that the complainants were denied notice about the investigations' results and the content or bases of the sanctions, and the sanctions themselves were not properly enforced.

The DAA attempted to justify the SSU failure to appropriately address the allegations of the SSU complainants by arguing that the complainants failed to formally report their complaints, were involved consensually with Student 1, and filed complaints because they felt "betrayed" by Student 1. Specifically, the DAA told OCR that: "[five of the SSU complainants] said that their involvement with [Student 1] had been consensual, although in light of his involvement with the others they felt 'betrayed'." The DAA informed OCR that

⁴There is some evidence that Student 1 was counseled that his "problems" with the women were not due to sexually discriminatory behavior on his part, but due to racism by the women. Student 1 stated to OCR that an SSU administrator indicated to him that the SSU complainants were interested in Student 1 as an "exotic item" but lost interest when he was no longer a "rare commodity."

she based this statement on written and verbal statements by another SSU staff member. However, the staff member denied to OCR that she or the SSU complainants ever stated that the sexual relations with Student 1 were consensual or that they felt "betrayed." OCR found that the witness interviews, the SSU complainants' statements and other information compiled by SSU and provided to OCR provide no evidence to support the DAA's theory of "betrayal" and consensual sex. Based on interviews and written reports, OCR found that the SSU complainants were far from satisfied with SSU's handling of their complaints. Four of the six SSU complainants indicated that they were discouraged by the confusing grievance procedures. They indicated that they were strongly discouraged from filing complaints by SSU staff. They described having to tell their stories repeatedly, feeling that they were not believed or taken seriously. One of the SSU complainants became convinced that the purpose of the repeated interviews and counseling was to find inconsistencies in their stories and to wear them down so as to discourage them from pursuing their complaints. Another alleged victim stated that she understood that her choice was to either file with the DPS or to drop her complaint completely. None of the SSU complainants were given notice of the SSU sexual harassment procedures. Some of the complainants indicated that ultimately they felt vilified for making their complaints. OCR notes that at least three of the SSU complainants eventually withdrew and no longer attend SSU.

CONCLUSION

OCR concluded that SSU students were denied an environment free from sexual harassment as evidenced by the inequitable procedures available to complainants and the manner in which alleged incidents and complaints of sexual harassment were handled by SSU. OCR found that complainants of sexual harassment were systematically denied the means to achieve a prompt and equitable resolution to their complaints including thorough and objective investigations. As a result, OCR found that SSU fostered and perpetuated a hostile educational environment on the basis of sex on its campus in violation of 34 C.F.R. §106.31(a).

OCR notes that in cases such as this one, retaliation, intimidation or harassment may occur against witnesses who took part in the OCR investigation. Retaliation, intimidation, and/or harassment may include, but are not limited to questioning witnesses as to their OCR testimony or making disparaging comments regarding a witness or complainant's personal life or history. Retaliation, intimidation, or harassment of individuals who took part in the OCR investigation (including SSU faculty, staff and students) may constitute a violation of Title IX and could be the subject of future OCR investigations. OCR will be monitoring SSU to ensure that retaliation against witnesses to the OCR investigation does not occur.

On April 15, 1994, SSU, without admitting any violations, signed a Compliance Agreement Plan (CAP) in which it agreed to undertake specific remedial actions to address the violations found by OCR during the course of the investigation. In the CAP SSU agreed to develop grievance procedures to provide for the prompt and equitable resolution of Title IX complaints, to provide training to students and staff regarding sexual harassment, to

Page 15 - Dr. Ruben Armiñana

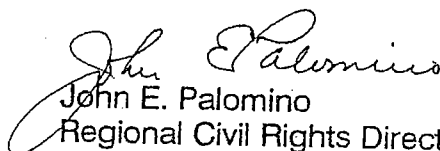
provide the SSU complainants with the results of the SSU investigations into their complaints, and to notify the campus community of the OCR findings in this letter as well as the remedial actions taken by SSU. A copy of the CAP is enclosed with this letter. Contingent upon complete implementation of the signed CAP, OCR finds the violations described above to be corrected and SSU to be in compliance with Title IX. However, SSU failure to fully implement the CAP in a timely manner will constitute a violation of Title IX whereby OCR could immediately pursue legal enforcement proceedings.

This letter only addresses the issues discussed above and should not be interpreted to cover any other civil rights laws or regulations enforced by OCR, including any future allegations of gender discrimination filed with OCR by SSU students, staff and faculty.

Under the Freedom of Information Act, it may be necessary to release this document and related records on request. If OCR receives such a request, it will seek to protect, to the extent provided by law, personal information which, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

If you have any questions, please contact Herman Bossano at (415) 556-0885.

Sincerely,


John E. Palomino
Regional Civil Rights Director

Enclosure