United States Department of Education
Office for Civil Rights
against
Swarthmore College

Complainants

(b)(7)(C)

(b)(7)(C)

3. Institution that Committed the Alleged Violations:

Swarthmore College
500 College Avenue
Swarthmore, PA 19081
(610) 328-8000

4. Legal Basis of Complaint:

Complainants allege that Swarthmore College has violated their rights based in part on the following laws that come under the direct jurisdiction of the United States Department of Education's Office of Civil Rights:

a. Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex. Complainants aver that the Office of Civil Rights of the Department of Education has full basis to investigate their complaint under Title IX of the Civil Rights Act of 1964's statement that "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." 20 U.S.C. § 1681(a).

Complainants presently allege extensive discriminatory acts in violation of Title IX that comprise both individually and as a pattern clear evidence of deliberate indifference on the part of Swarthmore College. This complaint alleges that the administration of Swarthmore College is liable for complainants' experiences of sexual harassment because of the illegal manner in which Swarthmore College dealt with the complainants' internal grievances. Complainants, as plaintiffs, must demonstrate that Swarthmore College acted with deliberate indifference to their grievances. This complaint meets that standard. Swarthmore College had actual knowledge of the complainants' sexual harassment and either responded in a "clearly unreasonable manner in light of the known circumstances," Davis v. Monroe Cnty. Bd. of Ed., 526 U.S. 629 (1999). at 648, or responded with remedial action only after a "lengthy and unjustified delay."Hayut v. State Univ. of N.Y., 352 F.3d 733, 751 (2d Cir. 2003). It is also clearly established that sexual harassment in the educational context—whether teacher-on-student or student-on-student— may constitute a violation of Title IX. Davis at 643.

It is complainants' belief and averment that Swarthmore College's deliberate indifference to their

experience of victimization and to the failed internal grievance procedure related to these experiences indeed, "at a minimum, cause[d] students to undergo harassment or make them liable or vulnerable to it," Davis, 526 U.S. at 645, and had "something more than a proffer indicating the ultimate inadequacy of preventative and curative measures. Instead, the measures taken must be so inadequate that a degree of discriminatory intent may be inferred." Yap v. Oceanside Union Free Sch. Dist., 303 F. Supp. 2d 284, 295 (E.D.N.Y. 2004) (citing Gant v. Wallingford Board of Education, 195 F.3d 134, 140 (2d Cir. 1999)).

This complaint clearly alleges that the measures Swarthmore College took to handle the complainants' grievances, if any, were "so inadequate that a degree of discriminatory intent may be inferred." Yap v. Oceanside Union Free Sch. Dist., 303 F. Supp. 2d 284, 295 (E.D.N.Y. 2004) (citing Gant v. Wallingford Board of Education, 195 F.3d 134, 140 (2d Cir. 1999)); see also Tesoriero v. Syosset Cent. Sch. Dist., 382 F. Supp. 2d 387, 398 (E.D.N.Y. 2005) (where an educational institution takes timely and reasonable measures in good faith to end the harassment, even if the measures ultimately prove to be ineffective, it has not acted with deliberate indifference)."

Stated differently, liability under Title IX attaches because Swarthmore College "either through grossly inadequate action or no action at all . . . effectively cause[d] the student[s] to encounter discrimination." Ex rel. Hunter v. Barnstable School Committee, 456 F. Supp. 2d 255, 265 (D. Mass. 2006) (citing Davis, 526 U.S. at 642-43); see also Tesoriero, 382 F. Supp. 2d at 398 (stating that title IX recipients such as Swarthmore College can be liable in damages only where their own deliberate indifference "effectively caused" the discrimination) (quoting Davis, 526 U.S. at 642-43).

The present complaint with OCR on its face alleges facts demonstrating that Swarthmore College acted with deliberate indifference in response to Plaintiffs' claims of sexual assault as well as to those of several others who are similarly situated to plaintiffs (b)(7)(C).

5. Description of Each Discriminatory Act

Violations in Regards to Sex Based harassment, discrimination, Title IX, Title VI and hostile climate:

(b)(7)(C) **Swarthmore College Student** (b)(7)(C)

Hostile Environment

(b)(7)(C) was sexually assaulted in (b)(7)(C) At this this time, she was (b)(7)(C)

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

THE WANAMAKER BUILDING, SUITE 515
100 PENN SQUARE EAST
PHILADELPHIA, PA 19107-3323

REGION III
DELAWARE
KENTUCKY
MARYLAND
PENNSYLVANIA
WEST VIRGINIA

July 12, 2013

IN RESPONSE, PLEASE REFER TO: 03-13-2294

(b)(7)(C)

Dear (b)(7)(C):

This refers to the complaint you filed with the U.S. Department of Education (the Department), Office for Civil Rights (OCR), against Swarthmore College (the College) alleging sex discrimination. Specifically, you (the Complainants) allege that the College subjects students to a sexually hostile environment by failing to respond appropriately to complaints of sexual harassment and sexual violence. The Complainants also allege that the College retaliated against (b)(7)(C) (the Student) due to her complaints of sexual harassment and sexual violence. Specifically, the Complainants allege that the College retaliated against the Student when, in April 2013, (b)(7)(C) told other students that the Student had been sexually assaulted.

OCR enforces Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681, and its implementing regulation, 34 C.F.R. Part 106, which prohibits discrimination on the basis of sex in any education program or activity operated by a recipient of Federal financial assistance. Title IX also prohibits retaliation.

As a recipient of Federal financial assistance from the Department, the College is subject to Title IX and its implementing regulation.

We will investigate these allegations above because OCR has jurisdiction and the allegations were filed timely. Please note that investigating an allegation in no way implies that OCR has decided its merit. During the investigation, OCR is a neutral fact-finder, collecting and analyzing relevant evidence from the complainant, the recipient, and other sources. OCR will ensure that its investigation is legally sufficient and is dispositive of the allegations, in accordance with the provisions of Article III of the *Case Processing Manual.*

You have also raised allegations with which OCR will not proceed. You alleged the College violated the Clery Act by failing to report incidents of sexual harassment and assault. OCR does not enforce the Clery Act; therefore, OCR does not have jurisdiction over this allegation. Accordingly, OCR is dismissing this allegation, effective the date of this letter.

You also alleged that the College employs improperly trained staff to enforce Title IX. OCR will investigate only those allegations that state a violation of one of the laws OCR enforces. While the Title IX regulations require recipients to designate at least one responsible employee to coordinate its efforts to comply and carry out its responsibilities under Title IX, the regulations do not specify training required for such individuals. Thus, this allegation does not state a claim under Title IX, and we are dismissing it, effective the date of this letter.

You also alleged that, due to your complaints about sexual harassment and sexual violence, the College retaliated against the Student:

1. When it erased chalk writings that she made regarding her experience with sexual assault on campus; and
2. Failing to follow up with the police regarding a May 10, 2013 incident when a man approached her and not providing her with the man's name.

In order to proceed with an allegation of unlawful retaliation, the complainant must allege or OCR must be able to infer from the facts given that: (1) an individual engaged in a protected activity; (2) a recipient was aware of the protected activity; (3) a recipient took adverse actions against the individual contemporaneous with or subsequent to the protected activities; and (4) there was a causal connection between the adverse actions and the protected activities. If any of those elements are not present, then OCR cannot investigate the claim of retaliation. In determining whether an action is adverse, OCR considers whether the alleged adverse action caused lasting and tangible harm, whether the action reasonably acted as a deterrent to further protected activity, or if the individual was precluded from pursuing his or her discrimination claims. Merely unpleasant or transient incidents usually are not considered adverse.

Specifically with regard to the handling of the May 10, 2013 incident, based on the information you provided to OCR, the College notified the Student that the Swarthmore police had been contacted, offered assistance in filing a report with the Swarthmore police if the Student chose to do so, and indicated that it would issue a letter to the individual banning him from College property. In both instances, the actions that you have asserted as adverse actions do not rise to the level of an adverse action as defined by the standard set forth above. The information you have provided does not indicate that the actions caused lasting and tangible harm to the Student, reasonably acted as a deterrent to protected activity, or precluded the Student from pursuing discrimination claims. Accordingly, these allegations fail to state a violation of one of the laws OCR enforces, and we are dismissing these retaliation allegations, effective the date of this letter.

If you have any questions, please contact Ms. Cynthia Wesley at 215-656-8548 or Cynthia.wesley@ed.gov.

Sincerely,

(b)(7)(C)

Rhasheda S. Douglas
Team Leader

Enclosures

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July 12, 2013

IN RESPONSE, PLEASE REFER TO: 03-13-2294

Dr. Rebecca Chopp
President
Swarthmore College
500 College Ave
Swarthmore, PA 19081

Dear Dr. Chopp:

On May 23, 2013, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint filed against Swarthmore College (the College) alleging sex discrimination. Specifically, the Complainants allege that the College subjects students to a sexually hostile environment by failing to respond appropriately to complaints of sexual harassment and sexual violence. The Complainants also allege that the College retaliated against (b)(7)(C) (the Student) due to her complaints of sexual harassment and sexual violence. Specifically, the Complainants alleged that the College retaliated against the Student when, in April 2013, (b)(7)(C) told other students that the Student had been sexually assaulted.

OCR enforces Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681, and its implementing regulation, 34 C.F.R. Part 106, which prohibits discrimination on the basis of sex in any education program or activity operated by a recipient of Federal financial assistance. Title IX also prohibits retaliation.

As a recipient of Federal financial assistance from the Department, the College is subject to Title IX and its implementing regulation. Additional information about the laws OCR enforces is available on our website at http://www.ed.gov/ocr.

We will investigate these allegations because OCR has jurisdiction and the allegations were filed timely. Please note that opening an allegation for investigation in no way implies that OCR has made a determination with regard to its merit. During the investigation, OCR is a neutral fact-finder, collecting and analyzing relevant evidence from the complainant, the recipient, and other sources, as appropriate. OCR will ensure that its investigation is legally sufficient and is dispositive of the allegations, in accordance with the provisions of Article III of the *Case Processing Manual*.

Please read the enclosed document entitled "OCR Complaint Processing Procedures," which includes information about: OCR's complaint evaluation and resolution procedures; regulatory prohibitions against retaliation, intimidation and harassment of persons who file complaints with OCR or participate in an OCR investigation; and application of the Freedom of Information Act and the Privacy Act to OCR investigations.

OCR intends to conduct a prompt investigation of this complaint. The regulation implementing Title VI, at 34 C.F.R. § 100.6(b) and (c), requires that a recipient of Federal financial assistance make available to OCR information that may be pertinent to reach a compliance determination. Pursuant to 34 C.F.R. § 100.6(c) and 34 C.F.R. § 99.31(a)(3)(iii), of the regulation implementing the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, OCR may review personally identifiable records without regard to considerations of privacy or confidentiality.

Accordingly, OCR is requesting that you forward the following information to us within fifteen (15) calendar days. Please note that in this request, the term "correspondence" includes, but is not limited to, e-mail, meeting notes, interviews, notes of telephone conversations, and all related memoranda. In each instance where a policy is requested but a written policy on the matter at issue does not exist, provide instead an explanation of the College's usual practice. To the extent that any requested documents are available on the College's website, an appropriate link would be sufficient.

1. A copy of the following College policies, procedures, and documents that have been in effect at any time from August 1, 2010, to the present:
    a. Title IX policies and procedures regarding discrimination based on sex and, if different, policies regarding sexual harassment and sexual violence;
    b. Grievance procedures for complaints and other avenues for reporting alleged sex discrimination, and if different, sexual harassment and sexual violence;
    c. The Student, Staff and Faculty Codes of Conduct and any other document(s) that contain the College's policies and procedures regarding student, staff and faculty behavior and discipline; and
    d. Student, staff and faculty handbooks.

2. For each grievance procedure or complaint process procedure offered to students and used by the College to address sexual harassment and sexual violence or other sex discrimination complaints, if not indicated in the policy or procedure, identify the name and title of each individual, including College police, administrators, staff and students that are responsible for accepting, investigating, deciding or otherwise resolving complaints.

3. Copies of all anonymous sexual harassment and sexual violence reports and complaints submitted from August 1, 2010, to the present.

4. A copy of any:
    a. internal or external assessments of the adequacy or effectiveness of the College's policies and procedures concerning sexual harassment and sexual violence; and
    b. internal or external recommendations made to the College since August 1, 2010, regarding changes to its policy and procedures for responding to or investigating complaints of sexual harassment and sexual violence.

    Please provide a narrative response as to whether the College made any changes to its policies and procedures in response to these reports and/or recommendations.

5. Identify the College's Title IX coordinator (or coordinators) from August 1, 2010, to present, including the person's name and job title, and the dates each person held this position.

6. Explain how the College's policies regarding sexual harassment and sexual violence are (or have been) distributed and publicized to College students, faculty and staff and any other means the College uses (or has used) to notify students, faculty and staff about how to file a complaint of sexual harassment and sexual violence or other discrimination based on sex. Please include documentation or web links that support this response, including, but not limited to, brochures, distributed flyers, newspaper or web articles, and orientation materials.

7. Provide a detailed description of training provided to College faculty and staff since August 1, 2010, covering the topics of sexual harassment and sexual violence or other discrimination based on sex. Include the date(s) provided and the names, titles, and qualifications of the person(s) that who provided the training(s); and lists of attendees and their positions. Provide copies of any material provided during the training including power point slides.

8. Provide a detailed description of training and information sessions for students (including freshmen orientation) since August 1, 2010, covering the topics of sexual harassment and sexual violence or other discrimination based on sex. Include the dates the training was provided and the names, titles, and qualifications of the person(s) that who provided the training(s). Provide copies of any material provided during the training.

9. Provide a detailed description of training provided to individuals responsible for investigating complaints of sexual harassment and sexual violence and to members of any committees or boards that hear or decide complaints on sexual harassment and sexual violence. Include the date(s) provided and the names, titles, and qualifications of the person(s) that who provided the training(s); and lists of attendees and their positions. Provide copies of any material provided during the training including power point slides.

10. Provide the following information for all student complaints or reports of (a) sexual harassment or sexual violence that have been brought to the College's attention (formally or informally) since August 1, 2010. For each complaint identified, please provide the information below with the dates for each step of the process:
    a. The name, or unique identifier, and sex of the student who made the report or complaint.
    b. The name or unique identifier, sex and position (e.g., student, faculty, staff) of the individual against whom the complaint was filed.
    c. The date each complaint was filed, the date the investigation was started, the date the investigation was completed, the date any hearing was convened, date the final decision was issued, and a description and date of any other step in the process.
    d. The type of report or complaint filed (i.e., formal or informal).
    e. The allegation(s) made in the report or complaint including whether it alleged sexual harassment, sexual assault or sexual violence, and whether the incident(s) described in the complaint occurred on or off campus. If off campus, indicate the location, whether the location was hosted or sponsored by the College and whether the location was owned or leased by the College.
    f. The title of the College office or name of College staff member where the report or complaint was filed (campus police, student services, academic dean, counselor, etc.).
    g. Indicate whether the complaint was investigated. If yes, provide the name and title of the College official or staff member who investigated the complaint. If the complaint was not investigated, please indicate why an investigation was not conducted.

h. If the complaint was investigated, provide a copy of all investigative reports, findings or other documents that describe the outcome and resolution, including a description of all the remedies and sanctions resulting from the decision.
i. Indicate whether a hearing was conducted in connection with the complaint. If a hearing was conducted, describe the process used and the names and titles of all persons who participated in the hearing and decision making; provide a copy of the hearing decision, report or other documents describing the hearing decision, including all documents describing the remedies and sanctions that resulted from the decision.
j. Indicate whether an appeal was filed and by whom. If yes, provide a copy of the appeal procedure, identify the staff person responsible for deciding the appeal, and provide a copy of the appeal decision or outcome.

11. Please provide a detailed response to the complaint allegations.

12. Any additional information that the College believes will assist OCR in investigating this complaint.

In an effort to improve the convenience, accessibility and quality of our interactions with our customers, we request that you submit requested evidence and information by e-mail in an electronic format whenever it is convenient to do so. This may include using e-mail to forward scanned or saved hard copy documents, PDFs, other e-mails, digital photographs, spreadsheets and databases. When data files are too large for email, a CD by regular mail would achieve a similar result. Similarly, if you have access to e-mail and can receive information from OCR in an electronic format, please provide us with your email address. To the extent that information we have requested (such as relevant policies or procedures) is available online, please provide the URL address(es) where the information is located. In addition, please advise us if you have ready access to a web camera or have other video-conferencing capability, in order for us to facilitate face-to-face communication. Use of these digital media can greatly enhance the quality, speed and efficiency of our case resolution activities.

Please notify OCR of the name, address, and telephone number of the person who will serve as the College's contact person during the resolution of this complaint. We would like to talk with this person as soon as possible regarding the information requested in this letter. In addition, OCR may need to request additional information and interview pertinent personnel. If an on-site visit is determined to be necessary, you will be contacted to schedule a mutually convenient time for the visit.

Thank you for your cooperation in this matter. If you have any questions, please contact Cynthia Wesley at 215-656-8548 or by email at Cynthia.wesley@ed.gov.

Sincerely,

(b)(7)(C)

Rhasheda S. Douglas
Team Leader

Enclosures