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## EEOC v. First Student, Inc

Judge Manuel Real

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## EEOC v. First Student, Inc

### Keywords

Case 2:09-cv-07102-R-VBK, First Student, EEOC, Consent Decree, Sexual Harassment, Retaliation, Sex, Female, Employment Law, Title VII

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14 FIRST STUDENT, INC.

16 UNITED STATES DISTRICT COURT  
17 CENTRAL DISTRICT OF CALIFORNIA

19 U.S. EQUAL EMPLOYMENT  
20 OPPORTUNITY COMMISSION,

21 Plaintiff,

22 v.

23 FIRST STUDENT, INC., DOES 1 - 10,

24 Defendants.

Case No. CV-09-7102-R (VBKx)

**[PROPOSED] CONSENT DECREE;  
ORDER**

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I.

**INTRODUCTION**

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3 Plaintiff U.S. Equal Employment Opportunity Commission (the "EEOC"  
4 or "Commission") and Defendant First Student, Inc. (referred to as "First Student" or  
5 "Defendant") agree to the entry of this Consent Decree to resolve the EEOC's  
6 Complaint, filed under Title VII of the Civil Rights Act, as amended, 42 U.S.C.  
7 section 2000e et seq. ("Title VII"). The EEOC's complaint alleges that Shanita  
8 Rogers, hereafter referred to as the "Charging Party," and other similarly situated  
9 individuals were subject to unlawful employment practices on the basis of their sex  
10 (female). The complaint alleges that Charging Party and others were subjected to  
11 sexual harassment in violation of Title VII during their employment with Defendant.  
12 The Commission's complaint further alleges that the Charging Party and others were  
13 retaliated against after complaining about the harassment.

14 II.

15 **PURPOSES AND SCOPE OF THE CONSENT DECREE**

16 A. The Parties to this Consent Decree ("Decree") are the EEOC and  
17 Defendant. This Decree shall be binding on and enforceable against Defendant and its  
18 officers, directors, agents, successors, and assigns.

19 B. The Parties have entered into the Decree for the following  
20 purposes:

- 21 1. To provide monetary and injunctive relief;
- 22 2. To ensure that Defendant's employment practices comply  
23 with federal law;
- 24 3. To ensure a work environment free from sex-based  
25 harassment and retaliation subsequent to any complaint of harassment;
- 26 4. To ensure training for Defendant's managers and employees  
27 with respect to the law against sex-based discrimination, harassment and any  
28 subsequent retaliation;





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V.

**EFFECTIVE DATE AND DURATION OF DECREE**

A. The provisions and agreements contained here are effective immediately upon the date this Decree is entered by the Court.

B. The Decree shall remain in effect through December 31, 2012.

VI.

**MODIFICATION AND SEVERABILITY**

A. This Decree constitutes the complete understanding of the parties with respect to the matters contained here. No waiver, modification, or amendment of any provision of this Decree will be effective unless made in writing and signed by an authorized representative of each of the parties.

B. If one or more provisions of the Decree are rendered unlawful or unenforceable, the Parties shall make good faith efforts to agree upon appropriate amendments to this Decree to effectuate the purposes of the Decree. In any event, the remaining provisions will remain in full force and effect, unless the purposes of the Decree cannot be achieved despite the Parties' reasonable efforts.

VII.

**JURISDICTION**

A. This Court has jurisdiction over the Parties and the subject matter of this lawsuit. The terms and provisions of this Decree are fair, reasonable, and just. This Decree conforms with the Federal Rules of Civil Procedure and Title VII and is not in derogation of the rights or privileges of any person.

B. The Court shall retain jurisdiction of this action during the term of the Decree for the purposes of monitoring and entering all orders, judgments, and decrees that may be necessary to implement the relief provided here.

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VIII.

**COMPLIANCE AND DISPUTE RESOLUTION**

A. The Parties agree that if the EEOC has reason to believe that Defendant has failed to comply with any provision of this Consent Decree, the EEOC will notify Defendant's legal counsel of record, in writing, of the nature of the dispute. This notice shall specify the particular provision(s) of the Decree that EEOC believes has / have been breached and the facts or allegations upon which EEOC bases its belief. Absent a showing by either party that the delay will cause irreparable harm, Defendant shall have thirty (30) days from receipt of the EEOC's notice of the alleged breach to attempt to resolve or cure the breach.

B. The Parties agree to cooperate with each other and use their reasonable efforts to resolve any dispute referenced in the EEOC notice.

C. If the dispute is not resolved by the Parties, the EEOC may petition the Magistrate Judge for resolution of the dispute, seeking all available relief, including an extension of the term of the Decree and/or any other relief that the Magistrate Judge deems appropriate.

IX.

**MONETARY RELIEF**

A. In settlement of all monetary claims that were made, or could have been made, in the lawsuit, Defendant shall pay a total of one hundred and fifty thousand dollars (\$150,000.00). Allocation of settlement monetary amounts for each claimant in this case shall be at the sole discretion of the EEOC.

B. On or after the effective date the EEOC shall provide a list identifying the individuals who are claimants, the amounts to be paid, and relevant identifying information, (hereafter "Distribution List") to Defendant. Within fifteen (15) days of delivery of the Distribution List to Defendant, Defendant shall send a check to each of the claimants via overnight mail, with a method of recording delivery, in the amounts specified by the EEOC. Defendant shall submit a copy of



1 each check and any related correspondence to Anna Park, EEOC Regional Attorney,  
2 at the office address on the caption page of this Decree, within two business days of  
3 the mailing of the checks.

4 C. Since the amount is designated as compensatory damages, no  
5 federal and state withholding taxes shall be made. Defendant shall prepare and  
6 distribute Form 1099 or equivalent form(s) to claimants; and shall make the  
7 appropriate reports to the Internal Revenue Service and other tax authorities.

8 **X.**

9 **GENERAL INJUNCTIVE RELIEF**

10 **A. Discrimination Based On Sex**

11 Defendant, its officers, agents, management (including all supervisory  
12 employees), successors, assigns, and all those in active concert or participation with  
13 them, or any of them, are hereby enjoined from: (a) harassing or permitting  
14 harassment against persons on the basis of sex in the terms and conditions of  
15 employment; (b) engaging in or being a party to any action, policy or practice that is  
16 intended or is known to them to have the effect of harassing or intimidating any  
17 employee on the basis of sex; and (c) creating, facilitating or permitting the existence  
18 of a work environment that is hostile to female employees.

19 **B. Retaliation**

20 Defendant, its officers, agents, management (including all supervisory  
21 employees), successors, assigns, and all those in active concert or participation with  
22 them, or any of them, hereby are enjoined from engaging in, implementing or  
23 permitting any action, policy or practice with the purpose of retaliating against any  
24 current or former employee or applicant of Defendant, or any of them, because he or  
25 she has in the past, or during the term of this Decree: (a) opposed any practice made  
26 unlawful under Title VII; (b) filed a charge of discrimination alleging such practice;  
27 (c) testified or participated in any manner in any investigation (including without  
28 limitation, any internal investigation undertaken by Defendant) in connection with this

1 case and/or relating to any claim of a Title VII violation; (d) was identified as a  
2 possible witness or claimant in this action; (e) asserted any rights under this Decree; or  
3 (f) sought or received any relief in accordance with this Decree.

4 **C. Posting of Notice of Consent Decree**

5 Within ten (10) days after the Effective Date and throughout the term of  
6 this Decree, Defendant shall post a full-sized copy of the Notice of Consent Decree,  
7 attached to the Decree as Attachment A, in a clearly visible location frequented by  
8 employees (i.e. break rooms or bulletin boards with other employee notices) in each of  
9 Defendant's covered locations that are operational during the term of the Decree and  
10 at Defendant's Southwest Region office having oversight over covered locations.

11 **D. Equal Employment Opportunity Consultant**

12 1. Within thirty days after the Effective Date, Defendant shall engage  
13 Sandra A. Marciari, Esq., hereinafter also referred to as "Consultant," who has  
14 demonstrated experience in the area of equal employment opportunity and  
15 employment discrimination, as a consultant to assist Defendant in implementation of  
16 Defendant's obligations under this Decree as specifically identified in this Section C.  
17 Defendant shall bear all costs associated with the selection and retention of the  
18 Consultant and the performance of her duties. The Consultant's responsibilities shall  
19 consist of the following:

20 a. Assisting Defendant in reviewing and/or revising its sexual /  
21 sex-based discrimination, harassment, and retaliation policies and complaint  
22 procedures as described in Section E below;

23 b. Assisting Defendant in reviewing, applying and  
24 implementing at all covered locations its policy or policies against sexual / sex-based  
25 discrimination, harassment, and retaliation and procedures handling complaints of  
26 sexual / sex-based discrimination, harassment, and retaliation to more effectively carry  
27 out its obligations under this Decree;

28 ////

1 c. Assisting Defendant in reviewing, developing and/or  
2 revising its training of managerial and staff/hourly employees at all covered locations  
3 on their rights and responsibilities under Title VII, including but not limited to the  
4 responsibilities to provide a workplace free of sexual / sex-based discrimination,  
5 harassment, and retaliation;

6 d. Assisting Defendant in training all employees at all covered  
7 locations on policies and procedures relating to sexual discrimination/harassment and  
8 retaliation and ensuring that all of Defendant's managerial and human resources  
9 employees at all covered locations are trained on policies and procedures relating to  
10 sexual / sex-based discrimination, harassment, and retaliation;

11 e. Assisting Defendant in monitoring and assuring the adequate  
12 investigation of all complaints of sexual / sex-based discrimination, harassment,  
13 and/or retaliation arising at any covered location;

14 f. Assisting Defendant in properly communicating with  
15 complainants at all covered locations regarding the complaint procedure, status of the  
16 complaint/ investigation, results of the investigation, and any remedial action taken;

17 g. Assisting Defendant in ensuring that all reports required by  
18 this Decree are accurately compiled and timely submitted;

19 h. Assisting Defendant in creating a centralized system of  
20 tracking sexual / sex-based discrimination, harassment, and retaliation complaints  
21 initiated at any covered location; and

22 i. Further ensuring compliance with the terms of this Decree.

23 **E. Review Of Anti-Harassment Policy And Complaint Procedure For Sex-**  
24 **Based Discrimination, Harassment And Any Subsequent Retaliation**

25 1. Within sixty (60) days of the Effective Date, Defendant, with the  
26 assistance of its Consultant, shall review and, if necessary, revise its policy against  
27 and complaint procedure for sexual / sex-based discrimination, harassment, and  
28 retaliation. The policy and complaint procedure shall include:

1 a. a clear explanation of prohibited conduct: sexual / sex-based  
2 discrimination, harassment, and retaliation;

3 b. an assurance that employees who make complaints of sexual  
4 / sex-based discrimination and harassment or provide information related to such  
5 complaints will be protected from retaliation;

6 c. a clearly described complaint process for sexual / sex-based  
7 discrimination, harassment, and retaliation that provides accessible avenues of  
8 complaint against co-workers, and complainant's supervisors, that allows for  
9 complaints to be initiated verbally, although Defendant or complainant may record the  
10 substance of the complaint later in writing;

11 d. an assurance that Defendant will protect the confidentiality  
12 of discrimination complaints to the extent possible from being disclosed to those who  
13 do not need to know;

14 e. a complaint process that provides a prompt, thorough, and  
15 impartial investigation;

16 f. a requirement that any employee in a supervisory position  
17 who receives a complaint of harassment, whether formal or informal, written or  
18 verbal, report such complaint to the human resources department within 24 hours of  
19 receiving said complaint;

20 g. a procedure for communicating with the complainant in  
21 writing regarding the status of the complaint / investigation, results of the  
22 investigation, and if any remedial action was taken; and

23 h. assurance that Defendant will take immediate and  
24 appropriate corrective action when it determines that sex-based discrimination,  
25 harassment or any subsequent retaliation has occurred.

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1 **F. Distribution Of Defendant's Policies Against And Complaint Procedures**  
2 **For Harassment And Any Subsequent Retaliation**

3 1. Within ninety (90) days of the effective date, Defendant shall  
4 distribute a written explanation of prohibited conduct under Title VII with examples  
5 of sexual harassment; and its policy against and complaint procedure for sexual / sex-  
6 based discrimination, harassment, and retaliation to all of its employees employed at  
7 covered locations. Defendant shall also distribute to all non-managerial employees a  
8 video/DVD explaining the prohibited conduct under Title VII with examples of sexual  
9 harassment; and its policy, and complaint procedure in conjunction with said  
10 distribution.

11 2. For the remainder of the term of this Decree, all new employees  
12 hired at covered locations shall receive within thirty (30) days of hire a written  
13 explanation of the prohibited conduct under Title VII with examples of sexual  
14 harassment; and Defendant's policy against and complaint procedure for sexual / sex-  
15 based discrimination, harassment, and retaliation.

16 3. For the remainder of the term of this Decree, all employees  
17 promoted from non-managerial to managerial positions at covered locations shall  
18 receive within thirty days of promotion a written explanation of the prohibited conduct  
19 under Title VII with examples of sexual harassment; and Defendant's policies and  
20 procedures for managerial employees relating to sexual / sex-based discrimination,  
21 harassment, and retaliation.

22 **G. Training**

23 1. Within sixty (60) days of the effective date, the Defendant shall  
24 review with the Consultant and, if necessary, revise its management training to  
25 include an explanation of the prohibited conduct under Title VII with examples of  
26 sexual harassment; and its policy against and complaint procedure for sexual / sex-  
27 based discrimination, harassment, and retaliation.

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1           2.     Within ninety (90) days after the effective date, the Defendant  
2 shall provide training(s) to its managerial employees employed at covered locations,  
3 as well as to all human resources and management personnel from Defendant's  
4 Southwest Region whose assigned areas include covered locations, concerning an  
5 explanation of the prohibited conduct under Title VII with examples of sexual  
6 harassment; and Defendant's policy against and complaint procedure for sexual / sex-  
7 based discrimination, harassment, and retaliation. The training shall include training  
8 on how to receive, investigate, or report to designated officials complaints of sexual /  
9 sex-based discrimination, harassment, and retaliation; and how to take preventive and  
10 corrective measures against sex-based discrimination, harassment and any subsequent  
11 retaliation.

12           3.     By the end of August 2011, all non-managerial employees  
13 employed at covered locations shall receive training to include an explanation of the  
14 prohibited conduct under Title VII with examples of sexual harassment; and  
15 Defendant's policy against and complaint procedure for sexual / sex-based  
16 discrimination, harassment, and retaliation.

17           4.     After the initial training described in paragraph 2 of this section for  
18 management employees employed at covered locations, Defendant shall conduct  
19 annual training (every twelve (12) months thereafter for the term of this Decree) for  
20 them on the topics described in paragraph 2 of this section.

21           5.     After the initial training described in paragraph 3 of this section for  
22 non-management employees employed at covered locations, Defendant shall conduct  
23 annual training (every twelve (12) months thereafter for the term of this Decree) for  
24 them on the topics described in paragraph 3 of this section.

25           6.     All employees required to attend the training sessions set forth in  
26 paragraphs 2 through 5 shall verify their attendance by signing an attendance list.

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1 XI.

2 **RECORD KEEPING AND REPORTING**

3 **A. Record Keeping**

4 The Defendant shall work with the consultant to establish a record-  
5 keeping procedure that provides for the centralized tracking of complaints at covered  
6 locations. Defendant shall also maintain the following:

7 1. All documents generated during the term of this Decree in  
8 connection with the making of any complaint, investigation into any complaint, or  
9 resolution of any complaint at a covered location.

10 2. All forms acknowledging each employee's receipt of  
11 Defendant's policy and complaint procedure against sexual / sex-based discrimination,  
12 harassment, and retaliation pursuant to Part X(E) of this Decree; and

13 3. A list of the dates of the training required under this Decree  
14 that shows the names and positions of all attendees for each one. Defendant shall  
15 make the aforementioned records available to the Commission within 30 days  
16 following a written request by the Commission to Defendant.

17 **B. Reporting**

18 The Defendant shall provide the following reports to the Commission in  
19 writing, by mail, or by facsimile on an annual basis during the term of this Decree:

20 1. Confirmation with attendance lists that the training required  
21 by Part X(G) of this Decree took place;

22 2. Confirmation that distribution of Defendant's policies and  
23 procedures required by Part X(F) of this Decree took place;

24 3. A document or spreadsheet summarizing all complaints of  
25 sexual / sex-based discrimination, harassment, and/or retaliation for making a  
26 complaint or being involved in the investigation of a complaint made by any  
27 employee at a covered location during the term of this Decree.

28 ///





1           B.     During the term of this Decree, Defendant shall assure that each of  
2 its affiliates, officers, managers and supervisors at covered locations is aware of any  
3 term(s) of this Decree which may be related to his/her job duties.

4           C.     Unless otherwise stated, all notices, reports and correspondence  
5 required under this Decree shall be delivered to the attention of the Regional Attorney,  
6 Anna Y. Park, U.S. Equal Employment Opportunity Commission, Los Angeles  
7 District Office, 255 E. Temple St., 4t" Fl., Los Angeles, CA. 90012.

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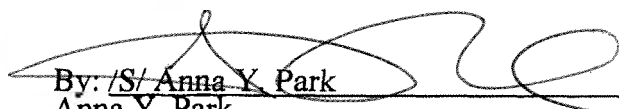
1 D. The parties agree to entry of this Decree and judgment subject to  
2 final approval by this Court.

3 All parties, through the undersigned, respectfully apply for and consent to  
4 the entry of this Consent Decree Order.

5  
6 Dated: 2/2/11

**U.S. EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION**

ANNA Y. PARK

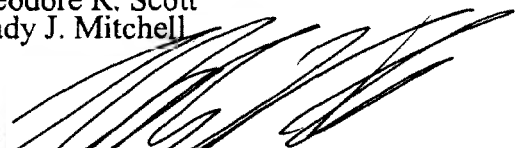
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10 By: /s/ Anna Y. Park  
11 Anna Y. Park  
12 Regional Attorney  
13 U.S. EQUAL EMPLOYMENT  
14 OPPORTUNITY COMMISSION

15  
16 Dated: Jan 27, 2011

**DEFENDANT FIRST STUDENT, INC.**

LITTLER MENDELSON  
A Professional Corporation  
Theodore R. Scott  
Brady J. Mitchell

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18   
19 By: Theodore R. Scott  
20 Attorneys for Defendant  
21 FIRST STUDENT, INC.

22 **[PROPOSED] ORDER**

23 GOOD CAUSE APPEARING,

24 The provisions of the foregoing Consent Decree are hereby approved and  
25 compliance with all provisions thereof is HEREBY ORDERED.

26 IT IS SO ORDERED.

27 Dated: \_\_\_\_\_

28 **THE HON. MANUEL REAL**  
United States District Court Judge

# **ATTACHMENT A**

# **ATTACHMENT A**

**NOTICE TO ALL EMPLOYEES**

This Notice is posted pursuant to a Consent Decree entered by the federal court in EEOC v. First Student, Inc. CV 09-7102 R (C.D. Ca.), settling a lawsuit filed by the U.S. Equal Employment Opportunity Commission ("EEOC").

In its suit, the EEOC alleged that First Student, Inc. ("First Student") subjected employees to sexual harassment and retaliation in violation of Title VII of the Civil Rights Act of 1964 ("Title VII"). First Student denies the allegations.

To resolve this lawsuit, the parties have entered into a Consent Decree that requires First Student to:

- 1) provide monetary relief to the Charging Party and claimants;
- 2) review and, if necessary, revise its sexual harassment and non-retaliation policies and ensure that said policies are being enforced;
- 3) retain a consultant to review policies and training materials on sexual harassment / retaliation prevention and complaint procedure;
- 4) provide periodic training on prevention of sexual harassment and retaliation;
- 5) provide periodic reports to the EEOC;

The EEOC enforces the federal laws against discrimination in employment on the basis of disability, race, color, religion, national origin, sex, pregnancy, and age. If you believe you have been discriminated against, you may contact the EEOC at 255 East Temple Street, 4<sup>th</sup> Floor, Los Angeles, California (213) 894-1000. The EEOC charges no fees and has employees who speak languages other than English.

No action may be taken against you by any management official of First Student for: (1) opposing discriminatory practices made unlawful by federal law, (2) filing a charge or assisting or participating in the filing of a charge of discrimination, or (3) assisting or participating in an investigation brought under Title VII. Should any such retaliatory actions be taken against you, you should contact the EEOC at the address listed above.

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**

This Notice must remain posted until December 31, 2012 and must not be altered, defaced or covered by any other material.

Date: \_\_\_\_\_

\_\_\_\_\_  
THE HON. MARGARET A. NAGLE  
Magistrate Judge