



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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April 24, 2015

Dr. Robert Head, President
Rockford University
50550 E. State Street
Rockford, Illinois 61108

Re: OCR Docket # 05-15-2031

Dear Dr. Head:

This letter is to advise you that the U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation and resolved the above-referenced complaint filed with OCR on October 27, 2014, against Rockford University (University) alleging discrimination on the basis of sex (grievance procedures)¹ and also alleging retaliation. Specifically, the complaint alleges that from Spring 2014 and continuing to the present, the University discriminated against Student A on the basis of sex by failing to afford her a prompt and equitable grievance procedure to address her complaint of sexual harassment against a University employee (Employee A). The complaint further alleged that after Student A reported that Employee A was subjecting her to racial and sexual harassment, the University retaliated against Student A in the following manner:

- a. XXX;
- b. XXX; and
- c. XXX.

This letter constitutes an agreement to resolve the above allegations under OCR's case processing procedures, as set forth in its *Case Processing Manual*.²

Jurisdiction

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 - 1688, and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in programs and activities that receive Federal financial assistance from the Department. OCR also enforces Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d - 2000d-7, and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color and national origin by recipients of Federal financial assistance from the Department. These laws also prohibit retaliation for certain

¹ The complaint initially also alleged that the University subjected Student A to harassment based on sex and race during the Fall 2013 semester. OCR dismissed these allegations on December 4, 2014, because OCR determined that the same allegations had been filed with the United States Equal Employment Opportunity Commission.

² <http://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.html>

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

protected activities. As a recipient of Federal financial assistance from the Department, the University is subject to Title IX and Title VI.

Legal Standards

OCR investigated the alleged discrimination in this case consistent with federal statutory authority, the Department's regulations, policies and pertinent case law.³

Sex Discrimination

The Title IX regulation, at 34 C.F.R. § 106.31(a), provides that no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity operated by a recipient.

The Title IX regulation, at 34 C.F.R. § 106.8(b), provides that a recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action which would be prohibited by the regulation.

Sexual Harassment Grievance Procedures

The Title IX regulation, at 34 C.F.R. § 106.8(a), provides that a recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX, including, but not limited to, any investigation of any complaint communicated to it alleging noncompliance with Title IX (including allegations that the recipient failed to respond adequately to sexual harassment and sexual violence). Recipients must ensure that employees designated to serve as Title IX coordinators have adequate training on what constitutes sexual harassment, including sexual violence, and that they understand how the recipient's grievance procedures operate. This provision further requires that the recipient notify all its students and employees of the name, office address and telephone number of the employee or employees so designated. OCR also recommends that the email address of the employee(s) be included in the notice.

In evaluating whether a recipient's grievance procedures satisfy this requirement, OCR will review all aspects of a school's policies and practices, including the following elements that are critical to achieve compliance with Title IX:

- notice to students, parents, and employees of the procedure, including where complaints may be filed;
- application of the grievance procedures to complaints filed by students or on their behalf alleging harassment carried out by employees, other students, or third parties;

³ The applicable legal standards described herein are more fully discussed in OCR's Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties (2001 Guidance) dated January 19, 2001, and found online at <http://www.ed.gov/about/offices/list/ocr/docs/shguide.html>, OCR's 2011 Dear Colleague letter on Sexual Violence (2011 DCL), dated April 4, 2011, which is available online at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html>, and OCR's "Questions and Answers on Title IX and Sexual Violence" (2014 FAQs) dated April 29, 2014, which is available online at <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

- provisions for adequate, reliable, and impartial investigation of complaints, including the opportunity for both the complainant and alleged perpetrator to present witnesses and other evidence;
- designated and reasonably prompt timeframes for the major stages of the complaint process;
- written notice to the parties of the outcome of the complaint; and
- an assurance that the recipient will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate.

To ensure that students and employees have a clear understanding of what constitutes sexual harassment and violence, the potential consequences for such conduct, and how the recipient processes complaints, a school's Title IX grievance procedures should also explicitly include the following in writing, some of which themselves are mandatory obligations under Title IX:

- A statement of the recipient's jurisdiction over Title IX complaints;
- Adequate definitions of sexual harassment (including sexual violence) and an explanation as to when such conduct creates a hostile environment;
- Reporting policies and protocols, including provisions for confidential reporting;
- Identification of the employee or employees responsible for evaluating requests for confidentiality;
- Notice that Title IX prohibits retaliation;
- Notice of a student's right to file a criminal complaint and a Title IX complaint simultaneously;
- Notice of available interim measures, such as changes to course settings and no contact orders, that may be taken to protect the student in an educational setting;
- The evidentiary standard that must be used (preponderance of the evidence) (i.e., more likely than not that sexual violence occurred) in resolving a complaint;
- Notice of potential remedies for students;
- Notice of potential sanctions against perpetrators; and
- Sources of counseling, advocacy and support.

Retaliation

The Title VI implementing regulation at 34 C.F.R. § 100.7 provides that a recipient may not intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title VI or because the individual has made a complaint, testified, assisted or participated in any manner in an investigation, proceeding, or hearing conducted under Title VI. This provision is incorporated by reference by the regulation implementing Title IX at 34 C.F.R. § 106.71 as to activities protected by Title IX.

A *prima facie* case of retaliation is established when it is determined that (1) an individual engaged in a protected activity (opposed a discriminatory policy, asserted protected rights, or participated in an OCR complaint or proceeding); (2) the recipient knew of this activity; (3) the recipient took an adverse action contemporaneous with or subsequent to the protected activity; and (4) there is an inferable causal connection between the protected activity and the adverse action. A finding of noncompliance under these regulations requires a threshold determination

that the recipient took an adverse action against the individual, i.e., the recipient took actions, including such acts as intimidation or coercion that significantly disadvantaged the individual or would reasonably have deterred or precluded an individual from engaging in further protected activities.

If all of the elements of a *prima facie* case of retaliation are met, OCR then considers whether the recipient presented a legitimate, non-retaliatory justification for taking the adverse action, and whether the reason is a pretext for retaliation. Pretext may be shown by evidence demonstrating that the explanation for the adverse action is not credible or believable or that treatment of the person was inconsistent with the treatment of similarly situated individuals or established policy or practice.

Factual Summary

The University provides courses of study leading to baccalaureate and master's degrees. The University reported that in Fall 2013, 1,241 students enrolled at the University, of which 454 are male and 787 are female. In Fall 2014, the University enrolled 1,284 students, 501 male students and 783 female students. From the 2013-14 school year to February 2015, no complaints of sex discrimination, sexual harassment and/or sexual violence were filed through the University's Title IX complaint procedures. According to Cleary Data, no forcible sex offenses occurred on campus in the past three (3) years.

University Policies and Procedures

The University's Title IX Policy and Procedures are contained in the current versions of its Student Handbook and its Employee Handbook.⁴ The Student Handbook includes "Harassment, Sexual Violence, and Title IX Policy and Procedures", a "Sexual Misconduct" policy, and a "TITLE IX, VAWA & Sexual Violence" policy. The Student Handbook also includes grievance procedures applicable to student misconduct; grievance procedures for employee misconduct are included in the Employee Handbook. In addition, the Employee Handbook (but not the Student Employment handbook) includes the University's "Harassment and Title IX Policy and Procedure." Collectively, these policies will be referred to throughout this letter as "Title IX Policy and Procedures."

The University has designated "Title IX Deputy Coordinators", (Deputy Coordinators) and a "Senior Title IX Coordinator /Harassment Officer" (Title IX Coordinator). The Title IX Coordinators are responsible for investigating harassment complaints, including interviewing the parties and witnesses, and reviewing any relevant documents or other information. The Handbooks contain complete contact information for the Title IX Coordinator and the Deputy Coordinators, but do not contain email address for the Deputy Coordinators. The Handbooks also do not include a description of the specific roles or responsibilities of these Coordinators, but they do identify the coordinator responsible for receiving complaints from students, employees and faculty.

⁴ The Student handbook can be found at https://www.rockford.edu/media/rockfordedu/departments/campusandcommunity/residencelife/docs/student_handbook.pdf. The Student Employment handbook and the employee handbook are not available on line.

The current versions of the University's Student Handbook, Student Employment Handbook, Employee Handbook, and Residence Hall training materials include the University's Notice of Non Discrimination. However, the documentation reviewed by OCR indicates that the Notice of Non Discrimination is not included in the current version of the Student Employment Supervisory Handbook, the University's application forms, or its admissions, student recruitment or human resources webpages.

The Title IX Policy and Procedures apply to the University community, faculty, staff, and students, but does not mention conduct by third parties. Notice of the Title IX Policy and Procedures is provided to students and employees of in the respective handbooks.

The Employee Handbook states:

In general, the [Harassment, Sexual Violence, and Title IX Policy and Procedures] is designed so that students may report allegations to the Dean of Students; faculty members may report allegations to the Faculty Harassment Officer; and staff members may report allegations to the Director of Human Resources. The Dean of Students, Faculty Harassment Officer, Director of Safety and Security and Human Resources are all named Title IX Coordinators/Harassment Officers or liaisons for Rockford University and are charged with investigating any complaints regardless of who is initiating the complaint. Title IX Coordinators/Harassment Officers and liaison will work together as required when two different constituencies are involved (i.e. a student files a complaint against a faculty member).

The Title IX Policy and Procedures includes appropriate definitions of sexual harassment. Additionally, the supplement to the Title IX Policy included in the Student Handbook but not the Employee Handbook provides definitions of sexual misconduct and sexual harassment with examples.

Additionally, the Title IX Policy and Procedures specify that every faculty, staff, and student has an obligation to report harassment. Employees are required to make a formal report of an incident of sexual misconduct to specified University officials.

The Title IX Policy and Procedures state that charges of harassment will be promptly and thoroughly investigated and the parties will have an equal opportunity to present relevant witnesses and other evidence during the investigation and hearing. Mediation is not required. Complaints brought against students are governed by the Student Code of Conduct grievance procedures which permit the parties to have an attorney or non-attorney advisor and provide for cross examination by a judicial body. However, the advisors to each party may not present the case at the hearing and are not allowed to speak or to participate directly in any hearing before a judicial body. The Student Code of Conduct indicates that either party may participate virtually.

Complaints brought against employees are governed by the employee conduct procedures which do not provide the parties a right to an advisor. Rather, after the investigation involving the alleged misconduct by the employee is completed, the investigative summary report is submitted

to the University's Executive Council which is responsible for determining what actions, if any, should be taken, including appropriate disciplinary action, training, or other steps to eliminate the inappropriate behavior. The employee conduct procedures do not make clear whether the parties may participate virtually.

The Title IX Policy and Procedures do not impose a time limit on reporting sexual misconduct. The procedures for accused students specify that charges will be prepared as soon as possible, but preferably within 28 days of the reported event. The Procedures specify that the charges are to be presented to the accused student in writing and a hearing is to be scheduled not less than five (5) nor more than fifteen (15) calendar days after the student has been notified. No timeframe is specified for rendering a decision; however the decision must be appealed within five (5) school days of the student receiving notification of the decision. The Appeal Board is required to respond within 10 school days from when the notification of appeal is received. The procedures for accused employees specify that the Title IX Coordinator will promptly initiate an investigation that is to be completed within 45 days, but does not include timeframes for making a decision and notifying the parties of the outcome of the adjudication process.

A preponderance of the evidence standard is used in all cases. The Title IX Policies and Procedures include a requirement for written notice for complaints against students, but not for complaints against employees. For complaints against students, the Title IX Policies and Procedures provide for periodic status updates to the complainant on the progress of the complaint investigation and any subsequent appeals. The Title IX Policy and Procedures do not indicate whether periodic updates will be provided to the accused. For complaints against employees, the procedures do not include a specific requirement for updating either party. In all complaints, the procedures provide the parties an equal right to appeal.

The Title IX Policy and Procedures specify that the University must maintain a record of all hearings before a judicial body. In addition, they specify that a Title IX investigative report will be created and will contain: 1) the complainant's allegations; 2) the respondent's replies; 3) information provided by witnesses or documents; 4) a description of the investigation process; 5) the investigator's analysis of evidence and findings of fact on each element of the grievance; and 6) any recommendation(s) the Title IX Coordinator or other investigator may consider pertinent to the disposition of the complaint.

The documentation reviewed by OCR indicates that the Student Handbook but not the Employee Handbook includes an assurance that the University will take steps to prevent recurrence of harassment and correct its discriminatory effects. Similarly, the documentation reviewed by OCR indicates that the Student Handbook but not the Employee Handbook specifically provides for interim remedial measures, provides for a range of remedies and prohibits retaliation against complainants or witnesses. The Student Handbook also notes that students may utilize counselors in the University's mental health center free of charge.

The Title IX Policy and Procedures permit for simultaneous criminal complaints, confidential reporting and address conflicts of interest.

Analysis and Conclusion

Allegation 1: The University's Title IX Policies and Procedures

OCR identified compliance concerns regarding the University's Notice of Non Discrimination and its Title IX Policies and Procedures.

- **Notice of Non-Discrimination (34 C.F.R. §§ 106.9(a) and (b))**

Based on OCR's investigation to date, OCR determined that the University's Notice of Non Discrimination does not fully meet the requirements of 34 C.F.R. § 106.9(a), which in part requires the notice to specify that inquiries concerning Title IX and its implementing regulation may be referred to OCR. OCR's investigation further determined that the University's Notice does not fully meet the requirements of 34 C.F.R. § 106.9(b), which requires inclusion of a notice of nondiscrimination in each announcement, bulletin, catalog, or application form that the recipient makes available to applicants, students, parents and employees. The University provides its Notice of Non Discrimination in its current versions of the Student Handbook, Student Employment Handbook, Employee Handbook, and Residence Hall training materials, but not in the current version of the Student Employment Supervisory Handbook, or elsewhere on its public website including any of its application forms, or its admissions, student recruitment or human resources webpages.

Based on the information obtained, OCR finds that the University is not currently in compliance with the Title IX requirements at 34 C.F.R. §§ 106.9(a) and (b) regarding its notice of nondiscrimination.

- **Sexual Harassment Policies and Procedures and Responses (34 C.F.R. §§ 106.8(b) and 106.31)**

Based on the information obtained, OCR identified compliance concerns regarding the University's Title IX Policies and Procedures. Specifically, OCR determined that the Title IX Policy and Procedures do not comply with the Title IX regulations in that the grievance procedures for complaints against employees do not designate reasonable timeframes for the major stages of the grievance process.

With respect to the additional requirements set forth in 34 C.F.R. §§ 106.8(b) and 106.31, and OCR's April 2011 Dear Colleague Letter, based on the information obtained to date, OCR's investigation also revealed that the University's Title IX Policy and Procedures may be improved upon with respect to the following components:

- Notice to students and employees of the procedures, including where complaints may be filed, that is easily understood, easily located, and widely distributed.
- Application of the procedures to complaints alleging discrimination or harassment carried out by employees, other students, and third parties.
- Adequate, reliable, and impartial investigation, including an equal opportunity to present witnesses and relevant evidence.

- A description of the specific roles or responsibilities of the Title IX Coordinator and the Deputy Coordinators.
- Provision of training for those implementing grievance procedures (Title IX Coordinator, investigator, adjudicators). This includes training on:
 - What constitutes sexual harassment, including sexual violence;
 - Handling of complaints of sexual harassment/violence;
 - The University's grievance procedures; and
 - Applicable confidentiality requirements.
- Processing of all complaints of sex violence regardless where conduct occurred to determine whether the conduct occurred in the context of an educational program or had continuing effects on campus or in an off-campus program or activity.
- With respect to an informal process, the procedures notify the parties of the right to end the informal process and begin a formal process at any time.
- Written notice of policies and protocols, including provision for confidential reporting.
- Identification of employees responsible for evaluating requests for confidentiality (usually Title IX Coordinator).
- Consideration of a range of appropriate factors in weighing confidentiality requests.
- Inform students at regular intervals of the status of the investigation.
- To the extent possible, coordination with other school or criminal investigations and establish appropriate fact finding roles for each investigator; consider whether information can be shared; must promptly resume and complete fact-finding once police have completed gathering evidence.
- The hearing procedures must provide similar and timely access to information used at hearing for both parties.
- Disallow evidence of past relationships with anyone other than alleged perpetrator.

In accordance with Section 302 of OCR's *Case Processing Manual*, a complaint may be resolved at any time when, before the conclusion of an investigation, the recipient expresses an interest in resolving the complaint. Prior to the conclusion of OCR's investigation, the University expressed interest in resolving the complaint. Subsequent discussions with the University resulted in the University signing the enclosed Resolution Agreement (Agreement) on April 24, 2015, which, when fully implemented, will resolve the sex discrimination allegation⁵ raised in the complaint. The Agreement requires the University to address sexual harassment on its campus in a comprehensive manner that not only requires clear notice of its commitment and the applicable processes for responding in a prompt and equitable manner to sexual harassment allegations, but also requires the University to assess the effectiveness of the steps it takes and, with OCR review and approval, take additional steps that may be necessary to ensure that the University is committed to responding promptly and effectively should sexual harassment occur. The provisions of the Agreement are aligned with the complaint allegation and the information obtained during OCR's investigation, and consistent with the applicable regulations. OCR will monitor the University's implementation of the Agreement.

⁵ Subsequent discussions with both parties revealed that Student A negotiated an independent settlement agreement with the University, waiving any individual remedies on her sex discrimination allegation (as well as her retaliation allegation, as discussed below). She did not withdraw the complaint.

Allegation 2: Retaliation

The University requested to resolve the allegation of retaliation raised in this complaint prior to the conclusion of OCR's investigation. As noted above, Student A negotiated an independent settlement agreement with the University, waiving any individual remedies for her complaint allegations. In accordance with Section 302 of OCR's *Case Processing Manual*, the University signed the enclosed Agreement which, when fully implemented, will resolve the retaliation issues raised in the complaint allegations. The provisions of the Agreement are aligned with the complaint allegation and the information obtained during OCR's investigation, and consistent with the applicable regulations. OCR will monitor the University's implementation of the Agreement.

Conclusion

Please be advised that the University may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the Complainant may file another complaint alleging such treatment.

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

This letter sets forth OCR's determination in an individual OCR complaint and should not be construed to cover any other issue regarding the University's compliance. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

We wish to thank the University for the courtesy and cooperation extended by its staff during this investigation. In particular, we wish to thank Ms. Laura D. Mruk, counsel for the University. If you have any questions regarding this letter, please contact Sandra Garcia, Equal Opportunity Specialist, at 312-730-1580, or Sandra.L.Garcia@ed.gov.

Sincerely,

Karen E. Tamburro
Supervisory Attorney

cc: Laura D. Mruk
WilliamsMcCarthy LLP