



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS, REGION I  
5 POST OFFICE SQUARE, 8<sup>th</sup> FLOOR  
BOSTON, MASSACHUSETTS 02109-3921

DATE

Richard W. Schneider, Ph.D. RADM, USCGR (Ret.)  
President  
Norwich University  
By email: RSchneider@norwich.edu

Re: Complaint No. 01-20-2044  
Norwich University

Dear President Schneider:

This letter is to advise you of the outcome of the complaint that the U.S. Department of Education, Office for Civil Rights (OCR) received against Norwich University. The complainant alleged that the University discriminated against him on the basis of sex. Specifically, the complaint alleged that the University failed to equitably respond to a complaint of sexual harassment filed against the complainant. As explained further below, before OCR completed its investigation, the University expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement.

OCR enforces Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. Section 1681 *et seq.*, and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any program or activity receiving federal financial assistance. Because the University receives federal financial assistance from the Department, OCR has jurisdiction over it pursuant to Title IX.

During this investigation, OCR reviewed documents provided by the complainant and the University, including contemporaneous emails, case file materials, and investigative reports. OCR also spoke with the complainant and interviewed the University's Title IX Coordinator.

### **LEGAL STANDARD**

The regulation implementing Title IX, at 34 C.F.R. § 106.31(a), states as follows: "Except as provided elsewhere in this part, 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 academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives Federal financial assistance."

At the time of the incidents in this case, the Title IX regulation included a requirement under 34 C.F.R. § 106.8(b) for recipients to adopt and publish procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any actions prohibited by Title IX and its implementing regulation. *See* 34 C.F.R. § 106.8(b). There is no fixed time frame to determine whether a resolution has been prompt; rather, OCR will evaluate a recipient's good

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

faith efforts under the circumstances. An equitable response requires a trained investigator to analyze and document the available evidence to support decisions, including inculpatory and exculpatory evidence; and any rights or opportunities that a recipient makes available to one party during an investigation should be made available to the other party on equal terms. OCR evaluates on a case-by-case basis whether the resolution of a sexual harassment complaint is prompt and equitable.

### **FINDINGS OF FACT TO DATE**

During the 2019-2020 academic year, the University opened a Title IX investigation examining whether the complainant, then a student at the University, sexually assaulted another student in XXXXXXXXXXXX (XXXXXXX Incident) and again on campus in XXXXXXXX (XXXXXXX Incident). The University conducted one consolidated investigation of both incidents, which focused on whether the student consented to the sexual contact, including, but not limited to, whether she was too intoxicated to provide consent. At the conclusion of the investigation, the Title IX Coordinator determined that the complainant was responsible for the XXXXXXXX Incident and not responsible for the XXXXXXXXXXXX Incident.

#### *The Title IX Investigation*

On XXXXXXXXXXXX, the University's Title IX Office received a third-party report that the complainant had sexually assaulted the student on two instances. The Title IX Coordinator conducted intake meetings with the student and the complainant on XXXXXXXX, and XXXXXXXX, respectively. On XXXXXXXXXXXX, the University notified the complainant and the student that it had retained an outside investigative firm to investigate the allegations and identified the individual assigned to conduct the investigation.<sup>1</sup> This notification letter informed both parties that they could select an advisor of their choosing to assist them with the Title IX process, and that they had 48 hours to appeal the investigator's appointment. Both the complainant and the student selected advisors, but neither party appealed the investigator's appointment.

The investigator conducted interviews in XXXXXXXXXXXXXXXX. Both parties were allowed to identify witnesses for the investigator. In XXXXXXXXXXXX, she interviewed the Student and four witnesses (Witnesses 1-4). She interviewed the complainant on XXXXXXXXXXXX, and conducted a follow-up interview on XXXXXXXXXXXX. During the interviews, the investigator gave both the complainant and the student the opportunity to provide information or otherwise submit evidence.

The interview transcripts show that the investigator began her questioning of each witness with similar open-ended questions about how the witness knew the complainant and the student, and

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<sup>1</sup> The University's Title IX Coordinator at the time of the investigation informed OCR that he is an attorney; has several certifications from a national association of Title IX administrators; and has completed numerous Title IX compliance trainings and offers trainings to other university Title IX coordinators. He told OCR that the outside investigative firm was vetted and approved to conduct Title IX investigations by the University's insurer. As part of the approval process, the Title IX Coordinator informed OCR that the insurer requires investigators to complete sexual misconduct training and trauma-informed investigative practice training. In addition, the Title IX Coordinator vetted the investigator himself and determined that she had appropriate qualifications and experience.

then asked open-ended questions about the incidents. The investigator asked follow-up questions based on each witness's answers. Witness 4 reported being present for the most relevant interactions, offered the most detailed recollections of the events, and had conversations with the student about the incidents in the days immediately following the events.

On XXXXXXXXXXXX, the investigator provided the University with a copy of her completed investigative report, transcripts of all interviews, and all the underlying documents she reviewed in preparing her report. The investigative report did not render any opinions or conclusions about the ultimate question of whether policy violations occurred;<sup>2</sup> instead, it summarized the evidence collected (documentary evidence and witness interviews), identified uncontested facts, identified facts in dispute, and made credibility determinations about each party and each witness. The investigative report found it undisputed that the complainant and the student had sexual contact on or around XXXXXXXXXX in XXXXXX and again on XXXXXXXXXXXXXX. For both incidents, the investigative report identified disputes of fact regarding whether the complainant and/or the student were intoxicated, and if so, the level of intoxication, at the time of the respective incidents. The investigative report questioned the complainant's credibility about the student's perceived level of impairment in XXXXXXXXXXXX in part by citing Witness 4, whom the investigator found "had no evident bias or motive to fabricate and is a very credible witness" and "was invested in maintaining neutrality and conveying as much information as she could accurately recall in an unbiased manner." Specifically, the investigator found that the complainant's testimony that the student showed no sign of impairment "during the nights in XXXXXXXX [XXXXXXX Incident] or on XXXXXXXX...strains credibility...especially given [Witness 4's] description" of the student's demeanor the first night in XXXXXXXX. The investigator also found that the complainant's "overall alcohol use is disputed," citing conflicting testimony between the complainant (XXXXXXXXXX) and Witness 4 (reporting that complainant XXXXXXXXXXXXXXXXXXXX).

#### *Title IX Coordinator's Responsibility Determination(s)*

The Title IX Coordinator informed OCR that he reviewed the investigative report and the underlying transcripts prior to issuing his decision. Based on his review of the transcripts he believed that the investigator asked fair and appropriate questions of the witnesses, and that the length of the investigator's interviews with witnesses appeared to be determined by the witnesses' level of knowledge and recollection of events.

The Title IX Coordinator provided the investigative report and underlying documents to the complainant and the student the following day, XXXXXXXXXXXX. There is a dispute of fact as to whether the University's Title IX office alerted the student's advisor (but not the complainant or his advisor) ahead of time as to when the investigative report would be issued. The complainant informed OCR that "around XXXXXXXXXXXX," and before he received the investigative report, his friend heard the student say that her advisor had called and told her to "brace herself" because the investigative report would be coming out soon. In an interview with OCR, the Title IX Coordinator denied that he alerted either party of this information ahead of

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<sup>2</sup> OCR reviewed the entire investigative report and all witness transcripts. OCR does not recite all the findings of the investigative report and all the testimony or other evidence collected since it is not relevant to the allegations in the complaint nor is it relevant to OCR's findings.

time. Rather, he told OCR that the student’s advisor asked when the investigative report would be sent via text message, but that this inquiry and the Title IX Coordinator’s response occurred after he had already released the report to both parties. Documentary evidence shows the Title IX Coordinator emailed the investigative report to the complainant at 12:14 PM, and to the student at 12:15 PM, and at 2:45 pm – several hours after he circulated the investigative report to the parties – the student’s advisor texted the Title IX Coordinator to inquire about whether the investigative report “came in” and that the Title IX Coordinator responded, “[j]ust sent.” The Title IX Coordinator also informed OCR that he would have answered this question if the complainant or his advisor had asked, and the University provided OCR with correspondence in which the Title IX Coordinator responded to status inquiries sent by both parties.

The Title IX Coordinator’s email enclosing the investigative report informed the complainant and the student that they had until 11:59 pm on XXXXXXXXXX to review the materials and submit any response. At the complainant’s request, the Title IX Coordinator granted a one-day extension to both parties. On XXXXXXXXXX, the complainant submitted his response, including a toxicology report by an expert retained by the complainant.<sup>3</sup> The toxicology report purported to rely on the student’s statements of her XXXXXX on the dates of the XXXXXXX Incident and XXXXXXXXXX Incident to opine that the student was XXXXX at the time.

On XXXXXXXXXX, in separate emails with the same time stamp, the Title IX Coordinator sent the Notice of Determination with his findings to the complainant and the student. In the Notice of Determination, the Title IX Coordinator wrote that he “reviewed all transcripts from interviews with [the investigator], all submitted evidence, the investigative report submitted by [the investigator], the Norwich University ... Sexual and Gender Based Misconduct Policy, and [the complainant’s] response to the investigative report.” Based on his review of these materials, the Title IX Coordinator wrote in the Notice of Determination that he found the complainant responsible for violating the University’s policy for the XXXXXXX Incident and found the complainant not responsible for the XXXXXXXXXX Incident due to insufficient evidence. The Notice of Determination also notified the complainant and the student that any appeal of the Title IX Coordinator’s decision must be received by 11:59 pm on XXXXXXXXXX.

In finding the complainant responsible for the XXXXXXX incident in XXXXXXX, the Title IX Coordinator explained in the Notice of Determination that he concluded it was “more likely than not that the [student] was XXXXXXXXXXXXXXXX” and did not provide consent for the sexual contact that occurred. In reaching this conclusion, the Title IX Coordinator summarized evidence from the investigative report and the investigator’s credibility assessments of the testimony provided by the student, the complainant, and the witnesses, including Witness 4. In addition, the Notice of Determination also addressed the toxicology report and explained that the Title IX Coordinator found that it lacked value because the expert never met nor tested the student and because it was unclear how

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<sup>3</sup> OCR notes the University’s Sexual and Gender Based Misconduct Policy in effect in 2019 does not specifically address the admissibility of purported expert reports. The complainant’s response also included another letter from a third party that he does not allege was addressed inequitably.

much XXXXXXXX the student had consumed during the two incidents.<sup>4</sup> During a subsequent interview with OCR, the Title IX Coordinator confirmed that he considered the toxicology report but found that it was a “flawed report” and had “zero relevance” for the reasons stated in the Notice of Determination.

*Witness 4 Recanting and/or Providing Additional Information*

On the appeal deadline of XXXXXXXXXXXX, Witness 4 emailed the Title IX Coordinator stating that she would like to “revoke several statements given during [the] Title IX Investigation” and that “[i]n the time after the investigation [she] realized [she] gave false information to the investigator.” She explained that she felt “a lot of personal bias” against the complainant and as a result some of her statements were “biased and exaggerated.” In her email, Witness 4 detailed specific statements she wished to recant and informed the Title IX Coordinator that a XXXXXXXXXXXX email she had sent to the investigator describing a recent conversation she had with the complainant – provided as part of the investigation – had been edited by the student and was a “poor representation of what happened” and was “written to shadow [sic] [the complainant] in a bad light.” Witness 4 also stated her concern that during her interviews, the investigator exhibited “a consistency of emotional bias” and that “[a]t several points [Witness 4] felt as though [the investigator] was trying to get [her] to specifically say something or putting words in [her] mouth.” Witness 4 also wrote that she was concerned that the University promised but did not provide immunity for individuals who provided self-incriminating testimony regarding XXXXXXXX.

After receiving Witness 4’s email, the Title IX Coordinator convened a meeting with her to discuss it that day. According to the Title IX Coordinator, he told Witness 4 that he appreciated the information, explained that giving biased and false information during an investigation was very serious, and that he would need to report her to the University’s XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX.

That same day, the complainant appealed the finding of responsibility for the XXXXXXXX Incident. The Title IX Coordinator forwarded the appeal, the Notice of Decision, the complainant’s response to the decision, the investigative report, and the underlying documents and transcripts reviewed by the investigator to the Assistant Vice President for Student Affairs, who would serve as the appeals officer.

The Title IX Coordinator did not forward the XXXXXXXXXXXX email he received from Witness 4, nor did he otherwise inform the Assistant Vice President that Witness 4 wished to change some of her testimony. The Title IX Coordinator informed OCR that he discussed whether to inform the Assistant Vice President of Witness 4’s email with his supervisor. Ultimately, they decided not to provide the information because they felt the changes in testimony were not relevant to the determination of the case.

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<sup>4</sup> Specifically, the Notice of Determination states: “The incidents that were being evaluated by the expert occurred four and six months ago respectively, with no actual testing of the [student] to determine her XXXXXXXXXXXX. While the expert could predict a person’s state, they never met with the [student] nor took into account a person’s tolerance or lack thereof. Furthermore, the investigation left a question as to the actual amount of XXXXXXXX that the [student] consumed.”

The Assistant Vice President reviewed the appeal and other information that was forwarded by the Title IX Coordinator and issued a letter denying the appeal on XXXXXXXXXX, concluding the University's Title IX proceeding against the complainant. At no time did the Title IX Coordinator or the Assistant Vice President alert the investigator about the information provided by Witness 4 in XXXXXXXXXX.

On XXXXXXXXXX, the Title IX Coordinator emailed Witness 4 to reiterate their conversation. In his email, he told Witness 4 that he would be forwarding her prior email to the University's XXXXXXXXXX. The Title IX Coordinator wrote that the misstatements Witness 4 identified "had no bearing on the case" or were "irrelevant" since they "d[id] not have anything to do with either incident that were [sic] alleged and investigated." The Title IX Coordinator also wrote that Witness 4 should have raised her concern "during or in close proximity to [her] interviews" rather than two and a half months after her last interview. Finally, the Title IX Coordinator wrote, with respect to Witness 4's concern about immunity for individuals who provide self-incriminating testimony regarding XXXXXXXX, that the University's policy is to provide immunity to individuals filing complaints and to witnesses, but not to respondents since alcohol use can be an aggravating factor. The University's policy states: "A student should not hesitate to report sexual misconduct due to a concern that the investigation process may indicate that he or she was under the influence of XXXXXXXX at the time of the incident. Amnesty will be provided to reporting parties and witnesses engaged in the resolution process as long as they are acting in good faith."

The same day that he emailed Witness 4, the Title IX Coordinator forwarded Witness 4's XXXXXXXX email to the University's XXXXXXXXXX, referring Witness 4 for "lying" and for "obstruction of an investigation."<sup>5</sup> The Title IX Coordinator informed OCR that given the timing of the email from Witness 4, he felt Witness 4 may have been coordinating with the complainant and sent the email in bad faith. He also told OCR that he would report any student who changed their testimony under similar circumstances to the University's XXXXXXXXXX, and that he had done this in the past with a student who made a false report to his office.

## **ANALYSIS**

OCR's investigation to date indicates that the Title IX Coordinator, who was trained in Title IX, generally provided both parties the same opportunities to present and respond to information collected during the investigation; and the complainant did not allege, and OCR did not find, that the parties were provided different rights or benefits during the resolution process. While the complainant alleged that the Title IX Coordinator wrongly rejected his request to include the toxicology report in any final report, the evidence indicates that the Title IX Coordinator reviewed both parties' responses to the investigative report and addressed the toxicology report in the Notice of Determination, and there is no evidence that the Title IX Coordinator utilized different or preferential criteria in addressing information presented by the parties. Relatedly,

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<sup>5</sup> Regarding Witness 4's concern about the investigator's partiality, the Title IX Coordinator wrote that he reviewed the interview transcripts, and that the investigator did not appear to have any bias. Rather, "she was very thorough and asked questions that needed to be answered in order to provide the clearest picture of what happened during each alleged incident."

while the complainant alleged that the investigator asked more probing questions of witnesses that supported the student's case against him, OCR found that the investigator interviewed witnesses identified by both parties, and used the same style of questioning for all witnesses.<sup>6</sup> According to OCR's review, the variance in questioning appears to correspond to the variance of relevant information presented by different witnesses. Lastly, the evidence indicates that the Title IX Coordinator responded to both parties' inquiries and provided the parties with the same information about the resolution process on identical or comparable terms.

OCR nonetheless is concerned whether the University provided the complainant with an equitable resolution process. OCR's investigation to date indicates that prior to the complainant's appeal date, Witness 4 recanted some of her testimony, admitted to being biased against the complainant, and disclosed that she and the student coordinated a written statement to the investigator; however, none of this information was conveyed to the investigator, the parties, or the Assistant Vice President to consider whether further action was required to ensure an equitable outcome. OCR acknowledges that the Title IX Coordinator was authorized to make determinations as informed by the investigative record, and that in this case, he asserted that the information disclosed by Witness 4 was immaterial to the responsibility determination for the XXXXXXXX Incident against the complainant. However, OCR notes that the Title IX Coordinator relied on the investigative report to render findings, and that the scope and contents of the underlying investigation were informed by Witness 4's perceived neutrality and lack of bias – including as to credibility determinations between the parties, and the student's degree of XXXXXXXX around the XXXXXXXX Incident. As a result, further investigation by OCR would be required to determine whether the University satisfied its obligations under Title IX under these circumstances.

In addition, OCR is concerned that the University provides amnesty for complainants and witnesses who provide self-incriminating testimony regarding personal use of XXXXXXXX, but not to respondents who engage in similar personal use, based on the Title IX Coordinator's correspondence with Witness 4 and the language of the University's policy on this issue.

As noted below, the University and OCR have agreed to resolve these topics pursuant to CPM Section 302.

## **CONCLUSION**

As noted above, prior to the conclusion of OCR's investigation and pursuant to Section 302 of OCR's *Case Processing Manual*, the University expressed an interest in resolving this complaint and OCR determined that a voluntary resolution is appropriate. Subsequent discussions between OCR and the University resulted in the University signing the enclosed Resolution Agreement which, when fully implemented, will address OCR's concerns. OCR will monitor the University's implementation of the Agreement.

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<sup>6</sup> OCR notes that the referral of Witness 4 to the University's XXXXXXXXXXXX did not impact the Title IX proceeding and there is no evidence that the Title IX Coordinator treated Witness 4 differently from how he would treat any other witness under the circumstances.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the University's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in an individual OCR case. 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. OCR would like to make you aware that individuals who file complaints with OCR may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the University must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

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

Sincerely,

Abra Francois  
Compliance Team Leader

Enclosure

cc: Pietro Lynn  
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