

July 9, 2018

Robert Barchi, M.D., Ph.D.
President
Rutgers University
83 Somerset Street
New Brunswick, New Jersey 08901-1281

Re: Case No. 02-18-2096
Rutgers University

Dear Dr. Barchi:

This letter is to advise you of the resolution of the above-referenced complaint filed with the U.S. Department of Education, Office for Civil Rights (OCR), against Rutgers University (the University). The complainant alleged that the University discriminated against her, on the basis of her sex, by failing to timely investigate a complaint she made of sexual harassment xxxxxxxxxxxx, in xxxx 2017 (Allegation 1). The complainant also alleged that the University discriminated against her, on the basis of her sex, by failing to respond appropriately to a sexual harassment and xxxx xxxxxxxx complaint made xxxxxx xxxxxx (Allegation 2).

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), as amended, 20 U.S.C. § 1681 et seq., and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in programs and activities receiving financial assistance from the U.S. Department of Education (the Department). The University is a recipient of financial assistance from the Department. Therefore, OCR has jurisdictional authority to investigate this complaint under Title IX.

The regulation implementing Title IX, 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 education program or activity operated by a recipient. Sexual harassment that creates a hostile environment is a form of sex discrimination prohibited by Title IX. Sexual harassment is unwelcome conduct of a sexual nature. Sexual harassment can include unwelcome sexual advances; requests for sexual favors; and, other verbal, nonverbal, or physical conduct of a sexual nature, such as sexual assault or acts of sexual violence. Sexual harassment of a student creates a hostile environment if the conduct is sufficiently serious that it denies or limits a student's ability to participate in or benefit from the recipient's program.

The regulation implementing Title IX, at 34 C.F.R. § 106.8(b), requires that a recipient adopt and publish grievance procedures providing for prompt and equitable resolution of student and

employee complaints alleging any action prohibited by the regulation implementing Title IX.¹ When responding to alleged sexual harassment, a recipient must take immediate and appropriate action to investigate or otherwise determine what occurred. If an investigation reveals that discriminatory harassment has occurred, a recipient must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring. Pending the outcome of an investigation, Title IX requires a recipient to take steps to avoid further harassment as necessary, including taking interim steps before the final outcome of the investigation. The recipient should undertake these steps promptly once it has notice of a sexual harassment allegation. Interim measures are individualized services offered as appropriate to either or both parties involved in the alleged incident of sexual misconduct, prior to an investigation or while an investigation is pending. Interim measures include counseling, extensions of time or other course-related adjustments, modifications of work or class schedules, campus escort services, restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of campus, and other similar accommodations.

In its investigation, OCR interviewed the complainant and University staff. OCR also reviewed documentation that the complainant and University submitted. In addition, OCR reviewed documentation submitted and interviews conducted in connection with its investigation of xxxx; xx xxxx.²

For academic year 2017-2018, the complainant enrolled in the University's xxxxx xxxxx xxxxx xxxx xxxx program (the program). The complainant graduated from the program on xxxx xx, 2018.

With respect to Allegation 1, the complainant alleged that the University discriminated against her, on the basis of her sex, by failing to timely investigate a complaint she made of sexual harassment xxxx xxxxxx, in xxxx 2017. The complainant stated that the investigation was not completed until xxxx 2018; i.e., approximately xxxx xxxx after she filed her complaint. The complainant alleged that as a result, she was subjected to a hostile environment.

Pursuant to University Policy Section 10.3.12: *Student Policy Prohibiting Sexual Harassment, Sexual Violence, Relationship Violence, Stalking and Related Misconduct* (the policy),³ the University will seek to resolve every report made under the policy within sixty calendar days of an initial report, not counting any appeal; however, this timeframe may be extended for “good cause” with a written explanation to the parties.⁴ The policy states that the University’s investigation will continue during any law enforcement or civil proceeding, although the investigation may be delayed due to concurrent proceedings.

¹ The University has policies and procedures prohibiting discrimination and harassment on the basis of sex, which can be found on the University’s website. OCR is reviewing these policies and procedures as part of its investigation in xxxxxxxx; therefore, these policies and procedures are not addressed substantively herein.

² xxxxxx xxxx xxxx xxxxx xxxxx xxxx.

³ See <https://policies.rutgers.edu/sites/policies/files/10.3.12-current.pdf>

⁴ The University’s Central Title IX Coordinator informed OCR that the University may extend the timeframe for “good cause” due to University breaks, the unavailability of a witness or the parties, the complexity of the case, or time needed for the parties to gather evidence.

The rescheduled hearing was held on xxxx xx, 2018. By letter dated xxxx xx, 2018, the University informed the complainant that xxxx was xxxx xxxx xxxxx for the charge of xxxx xxxx. Neither the xxxxx nor student A appealed the decision; accordingly, complaint 2 was closed.

During the course of OCR's investigation, the University expressed its interest in entering into an agreement with OCR to voluntarily resolve the complainant's allegations under Section 302 of OCR's Case Processing Manual. On July 6, 2018, the University signed the attached resolution agreement (Agreement) to voluntarily resolve the complainant's allegations. OCR will monitor the implementation of the Agreement. Upon the University's satisfaction of the commitments made under the Agreement, OCR will close the case.

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. The complainant may have a right to file a private suit in federal court whether or not OCR finds a violation.

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 individual may file a 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, it will seek to protect, to the extent provided by law, personally identifiable information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions regarding OCR's determination, please contact Lance Neyland, Compliance Team Attorney, at (646) 428-3824 or lance.neyland@ed.gov; Lisa Khandhar, Compliance Team Attorney, at (646) 428-3778 or lisa.khandhar@ed.gov; or Nadja Allen Gill, Compliance Team Leader, at (646) 428-3801 or nadja.r.allen.gill@ed.gov.

Sincerely,

Timothy C.J. Blanchard

Encl.

cc: Julianne M. Apostolopoulos, Esq.