



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

32 OLD SLIP, 26TH FLOOR
NEW YORK, NEW YORK 10005

TIMOTHY C. J. BLANCHARD
DIRECTOR
NEW YORK OFFICE

April 8, 2020

Sent by email only to andrew.hamilton@nyu.edu

Andrew D. Hamilton, Ph.D.
President
New York University
70 Washington Square South
New York, New York 10012

Re: Case No. 02-20-2030
New York University

Dear President Hamilton:

This letter is to notify you of the determination made by the U.S. Department of Education, Office for Civil Rights (OCR), regarding the above-referenced complaint filed against New York University (the University). The Complainant alleged that the University retaliated against her for a complaint she made to the University on XXXXX, 2019, alleging that a professor subjected her to sexual harassment, by disabling her University email account on XXXXX, 2019.

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. § 106.71, incorporates by reference 34 C.F.R. § 100.7(e) of the regulation implementing Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d *et seq.*, which provides that no recipient or other person shall intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege secured by regulations enforced by OCR or because one has made a complaint, testified, assisted or participated in any manner in an investigation, proceeding or hearing held in connection with a complaint.

The following three elements must be satisfied to establish a prima facie case of retaliation: (1) an individual engaged in a protected activity; (2) an individual experienced an adverse action caused by the recipient; and, (3) there is some evidence of a causal connection between the adverse action and the protected activity. When a prima facie case of retaliation has been established, OCR then

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

determines whether there is a facially legitimate, non-retaliatory reason for the adverse action; and if so, whether the facially legitimate, non-retaliatory reason is a pretext for retaliation.

In its investigation, OCR interviewed the Complainant. OCR also reviewed documentation that the Complainant and the University submitted.

OCR determined that the Complainant was enrolled in the Doctor of Dental Surgery Program (the Program) at the University's College of Dentistry (the College), during academic year 2018-2019. OCR also determined that the College dismissed the Complainant from the Program on XXXXX, 2019.

The Complainant alleged that the University retaliated against her for a complaint she made to the Senior Associate Dean for Education (the Dean) on XXXXX, 2019, alleging that a professor (the Professor) subjected her to sexual harassment, by disabling her University email account on XXXXX, 2019. The Complainant stated that by email on XXXXX, 2019, she submitted a complaint to the Dean, in which she alleged that the Professor sexually harassed her.¹ The Complainant asserted that in response to her complaint, XXXXX disabled the Complainant's University email account two days later, on XXXXX, 2019, contrary to its policy that provides for student access to email accounts for one semester after the end of the student's enrollment. The Complainant informed OCR that she lost access to her medical, financial, educational, and personal emails and documents because the University disabled her email account on XXXXX, 2019.

OCR determined that the Complainant engaged in protected activity, by making a complaint to the Dean on XXXXX, 2019, regarding the Professor's alleged sexual harassment. Further, OCR determined that the University was aware of this protected activity.

OCR determined that on XXXXX, 2019, the University disabled the Complainant's school email account, rendering it inaccessible to the Complainant as of that date. The University informed OCR that in accordance with the University's Information Technology policy, dismissed students are typically permitted a grace period of one semester past the end of the student's last semester for University email account access. The Complainant did not receive such a grace period.

On April 8, 2020, the University signed the enclosed resolution agreement (Agreement) to voluntarily resolve the Complainant's allegation without further investigation, pursuant to Section 302 of OCR's *Case Processing Manual*. OCR will monitor the implementation of the Agreement.

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

¹ In the email to the Dean on XXXXX, 2019, the Complainant stated, in relevant part, "XXXXX." In the email, the Complainant did not include any information regarding the alleged harassment, including what occurred, or the date(s) it occurred.

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 the individual 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 David Krieger, Senior Compliance Team Attorney, at (646) 428-3893 or david.krieger@ed.gov; Sandy Araj, Compliance Team Attorney, at (646) 428-3879 or sandy.araj@ed.gov; or Andy Artz, Senior Compliance Team Attorney, at (646) 428-3901 or alexander.artz@ed.gov.

Sincerely,

/s/

Anna Moretto Cramer
Compliance Team Leader

Encl.

cc: Dr. Charles N. Bertolami, Dean, New York University College of Dentistry
William H. Miller, Esq.