



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

THE WANAMAKER BUILDING, SUITE 515
100 PENN SQUARE EAST
PHILADELPHIA, PA 19107-3323

REGION III
DELAWARE
KENTUCKY
MARYLAND
PENNSYLVANIA
WEST VIRGINIA

August 27, 2018

Dr. Tuajuanda C. Jordan
President
St. Mary's College of Maryland
47645 College Drive
St. Mary's City, Maryland 20686

Re: OCR Complaint No. 03-14-2383

Dear Dr. Jordan:

The Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) has completed its investigation of the above-referenced complaint against St. Mary's College of Maryland (the College). The Complainant alleged that the College discriminated against XXXXXX.

OCR enforces Title IX of the Education Amendments of 1972 (Title IX) and its implementing regulation, 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex by recipients of Federal financial assistance from the Department. As a recipient of Federal financial assistance from the Department, the College is subject to Title IX and its implementing regulations.

In reaching a determination, OCR reviewed documents provided by the Complainant and the College and interviewed the Complainant and a College staff member. After carefully considering all of the information obtained during the investigation, OCR identified compliance concerns. The College agreed to resolve the concerns through the enclosed resolution agreement. OCR's findings and conclusions are discussed below.

Legal Standards

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 academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient. The regulation implementing Title IX, at 34 C.F.R. § 106.31(b), prohibits recipients from: treating one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service; providing different aid, benefits, or services or providing aid, benefits, or services in a different manner; denying any person any such aid, benefit, or service; or otherwise limiting any person in the enjoyment of any right, privilege, advantage, or opportunity.

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

Sexual harassment is unwelcome conduct of a sexual nature and is a form of sex discrimination prohibited by Title IX. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, including acts of sexual violence. When a student sexually harasses another student, the harassing conduct creates a hostile environment if the conduct is sufficiently serious that it interferes with or limits a student's ability to participate in or benefit from the recipient's program. If a recipient knows or reasonably should know about student-on-student or third party harassment that may create a hostile environment, Title IX requires the recipient to respond in a prompt and equitable manner by taking immediate action to eliminate the harassment, prevent its recurrence, and address its effects. These duties are a recipient's responsibility, regardless of whether a student has complained, asked the recipient to take action, or identified harassment as a form of discrimination. If, upon actual or constructive notice, a recipient delays responding to allegations of sexual harassment and/or sexual violence or responds inappropriately, the recipient's own action may subject a student(s) to a hostile environment. If it does, the recipient will be required to remedy the effects of both the initial sexual harassment and/or sexual violence and the effects of the recipient's failure to respond promptly and appropriately. A recipient's obligation to respond appropriately to sexual harassment complaints is the same regardless of the sex or sexes of the parties involved.

The Title IX regulation at 34 C.F.R. § 106.8(a) requires schools to designate at least one employee to coordinate efforts to comply with Title IX and to notify students and employees about that designated coordinator. The Title IX coordinator must have knowledge of the requirements of Title IX, of the recipient's own policies and procedures on sex discrimination, and of all complaints raising Title IX issues throughout the recipient.

The regulation implementing Title IX, at 34 C.F.R. § 106.8(b), requires a recipient 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. Title IX does not require a school to adopt a policy specifically prohibiting sexual harassment or to provide separate grievance procedures for sexual harassment complaints.

OCR has identified a number of elements in evaluating whether a recipient's grievance procedures are prompt and equitable, including whether the recipient: (1) provides notice of the grievance procedures, including how to file a complaint, to student and employees (2) applies the grievance procedures to complaints filed by students or on their behalf alleging discrimination or harassment carried out by employees, other students, or third parties; (3) ensures an adequate, reliable, and impartial investigation of complaints, including an opportunity to present witnesses and evidence; (4) designates and follows a reasonably prompt timeframe for major stages of the complaint process; (5) notifies the parties of the outcome of the complaint; and (6) provides assurance that the school will take steps to prevent recurrence of harassment, including sexual misconduct, and to remedy its discriminatory effects, as appropriate.

The regulation implementing Title IX, at 34 C.F.R. § 106.9, requires a recipient to implement specific and continuing steps to notify all applicants for admission and employment, students and parents, employees, sources of referral of applicants for admission and employment, and

all unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of sex in its education programs or activities, and that it is required by Title IX not to discriminate in such a manner.

Review and Analysis of College's Policies and Procedures

Ordinarily, a complaint of this nature would require OCR to review and assess the College's grievance procedures and its nondiscrimination statement to determine whether they contain the required components, as well as ensuring that the College has designated a Title IX Coordinator who is properly trained. However, these items were reviewed as part of a previous OCR investigation (OCR Case No. 03-12-2100). The College signed a resolution agreement to resolve the issues raised in that complaint, which included revising its Title IX grievance procedures and training its Title IX Coordinator and other personnel. OCR is currently monitoring that complaint. As a result, OCR will limit its review in this case to the allegation involving whether the College responded in a prompt and equitable manner to the Complainant's report of sexual assault.

Background

xx – paragraphs redacted – xx

Analysis

xx – paragraph redacted -- xx

For all of the reasons noted above and by a preponderance of the evidence, OCR finds that the College violated the Title IX regulation, at 34 C.F.R. §§ 106.8(b) and 106.31, because it failed to provide a prompt and equitable resolution to the Reporting Party's allegation of sexual assault and thus, subjected the Reporting Party to an ongoing sexually hostile environment.

Conclusion

To resolve the compliance concerns identified above, the College entered into the attached Resolution Agreement, signed on August 20, 2018. The Agreement requires the College to provide training to its employees on the responsibility to respond to reports of sexual harassment, specific training for the Dean of Students, XXXXXX. Once the Resolution Agreement is fully implemented, the College will be in compliance with Title IX with respect to the issues

addressed in this letter. OCR will monitor the College's implementation of the Resolution Agreement until the College is in compliance with the statute and regulations at issue in the case.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the College'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 Reporting Party may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the College 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, or participates in an OCR proceeding. 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.

We appreciate the College's cooperation in the resolution of this complaint. If you have any questions regarding this letter, please contact Andrea DelMonte, the OCR attorney assigned to this complaint, at 215-656-8554 or andrea.delmonte@ed.gov.

Sincerely,

/s/

Melissa M. Corbin
Team Leader
Philadelphia Office

Enclosure

cc: Allison Boyle, Esquire (via email)