



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

July 31, 2017

IN RESPONSE, PLEASE REFER TO DOCKET #03162216

Dr. Daniel Porterfield, President
Franklin and Marshall College
P.O. Box 3003
Lancaster, PA 17604

Dear Dr. Porterfield:

This is to notify you of the resolution of the above-referenced complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Franklin and Marshall College (the College). XXXXXX.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681, and its implementing regulation, 34 C.F.R. Part 106. Title IX prohibits discrimination on the basis of sex by recipients of Federal financial assistance. Title IX also prohibits retaliation. Because the College receives Federal financial assistance from the Department, it is subject to this law.

Legal Standards

Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 et seq., and its implementing regulations, 34 C.F.R. Part 106, prohibit discrimination on the basis of sex in education programs or activities operated by recipients of Federal financial assistance. 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 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 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.

In analyzing whether retaliation occurred, OCR must first determine: that: (1) an individual experienced an adverse action caused by the recipient; (2) the recipient knew that the individual engaged in a protected activity or believed the individual might engage in a protected activity in the future; and (3) there is some evidence of a causal connection between the adverse action and the protected activity. When there is evidence of all of these elements, OCR then determines whether the recipient has articulated a legitimate, non-retaliatory reason for the challenged action or whether the reason adduced by the recipient is a pretext to hide its retaliatory motivation.

Factual Background

XX – paragraphs redacted – XX

XXXXXX. The College reports a thorough investigation, in which it interviewed the parties and witnesses, that was prompt, lasting fewer than thirty days. XXXXXX. The College reports that it followed its process of determining discipline through its Administrative Review. XXXXXX.

Request to Resolve Complaint through a Voluntary Resolution Agreement

Under OCR procedures, a complaint may be resolved before the conclusion of an investigation if a recipient asks to resolve the complaint by signing a Resolution Agreement and OCR determines that such a resolution is appropriate. The provisions of the Resolution Agreement must be aligned with the complaint allegations, the information obtained in the investigation to date, and be consistent with applicable regulations. Such a request does not constitute an admission of a violation on the part of the College, nor does it constitute a determination by OCR of any violation of our regulations.

Consistent with OCR's procedures, on September 29, 2016, the College requested to resolve the complaint through a Resolution Agreement. On June 26, 2017, the College signed this Agreement. As is our standard practice, OCR will monitor the College's implementation of the Agreement, a copy of which is enclosed. Accordingly, OCR is concluding its investigation of the allegation as of the date of this letter.

This letter is not intended nor should it be construed to cover any other issues regarding the District's compliance with Section 504 and Title II, which may exist and are not discussed herein. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

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.

Please be advised that the College 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.

If you have any questions or concerns, please call me at (215) 656-8522.

Sincerely,

/s/

Vicki Piel
Team Leader/Supervisory Attorney
Philadelphia Office

Enclosure

cc: Pierce E. Buller, General Counsel and Deputy Chief of Staff