



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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October 31, 2023

IN RESPONSE, PLEASE REFER TO: 03222075 and 03222076

Ajay Nair, Ph.D.
President
Arcadia University
450 S. Easton Road
Glenside, PA 19038

Sent via email only: President@arcadia.edu

Dear Dr. Nair:

This is to notify you of the resolution of the complaints filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Arcadia University. Complainant A (03222075) and Complainant B (03222076), allege that the University discriminated against them on the basis of sex by failing to promptly and equitably respond to their April 2021 complaints of sexual harassment by a Professor.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), as amended, 20 U.S.C. § 1681 – 1688, and its implementing regulation, 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex under any education program or activity receiving Federal financial assistance.¹ As a recipient of Federal financial assistance from the Department, the University is subject to Title IX and its implementing regulation.

SUMMARY OF FINDINGS

OCR determined that the University violated Title IX when it failed to complete its investigation and make a determination regarding the allegations because the Professor tendered his resignation. OCR also finds that the University violated Title IX when it failed to investigate

¹ Amendments to the Title IX regulation went into effect on August 14, 2020, and can be viewed [here](#). However, OCR investigated this complaint based on the prior Title IX regulation that was in effect at the time when the alleged acts occurred. You can find that regulation [here](#). For more information about Title IX, including the new Title IX regulation and related resources, visit OCR's website at https://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html and <https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/index.html>.

possible sexual harassment by the Professor about which the University had knowledge prior to April 2021.

In conducting this investigation, OCR reviewed documents provided by Complainants A and B and the University and interviewed Complainants A and B.

LEGAL STANDARD

Sexual harassment 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, such as sexual assault or acts of sexual violence. Sexual harassment can create a hostile educational environment based on sex when the harassment is sufficiently serious to deny or limit the individual's ability to participate in or benefit from the recipient's education program or activity.

When the recipient has actual or constructive notice of sexual harassment, it must take appropriate steps to investigate or otherwise determine what occurred, and it may be appropriate for a postsecondary institution to take interim measures prior to or during the investigation of a complaint. Interim measures are individualized services offered as appropriate to either or both the reporting and responding parties involved in an alleged incident of sexual misconduct. 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 locations, leaves of absence, increased security and monitoring of certain areas of campus, and other similar accommodations. For instance, if a student alleges that he or she has been sexually assaulted by another student, the postsecondary institution may decide to place the students immediately in separate classes, pending the results of its investigation.

If a postsecondary institution's investigation or other appropriate steps to determine what occurred identify harassment that creates a hostile environment, institutions are responsible for taking prompt and effective action to stop the harassment and prevent its recurrence. A postsecondary institution also may be responsible for remedying the effects of the harassment on the students who were harassed.

FACTUAL FINDINGS

Complainants A and B are former students of the University [redacted content]. Complainant A was enrolled at the University from the [redacted content] school years and Complainant B was enrolled at the University from the [redacted content] school years. Complainant A graduated in [redacted content] and Complainant B graduated in [redacted content]. The Professor was employed in the [redacted content] Department [redacted content] until [redacted content], when he resigned. Both Complainant A and Complainant B took several classes with the Professor during their tenure at the University.

On March 16, 2021, [redacted content] Complainant A emailed the University President and former Chief Human Resources Officer with a link to an article about sexual harassment that occurred at a different university. Complainant A stated: "*May I once again bring to your attention [the [redacted content] Professor] and your [redacted content] department's inaction.*

I am aware I am not the only one who has had issues. I am also aware that nothing has ever been done.”

After Complainant A emailed University staff on March 16, 2021, the University’s Civil Rights Investigator initiated contact with Complainant A to discuss her complaint and walk through the Title IX process and interim measures. The Civil Rights Investigator met with Complainant A on March 27, 2021, and completed an intake form for Complainant A. On March 28, 2021, Complainant B emailed the Civil Rights Investigator, stating that Complainant A had recommended that she speak with the Civil Rights Investigator about their complaints against the Professor. On March 30, 2021, the Civil Rights Investigator met with Complainant B and completed an intake form for Complainant B. Following their meeting, the Civil Rights Investigator provided Complainant B with information about supportive and interim resources.

On April 6, 2021, Complainants A and B separately told the Title IX Coordinator that they wished to move forward with the formal grievance process. On April 9, 2021, the Civil Rights Investigator emailed Complainants A and B separately to let them know that, because the allegations made against the Professor occurred prior to 2020, the University was going to investigate the complaints pursuant to the University’s Legacy Policy and Legacy Procedures (the Legacy Policy), described below, which was the University’s Title IX policy in effect at the time of the incidents. The internal email exchanges amongst University staff reflect that, at this time, another, current student (Student C²) wanted to move forward with a complaint against the Professor, in addition to Complainants A and B. The University combined the complaints and investigated them together.

Complainants A and B submitted a formal complaint on April 10, 2021. On April 12, 2021, the Dean emailed the Administrative Director stating that she had a request from Human Resources to send them the course evaluations for the Professor. In an email exchange between the Administrative Director and the Dean on April 12, 2021, the Administrative Director explained that she was only able to obtain the Professor’s course evaluations for 2019 and forward because he habitually did not return them before 2019. On April 15, 2021, the Dean emailed Human Resources with copies of the Professor’s course evaluations from Summer 2019, Fall 2019, Spring 2020 and Fall 2020. The course evaluations for Fall 2019 and Spring 2020 noted the following:

- *“The Professor had a habit of making inappropriate comments or stories as examples. This made the environment uncomfortable at times and because of this I hated coming to class.”*
- *“The Professor made many sexual inappropriate comments on a regular basis. Everyone felt uncomfortable. I didn’t appreciate it and it’s too bad the administration won’t do anything since this has been reported to the chair and HR.”*
- *“There were a lot of strange comments of the sexual nature. Very strange.”*

² OCR does not know the identity of Student C as she did not file a complaint with OCR. However, based on OCR’s review of her Intake form and interview summary, her allegations are substantially identical to that of Complainants A and B in that she complained about the Professor’s comments about his wife’s dress, touching her shoulder in class, and other inappropriate comments in class.

- *“He has made numerous inappropriate comments that have no place in a professional/academic setting and is frequently rude or downright disrespectful to his students.”*

On May 3, 2021, the Title IX Coordinator sent a Notice of Investigation (Notice) to Complainants A and B, and the Professor. The Notice provided information about the Legacy Policy, notice of rights, information about advisors, the investigation, interim measures, the role of the Title IX Coordinator, and reiterated the University’s prohibition of retaliation. The Notice also stated that the allegation to be investigated was whether the Professor violated the University’s Legacy Policy Prohibiting Sexual Misconduct, Relationship Violence and Stalking, and the Legacy Policy Prohibiting Non-Discrimination and Non-Harassment. The Notice provided a detailed summary of the allegations, which included various inappropriate, sexual comments made by the Professor while teaching class, and physical encounters where the Professor stood too close to students. Last, the Notice advised the parties that Investigator 1 and 2 would schedule an interview with each of them.³

In May 2021, Investigator 1 and Investigator 2 began conducting interviews, starting with Complainants A and B. On [redacted content], Investigator 2 resigned from the University. Investigator 3 – another attorney from the same law firm as Investigator 1 – took his place in the investigation. On May 6, 2021, Investigator 2 reached out to the Professor to schedule an interview. On that same date, the Professor emailed the Title IX Coordinator to confirm he received the Notice. He also advised that he had been suffering from several medical conditions [redacted content], thus he requested that his participation in the investigation be completed by [redacted content]. [redacted paragraph].

Investigator 1 and 3 completed the Investigative Report on July 30, 2021, which was then submitted to the University. The Investigative Report reflects that 16 individuals were asked to be interviewed and 12 individuals accepted, including Complainants A and B and the Professor. The interviews were conducted from May 10, 2021 through June 18, 2021. The Report also includes various attachments, including the email that Complainant A sent to the University regarding the allegations, the Intake forms for Complainants A and B and Student C, the Notice, summaries of witness interviews, supplemental documentation from Complainant A, Complainant B, the Professor and the Vice President, and the Legacy Policy.

OCR reviewed all of the witness interviews in the Investigative Report, which reflect that Complainants A and B previously raised concerns about the Professor to the University’s then Chief Human Resources Officer in the Fall 2018. In her May 2021 interview, the former Chief Human Resources Officer recalled that Complainants A and B and other students complained to her in 2018 about the Professor making inappropriate statements in class related to “body parts or something.” [redacted sentence]. A former male student who attended the Professor’s class in 2018 and was also interviewed by Investigator 1 and 3 in May 2021 confirmed that the Professor made an inappropriate comment about his wife’s dress and how it was his favorite dress because

³ The investigators assigned to the complaint were Investigator 1 and 2. Investigator 1 was an attorney from a law firm, hired by the University as an external investigator. Investigator 2 was another Civil Rights Investigator for the Office of Equity and Civil Rights at the University. However, Investigator 2 resigned from the University May 17, 2021. Thereafter, Investigator 3 – another attorney from the same law firm as Investigator 1 – took his place in the investigation.

“when he would rub up against her...” The former Chief Human Resources Officer recalled that this male student brought his concerns about the Professor’s reference to his wife’s dress to her as a complaint. She also recalled that a student complained that the Professor touched her shoulder in class.

The former Chief Human Resources Officer could not recall if she reported the complaints, but believed she had a conversation about the Professor with the Dean. However, she told Investigator 1 and 3 that, shortly after the complaints were made in 2018, the Professor accused Complainants A and B of cheating. As a result, Complainants A and B did not want to pursue their complaints any further. She stated in her interview that the Professor’s cheating allegations against Complainants A and B appeared to be retaliatory and she believed that the timing was suspicious. The former Chief Human Resources Officer also expressed frustration during her interview that tenured faculty appear untouchable, and that she was unable to initiate an investigation of the Professor because he was a tenured faculty member. She added that while she found the complaints raised by students in 2018 concerning, she did not believe they fell under sexual misconduct under Title IX because “he did not touch students in their private parts.” During her interview, the former Chief Human Resources Officer explained that that, while employed with the University, she was a member of the University’s Title IX team. However, the University interview notes reflect that “there appeared to be some level of overlap and confusion as to which University Administrators would handle complaints of sexual harassment made by students against faculty...and in certain cases there was some confusion of whether an investigation into sexual harassment should be conducted on the HR side or on the Title IX side.”

The interviews also reflect that Complainants A and B also met with the Dean in Spring 2020 to express concerns about the Professor. Specifically, in her witness interview, the Dean recalled that Complainants A and B raised complaints with her in Spring 2020 regarding the Professor and she talked to the Professor as a result. Initially, she told Investigator 1 and 3 that the complaints involved the Professor not attending his virtual lectures and being unwilling to provide more time to complete an exam. However, later during the Dean’s interview, she referred to notes of a conversation with Complainant B in 2018 when Complainant B reported an incident where the Professor touched her elbow and when she recoiled, he asked her not to report him for sexual harassment and then turned to a male student and said he would pick on him from now on to avoid being accused of molestation. However, the Dean did not believe that rose to the level of a Title IX violation, as reflected in her notes at the time. However, based on other non-sexual harassment reports about the [redacted content] Department, the Dean acknowledged that she had an elevated level of concern regarding those Departments.

Similarly, during the May 2021 interview with a former [redacted content] major, he also confirmed Complainant B’s account of the Professor touching her elbow, asking her not to report him for sexual harassment and stating he would call on a male student to avoid accusations of molestation. This student said that he had reported his concerns to the Chair of the [redacted content] Department but the Chair responded that the Professor was a good guy and did not take the concerns seriously. In his May 2021 interview, the Chair of the [redacted content] Department denied ever receiving any of the complaints mentioned above.

The May 2021 witness interview with a [redacted content] professor reflects that he overheard students complaining about the Professor in his [redacted content] class. The complaints were

regarding inappropriate things that the Professor did or said, and concerns regarding his sexist comments about female students' anatomy. He said that he frequently overheard students complaining that the Professor made inappropriate sexual comments. He also reported that he heard that a student said that the Professor groped her in a bar off campus and touched another student's breast. The [redacted content] professor said that he recalled bringing the Professor's inappropriate conduct to the attention of his supervisors and being told that the Professor was just being himself. He also added that the professors in the [redacted content] Department protected one another and looked out for one another, and that they were loyal to the Professor. During a May 2021 witness interview with a different [redacted content] professor, he recalled that he had to have a conversation with the Professor about touching a female student's face in class after a student complained to him about the Professor.

On July 30, 2021, the Title IX Coordinator emailed the Professor and Complainants A and B to let them know that the investigation was complete and that the Investigative Report had been forwarded to the Vice President of Human Resources (the Vice President). Subsequently, the Vice President recommended informal resolution for Complainants A and B. According to the Legacy Policy, informal resolution is an educational and remedies-based approach to the resolution of complaints that may be offered to the parties following an Intake Assessment, in which the University will provide immediate and corrective action through individual and community remedies. However, in early September 2021, both Complainants A and B declined informal resolution. Accordingly, on September 6, 2021, the Vice President emailed the parties to advise them that the University moved forward with scheduling a formal hearing.

On September 17, 2021, the Professor emailed the Vice President to state that he was experiencing various health issues, including [redacted content]. As such, he asked the Vice President to consider holding off on the next stage of the Title IX resolution process so that he could more fully participate. On September 22, 2021, the Vice President emailed Complainants A and B separately to advise that she had learned that the Professor had serious health issues and that [redacted content] would extend the timeline for resolution of their complaints. She stated that she would be in touch to provide the anticipated duration of the delay and stated that she would advise them of the delay throughout the process.

From October 6, 2021 through November 29, 2021, the Vice President was in regular communications with the Professor regarding his medical status, and she also provided Complainants A and B with regular updates regarding the status of the delay in scheduling the hearing. On November 29, 2021, the Professor's treating [redacted content] sent a letter to the Vice President informing her that the Professor was under his care and would be receiving treatment [redacted content] from [redacted content]. In a November 30, 2021 exchange between the Vice President and the [redacted content], the Vice President confirmed with the [redacted content] that the Professor could participate in a hearing.

On December 13, 2021, at approximately 12:15-12:30pm, the Vice President emailed the Professor and Complainants A and B to let them know that the University planned on moving forward with the hearing, and that the University hired an external adjudicator to oversee the hearing. Approximately three hours later, the Professor emailed the University President requesting that the President permit him to [redacted content] begin his retirement from the University [redacted content].

On January 4, 2022, the Vice President emailed Complainants A and B to inform them that the Professor had tendered his resignation due to his ongoing health issues, and due to the Professor's separation from the University, the formal grievance process would be ending. Complainant B responded that, until the Professor's resignation was confirmed and made public to the University community, she expected that they would keep their case open and active. The University asserts that "this could reasonably be interpreted as indicating that the Complainants did not object to the University not proceeding with a hearing *if [the Professor's] resignation was confirmed.*"

The Professor tendered his resignation on [redacted content]. No activity regarding the complaints or the hearing took place between [redacted content], which Complainants A and B believe was intentional to protect the reputation of the Professor and the University, until his official resignation. The University maintains that, due to his health issues, the Professor would no longer be teaching at the University, where he was not eligible for rehire, or, to the University's knowledge, anywhere else. The University asserted in a letter to OCR that, "to the extent that the University's primary obligations under Title IX are to end harassment it has notice of, prevent its recurrence, and address its effects, the University's actions satisfied these obligations."

The University's Legacy Title IX Policy and Procedure in effect at the time of the incidents

The University's Legacy Policy in effect at the time of the incidents defined sexual harassment as any unwelcome sexual advance, request for sexual favor(s) or other unwelcome verbal, nonverbal, graphic or physical conduct of a sexual nature. The Legacy Policy stated that it applied to faculty and that complaints involving students, faculty, staff or administrator respondents would be resolved pursuant to the Legacy Policy. The Title IX team was responsible for investigating any complaint of sexual misconduct, including complaints against faculty. The Title IX Team consisted of the Title IX Coordinator, Deputy Title IX Coordinators, Dean of Students (unless a Respondent was a faculty or staff member), Director of Public Safety, and others as applicable, such as the Provost and the Chief Human Resources Officer, or their designee. For complaints against faculty members, if, at the conclusion of the investigation, the Associate Vice President of Human Resources determined that a reasonable person could find that a violation of Policy could have occurred, he/she would refer the matter to informal or formal resolution. If the matter was referred for formal resolution, the Associate Vice President of Human Resources would conduct an Administrative Hearing.

According to the Legacy Policy, circumstances may arise that prolong resolution of a Title IX complaint, including, but not limited to, the availability of the parties or witnesses. Both parties can expect periodic updates as to the status of the review or investigation. The Procedures for complaints against faculty stated that either party could request to have a hearing rescheduled for good cause. The Procedures for faculty also stated:

If a party does not attend a hearing, for any non-emergency or un compelling reason, the hearing may be held in his/her/hir absence at the discretion of the Associate Vice President of Human Resources. If a student chooses to withdraw or take a leave from the University prior to the conclusion of an investigation and/or formal resolution under the Policy, the University will move forward with the hearing and imposition of educational outcomes, if any, in absentia.

Although the Legacy Policy applied to students and faculty, it did not address how the University would proceed if a faculty member chose to withdraw or take a leave from the University prior to the conclusion of an investigation and/or formal resolution.

The University now has a Title IX webpage that includes a link to the University's Title IX Policy and Procedure, information about available resources and provides the contact information for the Title IX Coordinator and Deputy Coordinators. However, as of July 2023, the Title IX webpage does not include a copy of its Title IX training materials, as required by 34 C.F.R. § 106.45(b)(10)(i)(D).

SUMMARY OF LEGAL CONCLUSIONS

When a recipient has actual or constructive notice of sexual harassment, it must take appropriate steps to investigate or otherwise determine what occurred. Here, the University learned of possible sexual harassment by the Professor as early as the Fall 2018, when Complainants A and B reported the Professor's conduct to the former Chief of Human Resources. The University failed to fulfill its obligation to address the potential hostile environment of which it had notice for students who had been students in the Professor's classes and who had information that sexually harassing behavior from a professor persisted without apparent consequence from the University for a period of years. Had the University not repeatedly failed to investigate and resolve allegations of sexual harassment of which it was aware, the University may have prevented possible recurring harassment and the perpetuation of a hostile environment for its students. The former Chief of Human Resources stated during a University investigative interview that she did not pursue an investigation because the Professor was tenured. She also stated that she did not believe the conduct alleged fell within the jurisdiction of Title IX because no allegation was made of inappropriate touching. Both beliefs were incorrect. As stated above, sexual harassment can include verbal conduct of a sexual nature. Likewise, Title IX applies to actions of tenured faculty and the University had an obligation to investigate allegations of sexual harassment from such faculty. Due to these misunderstandings, while the Professor's conduct was reported to the University as early as Fall 2018, the University did not investigate it at that time. Fall 2019 and Spring 2020 course evaluations suggest that the Professor may have continued to sexually harass students, and OCR's investigation reflects that a University official suspected the Professor was retaliating, in violation of Title IX, in accusing Complainants A and B of cheating. Had the University conducted an adequate investigation at the time the complaints were first raised in 2018, it could have -- as necessary -- ended any harassment and retaliation at that time, and prevented its recurrence.

Further, once the allegations of misconduct by the Professor were once again brought to the attention of the University in 2021, while the University conducted a thorough and prompt investigation, it failed to take appropriate steps to determine the outcome of that complaint once the Professor resigned from his position at the University. In addition, although the University had another four weeks during which it could have scheduled a hearing before the Professor's resignation became effective on [redacted content], it took no action. OCR also notes that the University's refusal to proceed with the hearing despite the Professor's resignation contradicts University policy, which provided that a hearing may be held in the respondent's absence. The University was incorrect that its Title IX obligations, including the obligation to address the

effects of sexual harassment on Complainants A and B and other impacted students, ceased with the Professor's resignation.

RESOLUTION AGREEMENT

To resolve the violations OCR identified in its investigation of this complaint, the University entered into the attached Resolution Agreement. The Resolution Agreement requires that the University take the following steps to remedy the violations that OCR identified:

- The University will complete its investigation of the formal complaints filed by Complainants A and B in April 2021, and make an offer to reimburse Complainants A and B for any out-of-pocket counseling costs if the University determines that the conduct alleged is substantiated and created a hostile environment on the basis of sex.
- The University will conduct a review of all Title IX complaints for the 2018-2019, 2019-2020 and 2020-2021 school years to ensure that each complaint was resolved in compliance with Title IX, and if not, offer appropriate remedies.
- The University will conduct a review of all complaints against the Professor from 2018-2021 to assess whether his conduct created a hostile environment on the basis of sex, and if so, whether any other students, including Student C, are entitled to appropriate remedies.
- The University will provide OCR with a spreadsheet documenting its investigation and resolution of all sexual harassment complaints for the 2023-2024 and 2024-2025 school years.
- The University will conduct a survey of students to determine if it needs to take additional steps to address sexual harassment on its campus and report to OCR for approval its recommended responsive actions.
- The University will review its Title IX Policy and Procedures and make revisions, if necessary, to comply with Title IX, provide Title IX training to University faculty and staff, and post its Title IX training materials on its website.

CONCLUSION

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. The complainant 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, 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.

Thank you for your cooperation in this matter. If you have any questions, please contact Michael Branigan at 215-656-8516 or michael.branigan@ed.gov.

Sincerely,

/s/

Beth Gellman-Beer
Director
OCR Philadelphia