



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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KENTUCKY
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May 18, 2023

IN RESPONSE, PLEASE REFER TO: 03222243

VIA E-MAIL ONLY: president@umes.edu

Dr. Heidi M. Anderson, President
University of Maryland Eastern Shore
J.T. Williams Hall, Suite 2107
11868 Academic Oval
Princess Anne, MD 21853-1299

Dear President Anderson:

This is to notify you of the resolution of the above-referenced complaint filed with the Office for Civil Rights (OCR) of the U.S. Department of Education against the University of Maryland Eastern Shore (the University). OCR received a complaint filed by an attorney (the Complainant) on behalf of her client, XXXXXXXXXXXXXXXXXXXX. OCR investigated whether the University discriminated against XXXXXX on the basis of sex and retaliated against her, and whether the University discriminated against female athletes on the basis of sex.

Specifically, OCR investigated whether:

1. the University discriminated against XXXXXX on the basis of sex when it failed to properly investigate the Title IX complaint filed by XXXXXXXXXXXXXXXXXXXX, with the University's Office of Institutional Equity (OIE).

OCR also investigated whether the University retaliated against XXXXXXXXXXXXXXXXXXXX XX, XXX, when:

2. XX XX XXXXXX;
3. XX XXXXXXXXXXXXXXXX;
4. XX XX XXXXXXXXXXXXXXXX
5. XX XX.

Finally, OCR investigated whether the University discriminated against females at the University on the basis of sex, because it fails to provide equal opportunities to female athletes in its intercollegiate athletic program in the following areas:

6. interests and abilities;
7. equipment and supplies;
8. scheduling of games and practice times;
9. travel and per diem allowance;
10. availability, assignment, and compensation of tutors;
11. assignment and compensation of coaches;
12. locker rooms, practice, and competitive facilities;
13. medical and training facilities and services;
14. publicity; and
15. recruitment.

OCR enforces Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, and its implementing regulation, 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any education program or activity operated by a recipient of Federal financial assistance. Title IX also prohibits retaliation. As a recipient of Federal financial assistance from the Department, the University is subject to Title IX and its implementing regulations. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

In reaching a determination, OCR reviewed documents and information provided by the Complainant, XXXXXX, and the University. OCR also interviewed XXXXXX and other University staff.

The University requested to voluntarily resolve Allegations 1 and 6-15 and, on April 26, 2023, entered into a Voluntary Resolution Agreement with OCR to resolve these allegations. OCR has determined that there is insufficient evidence to support a finding of retaliation with regard to Allegations 2-5. An explanation of our findings is below.

Background Information

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XXXXXX. XX.
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ALLEGATIONS 1, 6-15: VOLUNTARY RESOLUTION AGREEMENT

Allegation 1: Failure to properly investigate XXXXXXXXXXXXXXXXXXXXXXX

Legal Standard

The Title IX regulation, at 34 C.F.R. § 106.8(c), requires recipients to adopt and publish grievance procedures that provide for the prompt and equitable resolution of student and employee complaints of Title IX violations other than formal complaints of sexual harassment. A recipient

Facts

The University stated that its *Policy and Procedures on Sexual Harassment, Other Forms of Sexual Misconduct and Gender-Based Discrimination* (the Policy) applies to the XXXXX Title IX complaint to OIE. OCR reviewed the Policy and notes that it describes prohibited conduct that meets the definition of harassment, rather than general discrimination or different treatment on the basis of sex. Moreover, the definitions in the Policy all pertain to complaints of sexual harassment filed against a specific individual (the Respondent).

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Analysis

Based on OCR’s review, the Policy does not appear to apply to complaints of different treatment on the basis of sex. The title of the Policy states that it applies to “Sexual Harassment, Other Forms of Sexual Misconduct and Gender-Based Discrimination” but the Policy itself defines gender-based discrimination as conduct based on sex. The Policy addresses the steps the University should take to address complaints of “Prohibited Conduct” and assumes that the complaint is against a particular person, or Respondent. Here, the XXXXXXX complaint involved different treatment on the basis of sex, not conduct by a particular person.

Further, even if OCR were to find that the Policy applies to the XXXXXXX complaint, OCR has concerns about how the University applied the Policy to the XXXXX complaint. According to the University’s own statement to OCR, it did not finish its investigation, nor did it provide any kind of written outcome of the results of its investigation to XXXXX, as required by the Policy. The Policy also required that the resolution of the XXXXX formal complaint be completed within 120 days; however, at the time XXXXX filed this complaint with OCR in XXXXXXXXXX, her formal complaint with the University had been unresolved for over a year. While the Policy provides for an extension of time to investigate the complaint, none of the documentation submitted by the University addressed this delay or the reason for it.

Allegations 6-15: Systemic Title IX Athletics Allegations

The Complainant alleged the University discriminates against females on the basis of sex, because it fails to provide equal opportunities to female athletes in its intercollegiate athletic program in various areas.

Legal Standards

The Title IX regulation, at 34 C.F.R. § 106.41(a), provides that no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club, or intramural athletics offered by a University.

Allegation 9: Travel and per diem allowance. The Complainant alleges that, for the 2021-2022 season, the men's basketball team took chartered planes as transportation to away games and the women's basketball team took a bus.

[illegible][illegible][illegible]

Analysis

Based on the information provided to OCR thus far, OCR has identified concerns that the University may not be providing equal athletic opportunity for members of both sexes in each of the areas alleged above.

Resolution Agreement

Consistent with OCR's procedures, the University requested to resolve Allegations 1 and 6-15 through a Voluntary Resolution Agreement (Agreement) and OCR determined that such a resolution was appropriate. The University signed the enclosed agreement on April 26, 2023, which, when fully implemented, will address the evidence obtained and concerns noted by OCR regarding Allegations 1 and 6-15. The Agreement requires the University to revise its policy for addressing complaints of discrimination on the basis of sex, train certain personnel on the new policy, and investigate XXXXX complaint XXXXXXXXX pursuant to the new policy. With

[illegible]

ALLEGATIONS 2-5: INSUFFICIENT EVIDENCE OF A VIOLATION OF TITLE IX

Legal Standards

In analyzing an individual's claim of retaliation against a recipient, OCR analyzes whether: (1) the individual experienced an adverse action caused by the recipient; (2) the recipient knew that the individual engaged in a protected activity; and (3) there is some evidence of a causal connection between the adverse action and the protected activity. In determining whether an action taken by a recipient is adverse, OCR considers whether the alleged adverse action caused lasting and tangible harm, or had a deterrent effect. Merely unpleasant or transient incidents usually are not considered adverse. If all these elements are present, this establishes an initial, or *prima facie*, case of retaliation. OCR then determines whether the recipient has identified a legitimate, non-retaliatory reason for taking the adverse action or whether the reason is a pretext for retaliation.

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CONCLUSION

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.

If you have any questions, please contact Sarah Haake at sarah.haake@ed.gov; 215-656-6416.

Sincerely,

/s/

Catherine C. Deneke
Supervisory Attorney
Philadelphia Office

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Attachment

Cc: Kristin H. McFarlane, Counsel for the University (via email only)