



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VII
KANSAS
MISSOURI
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August 8, 2018

Sent via email only to XXXXX@XXXXX.XXXXX

XXXXX XXXXX, General Counsel
XXXXX XXXXX XXXXX
XXX XXXXX XXXXX XXXXX
XXXXX, Oklahoma XXXXX

Re: Northeastern State University
OCR Case Number 07-13-2064

Dear XXXXX XXXXX:

On March 12, 2013, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint alleging discrimination on the bases of race and sex by Northeastern State University (University), Tahlequah, Oklahoma. This letter is to confirm that the University has voluntarily submitted a Resolution Agreement (Agreement) to OCR to resolve this complaint.

The Complainant alleged that the University:

1. discriminated against her son (the Student), who attended the University during the Fall 2012 semester, on the basis of race (part African American) by failing to take prompt and effective action to stop and address the racial harassment of the Student, including verbal harassment and acts of racial violence, by other students; and
2. discriminated against the Student on the basis of sex by failing to take prompt and effective action to stop and address the sexual harassment of the Student by other students.

OCR is responsible for enforcing:

- Title VI of the Civil Rights Act of 1964 (Title VI), 42 United States Code (U.S.C.) § 2000d, and its implementing regulation, 34 Code of Federal Regulations (C.F.R.) Part 100. Title VI prohibits discrimination on the basis of race, color, or national origin by recipients of Federal financial assistance (FFA).
- 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 in any education program or activity operated by a recipient of FFA.

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

As a recipient of FFA from the Department, the University is subject to Title VI and Title IX. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

To protect individuals' privacy, OCR has not used the names of the Complainant, the Student, University employees, or other parties in this letter.

Legal Standards

General Requirements

Universities that receive FFA from the Department may violate Title VI, Title IX, and their implementing regulations when harassment of students based on race, color, national origin, or sex is sufficiently serious that it creates a hostile environment, and such harassment is encouraged, tolerated, not adequately addressed, or ignored by university employees. Harassing conduct may take many forms, including: verbal acts and name-calling; graphic and written statements, which may include use of cell phones or the Internet; or other conduct that may be physically threatening, harmful, or humiliating. Harassment does not have to include intent to harm, be directed at a specific target, or involve repeated incidents. Harassment creates a hostile environment when the conduct is sufficiently severe, pervasive, or persistent so as to interfere with or limit a student's ability to participate in or benefit from the services, activities, or opportunities offered by a university. When such harassment is based on race, color, national origin, or sex, it violates Title VI and Title IX, respectively.

A university is responsible for addressing harassment incidents about which it knows or reasonably should have known. When responding to harassment, the university must take immediate and appropriate action to investigate or otherwise determine what occurred. The specific steps in a university's investigation will vary depending upon the nature of the allegations, the source of the complaint, the age(s) of the student(s) involved, the size and administrative structure of the university, and other factors. In all cases, however, the inquiry should be prompt, thorough, and impartial.

If an investigation reveals that discriminatory harassment has occurred, a university must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring. These duties are the university's responsibility regardless of whether a student has complained, asked the university to take action, or identified the harassment as a form of discrimination. Appropriate steps to end harassment may include separating the accused harasser and the target of the harassment, providing counseling for the target and/or harasser, or taking disciplinary action against the harasser.

In addition, depending on the extent of the harassment, a university may need to provide training or other interventions not only for harassers, but also for the larger university community to ensure that students, administrators, faculty, and staff can recognize harassment if it recurs and know how to respond. A university may be required to provide additional services to the student who was harassed in order to address the effects of the harassment, particularly if the

institution's initial response to the harassment is delayed, or the response is inappropriate or inadequate. An effective response may include the issuance of new policies against harassment and new procedures by which students and employees may report allegations of harassment.

A university should take steps to stop further harassment of a student, and prevent retaliation against individuals who make harassment complaints (or were the subject of the harassment) and against those who provided information as witnesses. The university's responsibilities include making sure that harassed students know how to report any subsequent problems, conducting follow-up inquiries to see if there have been any new incidents or any instances of retaliation, and responding promptly and appropriately to address both continuing and new problems.

Sexual Harassment

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 that receives FFA from the Department. Specific obligations are set forth at 34 C.F.R. § 106.31(b), including a recipient's obligation to ensure that its students are not denied or limited in their ability to participate in or benefit from the recipient's programs or activities on the basis of sex.

Sexual harassment is a form of sex discrimination prohibited by Title IX. Sexual harassment is unwelcome conduct of a sexual nature, and includes unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Sexual harassment of a student, whether by another student, employee, or third party, creates a hostile environment if the conduct is sufficiently serious that it denies or limits a student's ability to participate in or benefit from a university's programs or activities.

To determine whether sexual harassment has created a hostile environment for one or more university students, OCR considers all relevant circumstances, including: the degree to which the conduct affected one or more students' education; the type, frequency, and duration of the conduct; the identity of and relationship between the alleged harasser and the subject(s) of the harassment; the number of individuals involved; the age and sex of the alleged harasser and the subject of the harassment; the size of the university, location of the incidents, and the context in which they occurred; other incidents at the university; and whether there were also incidents of gender-based harassment. A sexually hostile environment may deny or limit a student's ability to receive the benefits, services, or opportunities of a university's program even if there are no tangible effects on the student (e.g., a drop in the victim's grades).

The more severe the sexually harassing conduct, the less of a need there is to show a repetitive series of incidents in order to establish a hostile environment. This is particularly true if the harassment is physical in nature. A single or isolated incident of sexual harassment may, on its own, if sufficiently severe, create a hostile environment. Moreover, a series of incidents involving different students could, taken together, create a hostile environment even if each by itself would not be sufficient. If there is a dispute about whether harassment occurred, determinations should be made based on the totality of the circumstances. In making such a

determination, OCR considers evidence such as: statements made by witnesses to the alleged incident; evidence about the relative credibility of the alleged victim of the harassment and the alleged harasser (e.g., the level of detail and consistency of each person's account should be compared to one another and to the existence or lack of corroborative evidence); evidence that the alleged harasser has been found to have harassed others; evidence that the alleged victim has made false allegations against other individuals; evidence of the alleged victim's reaction or behavior after the incident; evidence about whether the alleged victim filed a complaint or took other action to protest the conduct after it had occurred (note that failure to immediately report may not be indicative that the alleged harassment did not occur); and any other contemporaneous evidence.

A university must consider the effects of off-campus misconduct when evaluating whether there is a hostile environment on campus or in an off-campus education program or activity. This includes a review of misconduct that did not occur in the context of an education program or activity but may have had such an impact.

Certain acts of sexual harassment, such as unwelcome sexual touching, may be criminal in nature, in which case it may be appropriate for a university to contact law enforcement authorities. However, contacting law enforcement authorities does not relieve a university of its obligation to investigate and address acts of sexual harassment. The legal standards applied for criminal investigations are different than the standards applied under Title IX. Consequently, a university may not rely on a police investigation to fulfill its Title IX obligations. Further, certain remedies, such as separating the student reporting the harassment from the alleged perpetrator in classes, can only be implemented by the university and are the university's responsibility.

Title IX Notice of Nondiscrimination and Grievance Procedures

The regulation implementing Title IX at 34 C.F.R. § 106.9(a), requires each recipient of FFA, including universities, to implement specific and continuing steps to notify applicants for admission and employment, employees, sources of referral of applicants for admission and employment, and all unions and professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of sex in the educational program or activity it operates, and that it is required by Title IX not to discriminate in such a manner.

The regulation implementing Title IX at 34 C.F.R. § 106.8(a), requires a recipient to designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX, including the investigation of any complaint communicated to the recipient alleging its noncompliance with Title IX or alleging any actions that would be prohibited by Title IX. The recipient must notify all of its students and employees of the name or title, office address, and telephone number of the designated employee(s).

The Title IX regulation, at 34 C.F.R. § 106.8(b), requires recipients to adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints alleging any action that would be prohibited by Title IX, including sex discrimination, sexual violence, and other types of sexual harassment. The procedures for addressing and resolving complaints of

sex discrimination should be written in language that is easily understood, should be easily located, and should be widely distributed.

OCR has identified a number of elements it considers when evaluating whether a recipient's grievance procedures are prompt and equitable, including whether a recipient:

- provides notice to students and employees of the procedures, including where complaints may be filed;
- applies the procedures to complaints alleging discrimination carried out by students, employees, and third parties;
- ensures an adequate, reliable, and impartial investigation of complaints, including the opportunity for both the complainant and respondent to present witnesses and other evidence;
- designates and follows a reasonably prompt timeframe for the major stages of the complaint process;
- provides notice to the parties of the outcome of the complaint; and
- provides an assurance that the recipient will take steps to prevent recurrence of any sex discrimination found to have occurred and to remedy its discriminatory effects, as appropriate.

There is no fixed timeframe under which a recipient must complete a Title IX investigation. OCR will evaluate a school's good faith effort to conduct a fair, impartial investigation in a timely manner designed to provide all parties with resolution.

An equitable investigation of a Title IX complaint requires a trained investigator to analyze and document the available evidence to support reliable decisions, objectively evaluate the credibility of parties and witnesses, synthesize all available evidence—including both inculpatory and exculpatory evidence—and take into account the unique and complex circumstances of each case. In addition, a recipient should ensure that all designated employees have adequate training regarding what conduct constitutes sex discrimination and are able to explain how a recipient's grievance procedures operate.

Racial Harassment

Under Title VI and its implementing regulation at 34 CFR § 100.3, no individual may be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination on the ground of race, color, or national origin under any program or activity that receives FFA from the Department. Racially based conduct that has such an effect and that consists of different treatment of students on the basis of race by recipients' agents or employees, acting within the scope of their official duties, violates Title VI. The existence of a racially hostile environment that is created, encouraged, accepted, tolerated, or left uncorrected by a

recipient also constitutes different treatment on the basis of race in violation of Title VI.

Student-on-student harassment based on race, color, or national origin (hereafter referred to as “racial harassment”) creates a hostile environment if it is so severe, persistent, or pervasive that it denies or limits a student’s ability to participate in or benefit from a university’s programs or activities. Once a university has notice of a hostile environment caused by racial harassment, it has a legal duty under Title VI to take reasonable steps to eliminate it, prevent the recurrence of the harassment, and address the effects of the harassment. OCR will evaluate the appropriateness of a university’s response to a racially hostile environment by examining reasonableness, timeliness, and effectiveness. Examples of possible elements of appropriate responsive action by a university include the imposition of disciplinary measures, development and dissemination of a policy prohibiting racial harassment, implementation of racial awareness training, and provision of counseling for victims of racial harassment.

Preliminary Investigative Findings

Background Information

The Student is 24 years old and is biracial (African American and Caucasian).¹ He attended the University in August and September 2012 as a freshman, and lived in an on-campus dormitory. The Student decided to attend the University because his friend (Student 1), who is Caucasian, enrolled there. Student 1, who was also a freshman during the 2012-13 school year, lived in an off-campus apartment at the time.

Alleged Harassment of the Student

According to the Complainant, around the first day of the 2012-13 school year, University students who were members of the Phi Lambda Chi fraternity used a racial slur, telling the Student he could not join the fraternity because he is a “n-----” (hereafter referenced as “the n-word”). The Student told OCR he did not have any interest in joining Phi Lambda Chi, but spent time around Phi Lambda Chi fraternity members while at the University because Student 1 joined Phi Lambda Chi and associated with other fraternity members. The Complainant told OCR members of the Phi Lambda Chi fraternity frequently called the Student the n-word and physically attacked him during the time he attended the University. She stated that on one occasion, a fraternity member kicked the Student in the head, and that on at least two occasions, fraternity members choked the Student to the point of unconsciousness and beat him.

The Student told OCR that about a week or two after he arrived at the University, he and Student 1 attended an evening social event at one of the Phi Lambda Chi fraternity members’ homes. The Student said that while they were at the member’s home, he heard a Phi Lambda Chi fraternity member say the n-word. When the Student asked which fraternity member had said the n-word, some of the fraternity members asked if he was trying to start a fight. The Student replied in the negative and went outside. According to the Student, fraternity members followed him outside, and one member held him while another fraternity member picked him up by the

¹ Prior to opening this complaint for investigation, OCR received a signed consent form from the Student giving OCR permission to disclose his identity as needed to investigate the complaint.

neck and choked him to the point of unconsciousness. He said Student 1 watched this happen and did nothing to stop it. The Student told OCR he woke up several hours later in the front yard of the fraternity member's house, then went to his dormitory room and called the Complainant. The Complainant told OCR she drove to the University in the middle of the night after receiving the Student's phone call and took him home for the weekend, then brought him back to the University.

According to the Student, a few days after the choking incident, he was at Student 1's apartment when several Phi Lambda Chi fraternity members arrived. He said the fraternity members started calling him the n-word and "messing with him," so he went inside Student 1's apartment and sat down on the couch. The Student told OCR one of the fraternity members (Student 2), who was drunk, followed him inside, yelled racial epithets at him, hit him, and kicked in the side of the head with his boot. The Student said one of the fraternity members tried to pull Student 2 off of him. The Student told OCR he walked home after the incident and called the Complainant. The Complainant told OCR she drove to the University late at night after receiving the Student's phone call and took him home for the weekend, then brought him back to the University.

The Student told OCR that after the incident at Student 1's apartment, four members of the Phi Lambda Chi fraternity (including Student 2), continued to call him the n-word when they saw him. He said that about a month into the school year, the four fraternity members harassed him at a local nightclub by yelling at him while he was trying to talk to other people. They did not hit or otherwise touch him at the nightclub. When asked by OCR in July 2013 how many times total he was called the n-word by Phi Lambda Chi fraternity members, the Student initially guessed that it happened 20 to 30 times, then changed his answer to "daily," after the Complainant, who was listening in on OCR's telephone interview with the Student, said that it happened daily.

The Student and the Complainant told OCR that while the Student attended the University, members of the Phi Lambda Chi fraternity also made repeated sexual comments to the Student that were a play on XXXXX XXXXX. The Student said he was used to having students XXXXX XXXXX XXXXX XXXXX XXXXX in high school and found the racial name-calling he experienced much more offensive than the sexual comments.

According to the Complainant, while the Student attended the University, he called her crying about once a week, begging her to come get him. The Complainant said the Student refused to let her take him to a hospital or health clinic even though he was bruised when she picked him up. The Complainant said a member of the Phi Lambda Chi fraternity threatened to come after the Student if he told anyone about what the fraternity members were doing to him. According to the Complainant, the verbal and physical harassment the Student experienced while attending the University caused him to become XXXXX XXXXX and XXXXX.

On XXXXX XXXXX, 2013, the Student was XXXXX by a University police officer for XXXXX XXXXX. The Student and XXXXX other students were on the XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX, and all XXXXX were XXXXX. According to the Complainant, the Student was XXXXX XXXXX. The Student cooperated with the XXXXX officer and did not say anything to the

officer about XXXXX XXXXX or XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX. The Student's University roommate told OCR the Student did not XXXXX XXXXX XXXXX XXXXX XXXXX at the time he was XXXXX for XXXXX XXXXX, and that the XXXXX XXXXX the Student XXXXX XXXXX when he was XXXXX was only XXXXX XXXXX XXXXX XXXXX of the XXXXX.

The Student's roommate told OCR that he never heard any students use racial epithets towards, or about, the Student, never heard any students make sexual comments to or about the Student, and never saw the Student with any bruises, choke marks, or other signs of having been in a fight. The roommate recalled overhearing the Student say something to the Complainant on the phone about Phi Lambda Chi fraternity members harassing him shortly before the Student left the University, but could not remember any details about what the Student said. He also recalled overhearing the Student talk to the Complainant on the phone about a party that "got out of hand," but did not remember the details of the conversation.

The Complainant forced the Student to withdraw from the University on September XXXXX, 2012, "for his health and safety." Because it was so early in the semester, the Student had not received grades in any of his classes at the time he withdrew.

Reporting of Harassment to University Personnel

The Student told OCR the Phi Lambda Chi fraternity members who harassed him never did it in front of any University employees. According to the Complainant, from the first week of school throughout the time the Student attended the University, she repeatedly contacted the University's director of counseling services (director) to report the racial and sexual name-calling and physical attacks the Student was subjected to by Phi Lambda Chi fraternity members. (The director subsequently became the University's assistant vice president of student affairs.) The Complainant said the director told her the Student needed to report the incidents himself, even though the Complainant informed the director that the Student was too XXXXX XXXXX to talk about the incidents.

According to the University, the first time the Complainant contacted the director was on XXXXX XXXXX, 2012, XXXXX days before the Student withdrew from the University. The director said the Complainant reported that the Student was called the n-word and knocked unconscious at a fraternity party but was unable to provide any details regarding the event, the Student's injuries, or the name of the fraternity. The Complainant also told the director the Student refused to report what happened for fear of retaliation. According to the University, on September 18, 2012, the Complainant told the director via telephone that she wanted to sue the University because the Student was XXXXX from being beaten and called the n-word. The director encouraged the Complainant to have the Student file a report with the University.

The Student told OCR that about a month, or several weeks, into the 2012-13 school year, he went to the director's office and talked to her about the harassment he was experiencing. He said he went to her office a "few times" to talk with her, sometimes in tears, and that the director did not do anything about the harassment. In contrast, the director told OCR her first direct interaction with the Student was when he withdrew from the University and she helped check

him out (which is discussed in more detail below). The director said she had tried to contact the Student by phone and by email on September XXXXX, 2012, but he never responded to her.

The director met with the Student on September XXXXX, 2012, when he withdrew from the University, and helped him complete the paperwork necessary to withdraw. On his withdrawal form, the Student provided the following reason for withdrawal: “B/c I got jumped by some fraternity a few times for being black and the friend I came here with turned on me, I also have XXXXX problems back home.” The director asked the Student if he wanted to file a complaint against the fraternity members and he said he did, so she took him to the University’s coordinator for student rights and responsibilities (coordinator), who gave the Student a University complaint form to complete.

The Student completed the University complaint form on September XXXXX, 2012, and turned it in to the coordinator. On the complaint form, the Student identified two incidents he was complaining about: one on September XXXXX at a “XXXXX house by [the] XXXXX XXXXX on campus,” and one on September XXXXX at his friend’s house “off XXXXX XXXXX.” Under the section of the form that asked for the names of the individuals involved in the incidents, the Student listed four male students. He provided a first and last name for Student 2, and only first names for the other three students. Under the section of the form that asked for a description of the incident(s), the Student wrote:

We were all just hanging out talking about the fraternity, and they started just hating on me, calling me a n----- and other racial terms. Then it began to escalate and one of them pushed me first, so I pushed back and they pretty much just all jumped me, all I remember is waking up in the front yard. Second incident was at my friend [Student 1’s] house and this kid named [Student 2] got pissed off cuz [sic] I slammed his door and it wasn’t [sic] even that kid’s [sic] house, and he come in there started choking me, punched me in the face busted my lip, and kicked me in the side of the head with boots.

University’s Investigation Into Alleged Harassment

According to the director, the same day she received the first phone call from the Complainant about the alleged harassment of the Student, she contacted the coordinator, who helped her search the first names the Complainant provided her for the alleged harassers to see if any of the names matched up with those of fraternity students on campus. (At the time, the Complainant did not know the name of the fraternity.) The director told OCR there were no matches.

After her initial call with the Complainant, the director asked two of her staff members to conduct a wellness check on the Student, which consisted of going to his dormitory room with someone from the Housing Department, e.g., a resident assistant, to talk with him. According to the director, the staff members attempted the wellness check several times, but Student was never in his room. The director told OCR she also asked the assistant director of student housing to keep an eye on the Student, but did not provide the assistant director any information about the alleged harassment.

On or around October XXXXX, 2012, the Complainant called the Regional University System of Oklahoma (which governs six universities in Oklahoma, including the University) and complained to its executive director about the harassment the Student experienced at the University. The executive director contacted the University president about the Complainant's call, and the president then contacted the director of public safety (police chief) who oversees the University's Police Department. The president told the police chief that the Complainant alleged the Student was harassed at the University and asked the Police Department to investigate. He provided the police chief the Complainant's name and telephone number and the Student's name, but did not provide the police chief any details regarding the alleged harassment or harassers. The police chief assigned the matter to a detective in her department (detective), who is a commissioned police officer.

The detective talked with the Complainant five times by telephone between October 10 and October 25, 2012, and left her two voicemail messages. He repeatedly told the Complainant he needed to talk to the Student, and each time she said the Student was asleep or otherwise unavailable. The detective told OCR the Complainant informed him that the Student was being harassed by "some fraternity," but never provided him the name of the fraternity, the names of the alleged harassers, or any details about the alleged harassment.

On October 25, 2012, the police chief asked the detective to contact the District Attorney's Office to see if it would file charges regarding the alleged harassment of the Student. The detective told the police chief he had not been able to talk with the Student yet to determine if a crime had been committed or by whom. The police chief directed him to contact the District Attorney's Office anyway. The detective talked with an assistant district attorney on October XXXXX, 2012, about the alleged harassment of the Student. The assistant district attorney told the detective his office would need a statement from the victim before it would file any charges in the case.

The detective closed his investigation into the alleged harassment of the Student because he was unable to contact the Student or to determine what, if any, crime occurred. No one from the University ever informed the detective or the police chief that the Complainant had provided details about the alleged harassment to the director, or that the Student had completed a University complaint form. The detective and police chief told OCR they would have pursued an investigation into the alleged harassment of the Student if they had more information about the alleged harassment, such as the names of the individuals involved, even if they continued to have difficulty contacting the Student.

In October 2012, the University's vice president of student affairs (vice president) contacted the executive director of the Phi Lambda Chi fraternity (a national officer who is also an alumnus of the University) and asked him to look into the alleged harassment of the Student.² The vice president told the executive director the Complainant had complained about the Student being harassed by Phi Lambda Chi fraternity members but did not provide the executive director any details about the alleged harassment.

² The executive director of Phi Lambda Chi is not an attorney or law enforcement officer.

The executive director held an informal meeting with approximately five Phi Lambda Chi fraternity members, and told OCR he did not document, or recall, which members he met with. The fraternity members told the Phi Lambda Chi executive director there were two incidents with the Student at personal residences of Phi Lambda Chi members where the Student tried to XXXXX XXXXX XXXXX and was asked to leave. The fraternity members told the executive director “scuffles” with the Student broke out each time but were brief, and that no one was injured. One of the fraternity members also reported to the executive director that the Complainant had left a threatening voicemail message on his parents’ answering machine in the middle of the night. The Phi Lambda Chi executive director believed what the fraternity members told him and provided a summary of his findings to the vice president in October 2012.

The vice president told OCR she thought she asked the director and/or coordinator to try and identify the fraternity members who allegedly harassed the Student and that they were unable to do so. The vice president also recalled asking the director and/or coordinator to contact Student 1 about the alleged harassment, but neither the director nor the coordinator recalled interviewing, or having one of their staff members interview, Student 1. No one from the University interviewed the alleged harasser the Student identified by first and last name on the University complaint form he completed (Student 2), or the Student’s University roommate.

The Complainant told OCR the University did not do anything to stop the racial and sexual harassment of the Student. The Complainant also stated that once she told University personnel she was going to contact an attorney, they would no longer speak with her about what happened to the Student.

Additional Information

In November 2012, the Complainant contacted the director about a letter the Student received from the University’s Financial Aid Department regarding money he owed the University. The Complainant did not feel the Student should have to pay anything to the University given the harassment he experienced there. The Complainant also spoke with the vice president in January 2013 about the money the Student owed the University. University administrators decided to drop the fees the Student owed.

The Complainant told OCR in March 2013 that a family doctor XXXXX the Student XXXXX and directed the Complainant to XXXXX XXXXX XXXXX XXXXX XXXXX, but she did not have XXXXX XXXXX to XXXXX XXXXX the Student’s XXXXX and could not XXXXX to XXXXX XXXXX XXXXX XXXXX. The Complainant subsequently took the Student to XXXXX XXXXX XXXXX. The Student told OCR in July 2013 that the XXXXX XXXXX him XXXXX XXXXX XXXXX but did not XXXXX him any XXXXX because he and his family could not XXXXX XXXXX.

At the time OCR opened this complaint, the Complainant said the Student was too XXXXX XXXXX to talk with OCR staff about the harassment he endured at the University. An OCR staff member was subsequently able to interview the Student by telephone in July 2013.

The University's Phi Lambda Chi chapter for the 2012-13 school year was made up of 24 fraternity members. Thirteen of the fraternity members were white, nine were American Indian or Alaska Native, one was a white Hispanic/Latino, and one was Asian. Two of the four first names the Student listed on the University complaint form he filled out on September XXXXX, 2012, matched up with the names of Phi Lambda Chi fraternity members provided to OCR by the University. The list of fraternity members the University provided to OCR did not show Student 2 as being a Phi Lambda Chi member, but a Facebook search conducted by OCR in August 2013 showed Student 2 was "Facebook friends" with several Phi Lambda Chi members. The Facebook page of one of the alleged harassers identified by the Student contained postings at the time OCR accessed it in August 2013, and again in January 2018, that could be viewed as derogatory towards African Americans.

The University informed OCR in 2013 that it generally handled complaints about student-on-student harassment the same way, regardless of whether a complaint was about racial harassment, sexual harassment, or another type of harassment. The University also indicated at the time that it was in the process of developing grievance procedures for student complaints of harassment/discrimination and working on improving its process for investigating such complaints.

Outreach to African American University Students

The Complainant told OCR that while the Student was attending the University, he talked with a couple of African American students who lived on campus and were on the football team about Phi Lambda Chi fraternity members harassing him. According to the Complainant, the African American students asked the Student if he wanted their help in "going after" the fraternity members who were harassing him, and he told them he did not.

The Student confirmed to OCR that he talked with one African American football player who lived in his dormitory (and the football player's roommate) about the harassment he was experiencing. He said he did not tell the player the names of the individuals who were harassing him, but told him the harassers were in Phi Lambda Chi, were harassing him daily, and were calling him the n-word. The Student said he asked the football player to walk with him when he went to eat on campus, and that the player regularly did so. The Student was only able to provide OCR the first name of the football player, and the name he provided did not align with any of the names on the football roster provided by the University (but could have been a nickname).

OCR sent an email in March 2014 to all of the African American football players who attended the University while the Student was there (41 students) seeking information about the racial climate at the University. The email did not identify the Complainant or the Student by name, but stated that OCR was investigating a complaint involving racial name-calling and physical attacks on a student by members of a University fraternity that allegedly took place in Fall 2012. OCR resent the email to the African American football players in April 2014. No one responded to either email.

OCR also sent an email in March 2014 to the African American members of the University's multicultural fraternities who attended the University while the Student was there. The email did

not identify the Complainant or the Student by name, but stated that OCR was investigating a complaint involving racial name-calling and physical attacks on a student by members of a University fraternity that allegedly took place in Fall 2012. OCR resent the email to the fraternity members in April 2014. One fraternity member responded to OCR's emails by telephone.

The African American fraternity member who responded to OCR's March and April 2014 emails did not know the Student or anything about the alleged harassment of the Student. With regard to the racial climate at the University, the fraternity member, who had been at the University for XXXXX years, stated that he had never been racially harassed or called the n-word by anyone at the University. He noted that he did not live on campus. When asked whether he ever witnessed or heard about any other African American students at the University being subjected to racial harassment or called racial names at the University or a University event, the fraternity member said he had witnessed it "every now and again," but "treats it as a cultural norm" when he sees it happen. He was not aware of any racial harassment or racial name-calling taking place in a University classroom or in front of any University employees. The fraternity member told OCR he would feel comfortable reporting racial harassment to University officials and thinks the University takes complaints about racial harassment seriously. He also stated that he would recommend the University to an African American student who was considering attending school there, and has done so in the past.

Recent Attempts to Contact the Student and February 2017 Call with the Complainant

In October 2016, OCR sent an email to the Complainant stating that OCR needed to communicate directly with the Student about this complaint and needed the Student's current contact information. The Complainant never responded to the email.

In November 2016, OCR sent a letter to the Complainant—which referenced its October 2016 email—stating that in order to proceed with the investigation of this complaint, OCR needed additional information from the Student. The letter asked the Complainant to provide the Student's current contact information along with additional information pertaining to the complaint to OCR by November 27, 2016. OCR enclosed, in its November 2016 letter to the Complainant, a separate letter to the Student stating that in order for OCR to proceed with investigating this complaint against the University, OCR needed the Student to answer the questions in the letter, including the following:

- Are you currently experiencing any negative effects from, or issues caused by, the racial and/or sexual harassment you experienced while you were a student at the University. If so, what negative effects or issues are you currently experiencing?
- If University police agree to investigate the physical harassment/violence you experienced while you were attending the University, are you willing to speak with the police about what happened to you?
- Do you have any interest in continuing your education at the University?

- What, if anything, do you feel the University should do to correct, or address, the racial and sexual harassment you experienced while you attended the University?
- Do you still want OCR to pursue your mother’s complaint against the University?

The Student never responded to the letter.

The Complainant left voicemail messages for an OCR staff member on November 28 and 30, 2016, in response to OCR’s November letters to her and the Student. OCR attempted to reach the Complainant by phone in December 2016 and January 2017, but she did not answer or return OCR’s calls.

On February 9, 2017, OCR sent another letter to the Complainant stating that if the Complainant and the Student did not contact OCR by the end of the month, OCR might close the complaint or limit its investigation to any systemic issues that warranted further investigation or resolution. An OCR staff member also left a voicemail message for the Complainant on February 9, 2017. The Complainant contacted OCR by phone on February 15, 2017, in response to OCR’s February 9 letter to her. During the call, the Complainant stated that the Student was still living with her. She told OCR she did not know his cell phone number, but would look it up and provide it to OCR.

The Complainant stated during her February 15, 2017 call with OCR that she had shared OCR’s November letter to the Student with him, and he questioned why OCR wanted information now when this complaint was filed several years ago. The Complainant said she was not sure if the Student would be willing to talk to OCR about the complaint because he is “pretty much done with it or wants to be,” and will never return to the University. The Complainant also stated during her February 15 call with OCR that the Student is still friends with Student 1, and Student 1 was at her house recently. OCR asked the Complainant for Student 1’s telephone number. The Complainant said she would ask Student 1 if she could share his telephone number with OCR or if he was willing to contact OCR regarding this complaint. OCR has not heard from the Complainant since speaking with her on February 15, 2017, nor has OCR heard from the Student or Student 1.

University’s Grievance Procedures

The University policy titled “Students: Gender-Based & Sexual Discrimination Policy and Procedure,” which is available on the University’s website, contains the University’s current grievance procedure for sex discrimination complaints (Title IX Grievance Procedure). The Title IX Grievance Procedure states that all sex discrimination incidents, including sexual misconduct and retaliation, should be reported to the University’s Title IX coordinator, and that the Title IX coordinator “will provide for the adequate, reliable, and impartial investigations on all complaints.” It also provides the name of and contact information for the Title IX coordinator.

The Title IX Grievance Procedure encourages complainants to use a University complaint form to file a sex discrimination complaint with the Title IX coordinator, and asks complainants to

provide as much of the following information as possible on the form: 1) the name, department, and/or position of the individual(s) causing the sex discrimination or retaliation; 2) a description of the incident(s), including the date(s), location(s), and presence of any witnesses; 3) the names of other students or employees who might have been subject to the same or similar sex discrimination or retaliation; 4) any steps the complainant has taken to try and stop the sex discrimination or retaliation; and 5) any other information the complainant believes is relevant to his or her complaint.

The Title IX Grievance Procedure states that once a sex discrimination complaint is made, the Title IX coordinator will assign at least two investigators who have “received appropriate training approved by the Title IX coordinator” to conduct an investigation into the complaint. According to the procedure, the investigation will be concluded as quickly as possible, “typically within seven calendar days or within a reasonable amount of time required to complete the investigation.”

The Title IX Grievance Procedure says the investigation into a sex discrimination complaint may include interviews of the parties involved and witnesses, and specifically states that the parties to the complaint may present witnesses and other evidence. The procedure notes that at any time during the investigation into a sex discrimination complaint, the investigators may recommend that interim protections or remedies for the parties involved or witnesses be provided by appropriate University officials, and that failure to comply with the terms of interim protections may be considered a separate violation of the University’s Student Conduct Code.

According to the Title IX Grievance Procedure, once the investigation into a complaint is concluded, a written report describing the factual findings gathered from the investigation will be submitted to the Title IX coordinator within three days, and the Title IX coordinator will determine whether further action is needed pursuant to University policy and/or state or federal law “and respond accordingly.” The Title IX Grievance Procedure does not require written notification to the parties of the outcome of a sex discrimination complaint investigation, but does state that students who bring any sort of sex discrimination complaint against faculty or staff “may be informed of the investigation and the resolution.” It also states that the University will take “reasonable steps” to prevent the recurrence of sex discrimination or retaliation in any form and “all necessary steps” to remedy the discriminatory effects of sex discrimination or retaliation on the victim(s) and others.

In a supplemental data request OCR issued to the University on February 28, 2017 (February Data Request), OCR asked whether the Student Grievance Procedures posted on the University’s website were currently in effect and if they applied to complaints filed by or on behalf of students alleging race discrimination, including racial harassment. The University informed OCR in March 2017 that the Student Grievance Procedures were in effect and do apply to complaints filed by or on behalf of students alleging race discrimination/racial harassment.

The Student Grievance Procedures state that a student may initiate a complaint against another student, a faculty member, or a staff member by filling out a University complaint form that is available online and in the office of the vice president for student affairs. The procedures state that the complaint “should be submitted as soon as possible after the event takes place.” The

complaint form asks for: the name, University ID number, phone number, and email address of the complainant; a description of “the incident,” including the date, time, and place of the incident, as well as the names of the individuals involved; and the complainant’s desired outcome. According to the Student Grievance Procedures, complaints against students should be reported to Student Affairs, complaints against faculty should be reported to Academic Affairs, and complaints against staff should be reported to the applicable department head.

The Student Grievance Procedures state that submitted complaints will begin in the University’s informal procedure process unless circumstances surrounding the reported incident(s) warrant immediately moving into the formal procedure process. They identify “allegations of discrimination, hazing, and acts of violence and abuse – sexual, physical, mental” as circumstances that warrant immediately moving to the formal procedure process. The section of the Student Grievance Procedures titled “Formal Grievance Procedures” states that the University’s coordinator for student rights and responsibilities, or designee(s), will investigate to resolve a complaint using the “Conducting Student Investigations” guidelines, and that the purpose of the investigation is to: 1) provide the requesting party sufficient information to determine if the incident warrants University action; 2) determine departmental jurisdiction; and 3) provide the hearing officers and/or boards that might be assigned to the complaint with sufficient information to assess University charges.

Under the section of the Student Grievance Procedures regarding formal grievances, if an alleged incident is found to have occurred, the coordinator of student rights and responsibilities, or appropriate personnel, will “take disciplinary and/or additional action as deemed appropriate under University policies.” The procedures further state that incidents involving students will be addressed through “the appropriate University policies and procedures,” and incidents involving employees will be addressed through “HR policies and procedures.”

In the February Data Request, OCR asked for a copy of the “Conducting Student Investigations” guidelines referenced in the Student Grievance Procedures. In response, the University provided OCR a copy of its Title IX Manual. The Title IX Manual includes: information about what Title IX says; a section with frequently asked questions about Title IX; information about the University’s Student Conduct Code, including the process for reporting potential Student Conduct Code violations, and student conduct process; and a copy of the Title IX Policy. The Manual does not include a section titled “Conducting Student Investigations” or address how the University investigates or addresses race discrimination or racial harassment complaints.

OCR asked in the February Data Request for a copy of all studies, reports, or survey results created or commissioned by the University since the beginning of the 2014-15 school year regarding racial and/or sexual harassment, including but not limited to the results of climate surveys issued to University students. The University responded in March 2017 that it had not created or commissioned any such studies, reports, or surveys during that time period.

Additional Data Submitted by the University in 2017

In the February Data Request, OCR stated that the University could submit to OCR any additional information it would like OCR to consider. In response, the University provided OCR

a summary from its Title IX coordinator of Title IX training sessions he attended in Fall 2016 and Spring 2017, as well as Title IX training sessions he provided during that time period. The Title IX trainings he provided included a Title IX overview in January 2017 for students who serve in leadership positions within University fraternities and sororities. In addition, the University submitted information to OCR regarding training the University provides to students about sexual assault.

Resolution

Prior to the completion of OCR's investigation into this complaint, the University voluntarily signed an Agreement (copy enclosed) on July 25, 2018, that, when fully implemented, will address general concerns identified through OCR's investigation to date. The Agreement requires the University to: incorporate additional information into and republish its Title IX Grievance Procedure; remove or revise and republish a University sexual assault, harassment, and assault grievance document; develop and publish an anti-harassment statement; develop and administer a student climate survey; develop and implement a policy/procedure to ensure information provided to University personnel regarding alleged racial/sexual harassment is documented and shared with University personnel responsible for investigating such harassment; and provide training to University personnel and Phi Lambda Chi fraternity members. Please consult the Agreement for further details.³

OCR considers this complaint resolved effective the date of this letter and will monitor the University's implementation of the Agreement. When OCR concludes that the University has fully implemented the terms of the Agreement, OCR will close the complaint. If the University fails to carry out the Agreement, OCR may resume investigating the complaint.

Recipients of federal funds are prohibited from intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by federal civil rights law. Complaints alleging such retaliation may be filed with OCR. 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 could reasonably be expected to constitute an unwarranted invasion of personal privacy if released.

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.

³ Based on the Student's failure to communicate with OCR despite repeated requests, the Agreement does not include remedies specific to the Student.

OCR is committed to prompt and effective service. If you have any questions, please contact XXXXX XXXXX, Attorney, at (816) 268-XXXX (voice) or (877) 521-2172 (telecommunications device for the deaf), or by email at XXXXX.XXXXX@ed.gov.

Sincerely,

/s/

XXXXX XXXXX
Supervisory Attorney

Enclosure