

**Emporia State University
Resolution Agreement
Docket # 07162043**

The Emporia State University (University), Emporia, Kansas, enters into this Resolution Agreement (Agreement) with the U.S. Department of Education, Office for Civil Rights (OCR), to resolve the above-referenced investigation and to ensure compliance with Title VI of the Civil Rights Act of 1964 (Title VI), Section 504 of the Rehabilitation Act of 1973 (Section 504), and Title II of the Americans with Disabilities Act of 1990 (Title II).

The Complainant alleged the University failed to timely resolve his October 14, 2015 internal grievance he filed with the University's human rights/affirmative action office, resulting in the failure to reasonably respond to address the hostile environment to which he was subjected in violation of 34 C.F.R. § 100.3 and 34 C.F.R. § 104.4.

A. Grievance Procedure

1. Within sixty (60) days from date of this Agreement, the University will review and revise its complaint and/or grievance procedure or develop a new complaint and/or grievance procedure to provide for prompt and equitable resolution of complaints alleging discrimination, harassment, and retaliation on the bases of race, color, national origin, disability, sex, and age.¹ The revised grievance procedure should incorporate appropriate due process standards and include at a minimum the following:
 - a) notice that the procedures apply to reports/complaints alleging all forms of discrimination on the bases of race, color, national origin, disability, sex, and age against employees, students or third parties;
 - b) notice to students and employees of where reports/complaints may be filed, including contact information for the Title IX Coordinator, Title II/Section 504 Coordinator, and any person designated to receive and respond to complaints of discrimination;
 - c) provisions for adequate, reliable and impartial investigation of reports/complaints, including the opportunity for both the complainant and alleged perpetrator to present witnesses and evidence;
 - d) designated and reasonably prompt time frames for the major stages of the investigative process, as well as the process for extending timelines, that apply equally to the parties to the complaint;
 - e) written notice to the complainant and alleged perpetrator of the outcome of the investigation and any appeals;
 - f) assurance that the University will take immediate and appropriate steps to stop any discrimination or harassment, prevent recurrence and remedy discriminatory effects on the complainant and others, if appropriate;

¹ The University has specifically designated a single discrimination complaint resolution process for allegations of "discrimination on the basis of race (including racial harassment), religion, color, sex (including pregnancy, sexual harassment, and sexual violence), disability, national origin, ancestry, age, status as a veteran, sexual orientation, marital status, parental status, gender identity and gender expression. "

- g) where the procedures allow the parties to have a lawyer or other representative at a hearing, a statement that both parties will have an equal opportunity to have lawyers/representatives present and that any restrictions on the lawyers/representatives' ability to speak or otherwise participate will be applied equally to both parties;
- h) appropriate definitions and examples of what types of actions may constitute discrimination (including sexual harassment, sexual assault, and sexual violence) including a clear and consistent definition of what does and does not constitute consent to sexual conduct;
- i) a statement clarifying that the University's policy and procedures for addressing complaints of discrimination, including sexual harassment, sexual assault and sexual violence, apply to: all University facilities, programs, and activities, including discrimination that occurs on campus, discrimination that occurs at off-campus programs or activities that are sponsored by the University, discrimination that occurs off-campus that has an effect on campus, the University's professional and graduate schools, and any harassment perpetrated by an employee, regardless of location, if in the context of the employee's provision of aid, benefits, or services to students;
- j) a statement that all responsible employees are expected to promptly report discrimination or harassment, including sexual assault and sexual violence that they observe or learn about;
- k) for complaints pursuant to Title IX, provisions that make clear the right of the victim not to appear in the hearing room or otherwise confront the alleged perpetrator during the grievance process, including any hearings or appeals;
- l) for complaints pursuant to Title IX, if the procedures allow for cross-examination of the parties, the procedures should strongly discourage allowing the parties to personally question or cross-examine each other during a hearing;
- m) for complaints pursuant to Title IX, provisions for confidential reporting, including informing a complainant that the University's ability to respond may be limited in the event of a request for confidentiality;
- n) provisions ensuring that the parties are afforded regular updates regarding the status of the investigation, as well as similar and timely access to any information used at hearings;
- o) provisions clarifying that any informal resolution mechanism set forth in the procedures will only be used if the parties voluntarily agree to do so; that the complainant should not be required to resolve the problem directly with the respondent; and a statement that there will be instances when the informal resolution mechanism is inappropriate (e.g., mediation is prohibited in cases of sexual assault, and in cases involving a student complaining of sexual harassment against an employee in a position of authority over the student); and that the complainant must be notified that he or she has the right to end the informal process at any time and begin the formal stage of the complaint process;
- p) a statement that the preponderance of the evidence standard will be used for investigating alleged discrimination and harassment complaints, including allegations of sexual violence, and a statement that it is the University's responsibility to determine whether discrimination and harassment, including sexual violence, has occurred;

- q) a statement that retaliation and retaliatory harassment is prohibited against any individual who files a discrimination complaint with the University or participates in a complaint investigation in any way, as well as a clear explanation of how retaliation or retaliatory harassment can be reported to the University;
- r) notice of a student's right to file a criminal complaint and a complaint of discrimination and/or harassment, including sexual violence, simultaneously, that the University may need to temporarily suspend the fact-finding aspect of an investigation briefly while the law enforcement agency is in the process of gathering evidence and that the University will promptly resume its investigation as soon as notified by the law enforcement agency that it has completed the evidence gathering process, or within 10 days, whichever is sooner;
- s) provisions ensuring that students are notified, in writing, of the availability of interim measures to protect students during the University's investigation of possible sexual harassment and during any judicial process, including appeals (such as University-enforced no contact orders, changes in class schedules, counseling, other mental health services, academic assistance, the ability to retake or withdraw from courses without penalty, etc.) and that the University will take steps to ensure, where possible, that such interim measures do not negatively impact the complainant;
- t) an assurance that the University will not allow conflicts of interest (real or perceived) by those handling the complaints;
- u) an assurance that the University does not consider evidence of past sexual relationships when making a determination regarding complaints of sexual harassment and sexual violence;
- v) notice of potential remedies for students;
- w) notice of potential sanctions against perpetrators;
- x) sources for counseling, advocacy and support; and
- y) a provision that notifies individuals they may file complaints with OCR. The provision should include the following contact information: U.S. Department of Education, Office for Civil Rights, One Petticoat Lane, 1010 Walnut, Suite 320, Kansas City, Missouri 64106-2106; Telephone: (816) 268-0550; Facsimile: (816) 268-0599; or Email: OCR.KansasCity@ed.gov.

REPORTING REQUIREMENT: Within ninety (90) days from the date of this Agreement, the University will provide OCR with a copy of the draft grievance procedure for OCR's review and approval. Upon receiving approval from OCR, the University will adopt and display the grievance procedure on the University's website. Within sixty (60) days of receiving approval of the policy, the University will provide OCR with documentation demonstrating the policy has been adopted and published on the University's website.

B. Training

Within ninety (90) days from the date OCR approves the grievance procedure, and annually thereafter, the University will conduct internal training for appropriate staff, faculty, and administrators regarding the University's revised grievance procedure, including the University's responsibility to investigate and respond to complainants alleging discrimination. The training will be conducted by an individual(s) knowledgeable about the

laws and issues pertaining to discrimination, harassment, and retaliation on the bases of race, color, national origin, disability, sex, and age.

REPORTING REQUIREMENT: Within thirty (30) calendar days of completing the training described in Item B of this Agreement, the University will provide OCR with documentation confirming the completion of this Item. The documentation must identify the following: 1) the date, time and location of the training; 2) the topics addressed at the training (the University may provide OCR an outline of the training and a copy of the materials disseminated at the training); 3) the name(s), title(s), and credentials of the individual(s) who conducted the training; and 4) the name and title of each University administrator or employee who attended the training (a sign-in sheet with the attendees' names and titles is sufficient). The University need not provide OCR documentation of subsequent annual training unless OCR requests such documentation.

C. Implementation of Grievance Procedure

The University will process grievances consistent with the OCR-approved procedure, including resolving grievances within the time frame specified in the grievance procedure of 60 calendar days, except for extensions of this time frame for good cause.

REPORTING REQUIREMENT: By December ____, 2016, and June ____, 2017, the University will provide OCR the following information for each grievance that the University receives after the date of this Agreement: a copy of the grievance; the date the University received the grievance; the current status of the grievance (intake, investigation, closed, other specified); the age of the grievance; if the grievance is closed, the date the grievance was closed, the reason the grievance was closed, and a copy of the closure letter; if the grievance was closed after sixty (60) calendar days, the reason why the grievance was closed after sixty (60) calendar days and documentation to support that reason; and, if the grievance is still open after sixty (60) calendar days, the reason why the grievance is still open, documentation establishing the reason why the grievance is still open, and the anticipated date of closure.

The University understands that OCR will not close the monitoring of this Agreement until OCR determines that the University has fulfilled the terms of this Agreement and is in compliance with the regulations implementing Title VI, Section 504 at 34 C.F.R. § 104.7(b), and Title II at 28 C.F.R. § 35.107(b), which were at issue in this case.

The University understands that by signing this Agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this Agreement and that all actions taken to comply with the requirements of the Agreement are subject to OCR's review and approval. Further, the University understands that during the monitoring of this Agreement, if necessary, OCR may visit the University, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the University has fulfilled the terms of this Agreement and is in compliance with the regulation implementing Title VI, Section 504 at 34 C.F.R. § 104.7(b), and Title II at 28 C.F.R. § 35.107(b), which were at issue in this case.

The University understands and acknowledges that OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of this Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10) or judicial proceedings to enforce this Agreement, OCR shall give the University written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

/s/ Allison Garrett

President, Emporia State University

7-12-16
Date