



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

ONE PETTICOAT LANE
1010 WALNUT STREET, SUITE 320
KANSAS CITY, MO 64106

REGION VII
ARKANSAS
KANSAS
MISSOURI
NEBRASKA
OKLAHOMA
SOUTH DAKOTA

September 30, 2020

Sent by email only, to: XXXX.XXXXX@XXXXX.com

XXXXX XXXXX XXXXX
XXXXX XXXXX XXXXX
XXXXX XXXXX XXXXX, XXXXX XXXX
XXXXX XXXXX, XXXXX XXXXX

Re: Northwest Missouri State University
OCR Case Number: 07172013, 07172066, 07172067, 07172068, and 07172069

Dear Mr. XXXXX:

On October 20, 2016, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received the above-referenced complaints against the Northwest Missouri State University (University), Maryville, Missouri, alleging discrimination on the bases of sex and age.

Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 et seq., and its implementing regulation at 34 C.F.R. Part 106, prohibit discrimination on the basis of sex in any program or activity receiving Federal financial assistance (FFA).¹ Under Title IX, OCR has enforcement jurisdiction over recipients of FFA from the Department. The Age Discrimination Act of 1975 (Age Discrimination Act), 42 U.S.C. §§ 6101 et seq., and its implementing regulation at 34 C.F.R. Part 110, prohibit discrimination on the basis of age in any program or activity receiving FFA. Under the Age Discrimination Act, OCR has enforcement jurisdiction over recipients of FFA from the Department. As a recipient of FFA from the Department, the University is subject to Title IX, the Age Discrimination Act, and OCR’s jurisdiction. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

OCR investigated whether the University discriminated against seven high school students (the Students) participating in a football camp at the University:

¹ An amended Title IX regulation went into effect on August 14, 2020 and can be viewed [here](#). However, the Title IX regulation in effect at the time of the underlying events associated with the above-referenced complaint serves as the basis for OCR’s determination in this matter, which is available [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/policy/rights/guid/ocr/sexoverview.html>.

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

1. on the basis of sex in violation of Title IX by failing to respond promptly and equitably to an allegation of sexual harassment;² and
2. on the basis of age in violation of the Age Discrimination Act by dismissing them from the football camp after the Students were accused of sexual harassment.

This letter is to confirm the University has voluntarily submitted a Resolution Agreement (Agreement), prior to the completion of OCR’s investigation under Section 302 of OCR’s Case Processing Manual (CPM), to resolve the Title IX allegation.³ For the reasons set out below, OCR has determined there is insufficient evidence to conclude the District discriminated on the basis of age, so OCR is closing the allegation of age discrimination. OCR’s decision is explained below. To protect individuals’ privacy, the names of employees, witnesses, and other parties were not used in the letter.

Evidence Obtained to Date

The University’s Title IX Policy states it is applicable to all persons participating in the University’s educational programs and activities, including third-party visitors on campus.

On XXXXX XXXXX, XXXX, approximately XX high school football players from the XXXXX XXXXX XXXXX XXXXX (District), including the Students, attended a three-day XXXXX camp at the University. At the time of the football camp, the Students ranged in age from 14 to 17 years old.

On the morning of XXXXX XX, XXXX, a cheerleading coach, who was attending a separate summer camp at the University, reported to the University that several people may have seen her undressing in front of the window of her dormitory room and may possibly have taken cell phone photos or videos of her from their dorm windows the night before. Although the cheerleading coach was unable to identify the individuals who may have seen and possibly photographed her, she identified the rooms from which she saw people looking at her using a photograph she took of the West Tower Suites from her dorm room. The cheerleading coach left the University with her cheerleading squad immediately after making the report.

Using the cheerleading coach’s photograph, a dormitory floor plan of the West Tower Suites, and camp registration records, the University identified the Students as the individuals assigned to the rooms identified by the cheerleading coach in West Tower Suites.

According to the High School Coach, sometime between 12:00 and 1:00 p.m. on XXXXX, XXXXX XX, XXXX, he was told to go to the office of the University’s Head Football Coach. When he arrived, he was told that a female cheerleading coach reported to the University that she

² Although OCR originally stated Allegation 1 as a due process issue under Title IX, OCR has reframed the allegation as stated above to be consistent with the Title IX regulations. Reframing the allegation did not alter OCR’s investigation of Allegation 1.

³ The Case Processing Manual is available on OCR’s website at <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.

may have been seen by some boys while undressing in her dorm room and that one of them may have taken a photo or video of her. The High School Coach said he was told the Students would have to leave camp. He asked if he could talk to the Students to see what was going on and everyone present at the meeting agreed to that.

The High School Coach said he met with the Students in his dorm around 1:00 p.m. to 2:00 p.m. on XXXXX XX, XXXX. He said the Students did not know anything about the cheerleading coach's allegation; they thought they were in trouble for violating "lights out." He asked them if they had seen anyone not properly clothed in the dorm across from them; they said they had not. The High School Coach stated that no one from the University questioned the Students, gave him questions to ask the Students, or asked him to attempt to solicit a confession from one of the Students or "just pick one" of the Students for the University to identify on its report.⁴ According to the High School Coach, after he met with the Students, they remained on the team's assigned dorm floor until they left campus in the early evening.⁵ The Students had access to showers and restrooms and were free to move around from room to room.

In an OCR interview, the campus police officer who responded to the cheerleading coach's report (Responding Officer) stated he did not recall anyone present at the XXXX XX, XXXX meeting giving the High School Coach questions to ask the football players or suggesting the High School Coach attempt to obtain a confession from any of the Students. The Responding Officer denied speaking with or questioning the Students about the cheerleading coach's report. He also denied giving the High School Coach questions to ask the Students or encouraging the High School Coach to solicit a confession from any of the Students. The Responding Officer stated, and the Offense/Incident Report of the University Police Department confirmed, that the cheerleading coach did not want to press charges for the incident.

Four of the five Students interviewed by OCR stated that no one from the University questioned them about the incident reported by the cheerleading coach. One of the Students, however, stated the University's Head Football Coach met with the Students. According to this Student, the University's Head Football Coach repeated what the High School Coach had already told them about the cheerleading coach's report and asked them what they did the night before and whether anyone had taken any pictures. According to this Student, the University's Head Football Coach told the Students that if one of them did it, he should confess and that no one should confess unless he did it. None of the Students said they were pressured directly by anyone at the University to confess.

The individual who was the Title IX Coordinator during the summer of XXXX (former Title IX Coordinator) stated the University uses interim measures to reduce the harm that may have already occurred or to protect a student or students during the investigation of an allegation of

⁴ Although four of the five Students interviewed by OCR stated the High School Coach told the Students that if one of them confessed the rest of the team could stay at camp, none of the Students interviewed by OCR felt pressured by any of the District's football coaches to admit they had watched the cheerleading coach undress or taken a photograph or video of her.

⁵ During the afternoon, the District's Superintendent spoke with University representatives, including the President of the University, to oppose the University's decision to send the Students home and to attempt to persuade the University to allow the Students to complete the remaining day of camp. The Students stayed in the dormitory on campus until these discussions concluded.

sexual misconduct. According to the former Title IX Coordinator, the University considers the information about the incident available at the time, the safety of the campus at large, and the interests of the individuals involved when determining what interim measures, if any, are appropriate. When an interim measure restricts an individual's presence on campus or participation in an activity, the University attempts to impose the least restrictive, but still effective, interim measure.

In response to the cheerleading coach's report, the former Title IX Coordinator stated that she decided if the student(s) who allegedly photographed or made a video of the cheerleading coach undressing "came forward," those student(s) would be sent home from camp. If no one came forward, all the Students would be sent home while the Title IX Office conducted a full investigation of the cheerleading coach's allegation. Since no student "came forward," all the Students were sent home. The former Title IX Coordinator stated the Students' ages were not a factor in her response to the cheerleading coach's report.

When the former Title IX Coordinator decided to send the Students home from camp, she had information from the cheerleading coach's report shared with her by the Responding Officer; the identity of the Students who were assigned to the dorm rooms identified by the cheerleading coach; and the opinions of the Responding Officer and the Assistant Director of Operations that the events described by the cheerleading coach could have happened as she described. The Responding Officer, the Assistant Director of Operations, and the former Title IX Coordinator acknowledged they had not confirmed whether any of the seven Students assigned to the two rooms were in one of the dorm rooms identified by the cheerleading coach at the time in question or whether any of the seven Students engaged in the behavior described by the cheerleading coach. At the time, the former Title IX Coordinator did not know what, if anything, the cheerleading coach wanted as an interim measure or whether other females would be staying in the dorm used by the cheerleading coach after her squad's departure. Further, she did not consider whether there was another location on campus where the Students could have stayed for the one remaining day of football camp. The University's Title IX records contain no evidence that the University's decision to send the Students home from camp was motivated by age.

In a XXXXX XX, XXXX letter from the University's counsel to an attorney representing parents of the Students, the University provided a written assurance that the University had made no public statement regarding the incident and had protected the privacy of all parties involved. The University agreed to reimburse the cost of the Students' football camp registration to the District. OCR confirmed the District disbursed the refunded camp fees to the Students' parents.

In a XXXXX X, XXXX email, the University's Title IX Investigator (Investigator) provided the cheerleading coach with general information about the University's Title IX investigative process and requested to schedule a meeting to discuss the incident she reported. The cheerleading coach responded that she had already given a statement to the campus police indicating she did not want to press charges "or anything like that." She declined to give another statement, preferring to "move past what happened." On XXXXX X, XXXX, the Investigator notified the cheerleading coach by email that the University would not move forward with a Title IX investigation of the incident she reported.

In a XXXX XX, XXXX, letter from the University’s counsel to the District’s attorney, the University stated the Title IX investigation of the incident reported by the cheerleading coach was closed with no adverse finding against the Students. The decision was based on the cheerleading coach’s preference not to proceed and the University’s assessment that there was no continuing threat to the University community. The University stated its policy and intent was to keep all such information and records confidential and provided a second assurance that the University had made no public statement regarding the incident and had protected the privacy of all parties involved.

In an XXXXX XX, XXXX letter to the District’s attorney, the University confirmed the Students were not banned from campus and were free to participate in University activities like any member of the general public. The letter reiterated that the University’s Title IX investigation was closed without any adverse finding against any of the Students and would not be reopened. Four of the five Students interviewed by OCR stated their plans and activities were not impacted by the events at the football camp. The fifth Student was a participant in XXXX XXXXX, which was conducted at the University; according to one of this Student’s parents, the Student knew within the first few weeks after football camp that he was not banned from the University or otherwise prohibited from participating in any activities on the University campus. The parent also stated that even though the parent and XXXXX XXXXX staff encouraged the Student to continue XXXXX XXXXX in the fall, the Student chose not to complete the XXXXX XXXXX program at the University.

Legal Standards

The Title IX regulation, at 34 C.F.R. § 106.31(a), states 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 educational program or activity operated by a recipient.

The Title IX regulation at 34 C.F.R. § 106.8(b) requires each recipient to adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action prohibited by Title IX.

It may be appropriate for a school to take interim measures during the investigation of a complaint. In fairly assessing the need for a party to receive interim measures, a school may not rely on fixed rules or operating assumptions that favor one party over another, nor may a school make such measures available to only one party. Interim measures should be individualized and appropriate based on the information gathered by the Title IX Coordinator, making every effort to avoid depriving any student of her or his education.

The regulation implementing the Age Discrimination Act, at 34 C.F.R. § 110.10(b), states that a recipient may not in any program or activity receiving FFA, directly or through contractual, licensing, or other arrangements, use age distinctions or take any other actions that have the effect, on the basis of age, of—(1) excluding individuals from, denying them the benefits of, or subjecting them to discrimination under a program or activity receiving FFA; or (2) denying or limiting individuals in their opportunity to participate in any program or activity receiving FFA.

Analysis

OCR identified a concern that the University did not equitably consider interim measures. Although the cheerleading coach made no request for an interim measure or even an investigation, it appears the former Title IX Coordinator decided to remove the Students even though she did not know if females were being housed in the same dormitory as the cheerleading coach during the remainder of the football camp or whether there was another location on campus the Students could have stayed that would have addressed her safety concerns and allowed the Students to complete camp. Although the University asserted that it sent the Students home from camp out of concern for campus safety, to date, OCR has not identified the information the University relied upon to assess the risk the Students would pose were they to remain on campus another night to complete the football camp and to conclude that any such risk required sending the Students home.

OCR notes that the University promptly reimbursed the full cost of the camp for each of the Students. Further, although the Complainants expressed concern that the Students were barred from participating in activities at the University, the evidence did not establish the University banned the Students from anything other than the remainder of the summer XXXX football camp or that the University's actions resulted in the Students losing any opportunities to participate in or benefit from programs and activities at the University other than the last day of the summer football camp. Finally, the University never conducted an investigation and thus made no Title IX findings of responsibility against any of the Students.

OCR has found insufficient evidence of age discrimination. The evidence does not establish any attempt to manipulate the Students into confessing to the alleged sexual harassment of the cheerleading coach because of their ages. Rather, the evidence demonstrates that, upon learning of the cheerleading coach's report, the High School Coach volunteered to speak with the Students to see what he could find out. The High School Coach and all but one of the Students interviewed denied that anyone from the University, including the Responding Officer, questioned them about the cheerleading coach's report. None of the Students interviewed felt the District's football coaches or anyone at the University, including the Responding Officer, pressured them to confess. Further, the evidence indicates the University was ready to go forward with an investigation of the cheerleading coach's report, but she declined to move forward. Finally, the former Title IX Coordinator denied that the Students' ages were a factor in her decision about how to proceed, and the University's records do not indicate otherwise.

Resolution

Prior to the completion of OCR's investigation into this complaint, the University indicated its interest in entering into a voluntary resolution agreement with OCR pursuant to CPM Section 302. OCR determined that such a resolution would be appropriate based on Title IX issues identified during the investigation. Based on the above, OCR determined there is insufficient evidence to support a concern or a finding that the University discriminated against the Students in violation of the Age Discrimination Act. Accordingly, OCR is closing Allegation 2 effective the date of this letter.

The University signed an Agreement (copy enclosed) on September 23, 2020, which when fully implemented, resolves OCR's concerns. The Agreement requires the University to develop a process for assessing and implementing equitable interim measures under Title IX and provide training about the process to the Title IX Coordinator and any other staff involved in assessing and implementing interim measures. For more information, please consult the Agreement.

OCR considers this complaint resolved effective the date of this letter and will monitor the University's implementation of the Agreement. When OCR concludes 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 its investigation.

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.

The complainants have a right to appeal OCR's determination regarding Allegation 2 within 60 calendar days of the date indicated on this letter. In the appeal, the complainants must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal. If the complainants appeal OCR's determination, OCR will forward a copy of the appeal form or written statement to the recipient. The recipient has the option to submit to OCR a response to the appeal. The recipient must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

Complainants have the right, pursuant to the regulation implementing the Age Discrimination Act, at 34 C.F.R. § 110.39, to file a civil action for injunctive relief in Federal court following the exhaustion of administrative remedies. Administrative remedies are exhausted if: (1) 180 days have elapsed since the complainant filed the complaint with OCR, and OCR has made no finding, or (2) OCR issues any finding in favor of the recipient. A civil action can be brought only in a United States district court for the district in which the recipient is found or transacts business. A complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but these costs must be demanded in the complaint filed with the court. Before commencing the action, the complainant shall give 30 days' notice by registered mail to the Secretary of the Department of Education, the Secretary of the Department of Health and Human Services, the Attorney General of the United States, and the recipient. The notice shall state the violation of the Age Discrimination Act, the relief requested, the court in which the action will be brought, and whether or not attorney's fees are demanded in the event the complainant prevails. The complainant may not bring an action if the same alleged violation of the Age Discrimination Act by the same recipient is the subject of a pending action in any court of the United States.

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. Complainants may have the right to file a private suit in Federal court whether or not OCR finds a violation.

If you have questions concerning this letter, please contact XXXXX XXXXX, attorney, at (816) 268- XXXX(voice) or (877) 521-2172 (telecommunications device for the deaf), or by e-mail at XXXXX.XXXXX@ed.gov.

Sincerely,

Kelli Douglas
Supervisory Attorney

Enclosure