



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

October 16, 2023

SENT VIA EMAIL ONLY

XXXXX XXXXX
XXXXX XXXXX
XXXXX XXXXX
XXXXX XXXXX

Re: Arkansas State University
OCR Complaint No. 07232125

Dear XXXXX XXXXX:

On XXXXX XXXXX, XXXXX, the U.S. Department of Education, Office for Civil Rights (OCR), opened a complaint for investigation against Arkansas State University (the University), located in Jonesboro, Arkansas. Specifically, OCR investigated:

- (1) Whether the University discriminated against the Complainant based on sex, in violation of Title IX and its implementing regulation at 34 C.F.R. § 106.31, by treating XXXXX differently than XXXXX XXXXX in the XXXXX XXXXX XXXXX during the XXXXX XXXXX semester;
- (2) Whether the University retaliated against the Complainant, in violation of Title IX and its implementing regulation at 34 C.F.R. § 106.71, after XXXXX complained of different treatment based on sex; and
- (3) Whether the University failed to provide a prompt and equitable resolution to the Complainant's sex discrimination and retaliation complaint filed during the XXXXX XXXXX XXXXX, in violation of Title IX and its implementing regulation at 34 C.F.R. § 106.8.

This is to inform you that OCR is dismissing Allegations 1 and 2, and the University voluntarily entered a Resolution Agreement (Agreement) resolving Allegation 3. This decision is explained below.

OCR enforces 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, which prohibit discrimination based

on sex in any education program or activity receiving federal financial assistance. The Title IX regulation at 34 C.F.R. § 106.71 also prohibits retaliation.

Because the University receives federal financial assistance from the Department of Education, the University is subject to Title IX and OCR’s jurisdiction. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

During OCR’s investigation, OCR considered documentation submitted by the Complainant and the University, including the investigative file from the Complainant’s XXXXX XXXXX, the University’s Title IX Grievance procedures, correspondence between University staff and the Complainant, and documentation regarding the Complainant’s XXXXX XXXXX and XXXXX XXXXX. OCR interviewed the Complainant and the University’s XXXXX XXXXX. To protect individuals’ privacy, the names of employees, witnesses, and other parties are not used in the letter.

Allegations 1 and 2

Section 110(a)(2) of OCR’s *Case Processing Manual*¹ states that OCR will close or dismiss allegations when the same allegations have been filed by the complainant against the same recipient with another federal, state, or local civil rights enforcement agency, or through a recipient’s internal grievance procedures, including due process proceedings, and the allegations filed with OCR have been resolved by that enforcement agency or recipient, the allegations were investigated, the remedy obtained would be the same as if OCR were to find a violation regarding the allegations, and there was a comparable resolution process under comparable legal standards.

In XXXXX XXXXX, the Complainant filed a report with the XXXXX XXXXX XXXXX XXXXX alleging that (1) a XXXXX discriminated against XXXXX by treating XXXXX differently than XXXXX XXXXX XXXXX XXXXX XXXXX during the XXXXX XXXXX semester; and (2) the University retaliated against XXXXX after XXXXX complained of the different treatment. As part of the discrimination investigation, the XXXXX XXXXX XXXXX XXXXX interviewed at least seven faculty members and four current or former students. The XXXXX worked with administrators and faculty to provide interim measures and academic accommodations to the Complainant, while the investigation of XXXXX complaint was pending. The XXXXX also collected and reviewed documentation related to the Complainant’s allegations. Finally, the XXXXX issued a written determination, summarizing the Complainant’s allegations and explaining XXXXX conclusion that the evidence was insufficient to support a finding of discrimination or retaliation by XXXXX. After a review of the documentation collected, OCR determined that Allegations 1 and 2 in the OCR complaint were investigated and resolved by the University’s XXXXX XXXXX XXXXX XXXXX under a comparable resolution process and comparable legal standards. Accordingly, OCR is dismissing Allegations 1 and 2 pursuant to CPM Section 110(a)(2).

¹ OCR’s *Case Processing Manual* is available at: <http://www.ed.gov/ocr/docs/ocrcpm.pdf>.

Allegation 3

Legal Standard

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...education program or activity” operated by recipients of federal financial assistance. Further, 34 C.F.R. § 106.31(b)(1) states: “in providing any aid, benefit, or service to a student, a recipient shall not, on the basis of sex: Treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service.”

In addition, the Title IX regulation requires that recipients “adopt and publish grievance procedures that provide for the prompt and equitable resolution of student and employee complaints” alleging any actions prohibited by Title IX and its implementing regulation. *See* 34 C.F.R. § 106.8(c).

Preliminary Investigative Findings

The Complainant was a XXXXX at the University during the XXXXX XXXXX academic year. As a recipient of a XXXXX XXXXX, the Complainant worked as a XXXXX XXXXX in the XXXXX XXXXX XXXXX during the XXXXX XXXXX XXXXX XXXXX. On XXXXX XXXXX, XXXXX, the Complainant filed a complaint with the University’s XXXXX XXXXX XXXXX XXXXX, alleging sex discrimination and retaliation as discussed above.

The University assigned the XXXXX XXXXX XXXXX Office XXXXX (the XXXXX) to investigate the complaint. The XXXXX interviewed various faculty and student witnesses between XXXXX XXXXX XXXXX XXXXX. The XXXXX completed XXXXX investigation by XXXXX of XXXXX. As of XXXXX XXXXX, the XXXXX had not yet finalized XXXXX decision. The XXXXX advised OCR that several active University investigations had higher priority over the XXXXX and XXXXX of XXXXX. Over a year after the filing of the internal grievance, on XXXXX XXXXX, XXXXX, the XXXXX issued a determination letter, finding XXXXX XXXXX of XXXXX or XXXXX. The determination noted that the Complainant’s allegations were investigated as a XXXXX XXXXX because the allegations did not meet the XXXXX and XXXXX XXXXX of XXXXX XXXXX for proceeding under the University’s XXXXX XXXXX XXXXX XXXXX.

The University’s Student Handbook contains a policy against sex discrimination.² OCR reviewed the Title IX Policies and Title IX Grievance Procedures in the handbook and found the procedures appear to apply only to formal complaints of sexual harassment and sexual violence. The Title IX policies and procedures do not include a formal process applicable to complaints of different treatment based on sex.

² <https://www.astate.edu/a/student-conduct/student-standards/handbook-home.dot>

Analysis and Resolution

The evidence obtained during OCR’s investigation to date raised concerns that the Complainant’s reports of sex discrimination and retaliation were not resolved promptly and the delays in issuing the determination were unrelated to the complexity of the case investigation or other factors, such as school breaks, extension requests, or the unavailability of witnesses.³ The evidence also raised concerns that the University did not have clear grievance procedures for processing student or employee complaints of sex discrimination that are not sexual harassment complaints, such as complaints of different treatment based on sex.

Prior to OCR completing the investigation, and pursuant to Section 302 of OCR’s *Case Processing Manual*, the University voluntarily entered into the attached Agreement to address the concerns raised during OCR’s investigation. The Agreement, executed by the University on October 16, 2023, requires the University to review and revise its grievance procedures as necessary to ensure compliance with Title IX; train Title IX staff regarding the revised Title IX policies; and submit a report to OCR regarding Title IX student complaints filed during the 2023–24 academic year that result in an investigation. Please consult the Agreement for further details. OCR will monitor the University’s implementation of the Agreement until the University has fulfilled its terms.

This concludes OCR’s investigation of the complaint and should not be interpreted to address the University’s compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR’s determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR’s formal policy statements are approved by a duly authorized OCR official and made available to the public. OCR would like to make you aware that individuals who file complaints with OCR may have the right to file a private suit in federal court whether or not OCR finds a violation.

The University must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. 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.

If you have questions, please contact XXXXX XXXXX, XXXXX, at XXXXX XXXXX XXXXX (voice) or (877) 521-2172 (telecommunication device for the deaf), or by e-mail at XXXXX XXXXX @ XXXXX. XXXXX.

³ OCR’s review of the University’s determination letter, investigative file, and application of legal standards did not raise separate concerns about whether the University provided an equitable response.

Sincerely,

XXXXX XXXXX
XXXXX XXXXX