



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VIII
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October 31, 2016

Dr. Joe Schaffer , President
Laramie County Community College
1400 E College Drive
Cheyenne, WY 82007

Re: **Laramie County Community College**
Case No. 08-16-2050

Dear Dr. Schaffer:

On November 15, 2015, the U.S. Department of Education, Office for Civil Rights (OCR), informed you that it had initiated an investigation of the above-referenced complaint alleging the Laramie County Community College retaliated.

Specifically, the complainant alleges that the College retaliated against her by issuing a reprimand after she participated in a sexual assault investigation.

Individuals filing a complaint, participating in an investigation, or asserting a right under Title IX are protected from intimidation or retaliation by 34 C.F.R. § 106.71, which incorporates 34 C.F.R. § 100.7(e). As a recipient of Federal financial assistance from the Department, the College is subject to Title IX and its implementing regulation. Accordingly, OCR has jurisdiction over this complaint.

On September 13, 2016, prior to the conclusion of the investigation, the College requested to resolve the case pursuant to Section 302 of the *Case Processing Manual*. After careful consideration of the complaint allegations, as well as the information collected during the investigation, OCR determined that it was appropriate to resolve the allegation.

Applicable Legal Standards

Retaliation

A *prima facie* case of retaliation is established when it is determined that (1) an individual engaged in a protected activity (opposed a discriminatory policy, asserted protected rights, or participated in an OCR complaint or proceeding); (2) the recipient took an adverse action contemporaneous with or subsequent to the protected activity; and (3) there is an inferable causal connection between the protected activity and the adverse action. To be considered adverse, an action must significantly disadvantage an individual or reasonably deter an individual from engaging in future protected activities.

Analysis

Prior to the conclusion of OCR's investigation, the College requested to resolve the allegation that it retaliated against the Complainant by issuing a reprimand after she participated in a sexual assault investigation. The provisions of the resolution agreement are aligned with this allegation and consistent with the applicable regulations.

The Complainant spoke with xxxxxxxx in late xxxxxxxxxxxxxxxx about Student A's Title IX report to the College, and, shortly thereafter, the College issued her a verbal warning. Although the Complainant asserts that she told xxxxxxxx that she was not aware what steps the College had taken in response to Student A's Title IX report, the evidence gathered so far does not provide sufficient information for OCR to conclude that the Complainant opposed a discriminatory practice. OCR would need to review the scope and content of the Complainant's conversation with xxxxxxxx to determine whether her conduct constituted protected activity.

The verbal warning issued indicated that further violations by the Complainant could lead to dismissal from the College; however OCR has no information from which it can determine the extent the College stored the warning in the Complainant's personnel file or the effect of the verbal warning on the Complainant's performance evaluation. OCR would need to interview the College's xxxxxxxxxxxx to evaluate the scope and effect of the warning in order to determine whether it constituted an adverse action.

Finally, the College asserts that it disciplined the Complainant because it believed that she had violated FERPA and not in retaliation for speaking with xxxxxxxx. The documentation provided by the College supports this assertion. However, OCR would need to conduct additional interviews with the Complainant, xxxxxxxxxxxxxxxx, and College staff to further assess the merits of the assertion. Based on the information provided thus far, OCR cannot determine whether the Complainant's conversation with xxxxxxxx did, in fact, violate FERPA; none of the documentation provided demonstrates the scope of her conversation with xxxxxxxx or indicates what information from a student record the Complainant may have shared with xxxxxxxx. Thus, OCR would need to interview the Complainant, xxxxxxxxxxxxxxxx, and College staff to determine whether the College's asserted reason for issuing the verbal warning was a pretext for retaliation.

Prior to providing this information, the College requested to resolve the allegation. Based on the above described information and the College's interest in resolving the allegation, OCR drafted a resolution agreement to fully address the allegation. The provisions of the enclosed resolution agreement are aligned with the allegation, information obtained by OCR to date in its investigation, and are consistent with the applicable regulations.

Based on the evidence gathered to date, and the additional information that would be necessary to complete the investigation, OCR determined that it was appropriate to resolve the complaint allegation prior to completing the investigation. The College agreed to enter into a resolution agreement (the Agreement) with OCR on **October 25, 2016**, which, when fully implemented, will resolve the alleged retaliation with respect to 34 C.F.R. § 106.71, which incorporates 34 C.F.R. § 100.7(e) that were at issue in the complaint. The provisions of the Agreement are

aligned with the complaint allegation, the issues investigated, and are consistent with applicable law and regulations.

OCR will monitor the College's implementation of the Agreement until the College is in compliance with the statutes and regulations at issue in this case. The full and effective implementation of the Agreement will address the alleged retaliation with respect to Title IX. OCR looks forward to receiving the College's first monitoring report, which is due by November 15, 2016.

This concludes OCR's investigation of the complaint and should not be interpreted to address the College'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.

Please be advised that the College may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the individual may file a complaint alleging such treatment. The Complainant may also file a private suit in federal court whether or not OCR finds a violation.

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, we will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

We wish to thank you for the cooperation extended to OCR during our investigation. If you have any questions, please do not hesitate to contact Patrick Alexander by phone at 303-844-3473, or by e-mail at Patrick.Alexander@ed.gov.

Sincerely,

Sandra J. Roesti
Supervisory Attorney

Enclosure