



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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REGION VIII  
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UTAH  
WYOMING

May 4, 2018

Dr. Stefani Hicswa, President  
Northwest College  
231 West 6th Street  
Powell, WY 82435

Re: Northwest College  
OCR Case Number: 08-16-2101

Dear Dr. Hicswa:

We write to advise you of the resolution of the above-referenced complaint that was filed with our office against Northwest College (College). The issue opened for investigation was whether the College discriminates on the basis of sex by not appropriately responding to complaints of sexual violence.

The Office for Civil Rights (OCR) of the U.S. Department of Education (Department) is responsible for enforcing Title IX of the Education Amendments of 1972 and its implementing regulation at 34 Code of Federal Regulations (C.F.R.) Part 106 (Title IX), which prohibit discrimination on the basis of sex in education programs and activities that receive Federal financial assistance from the Department. As a recipient of Federal financial assistance from the Department, the College is subject to this law and regulation.

During the course of our investigation, the College indicated its desire to voluntarily enter into an agreement to resolve the allegation pursuant to Section 302 of our *Case Processing Manual*. We reviewed this request and determined that it was appropriate to enter into an agreement without completing a full investigation. This letter details our factual findings, the status of our investigation prior to receiving the College's request to enter into an agreement to resolve the allegation in this case, and the reasons for our determinations that an agreement pursuant to Section 302 of our *Case Processing Manual* was appropriate in this case.

## **I. Legal Standards & OCR's Investigation**

The College is a two-year community college in Powell, Wyoming, enrolling approximately 1,700 students.<sup>1</sup>

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<sup>1</sup> Northwest College Annual Report 2016-17, Institutional Profile, <http://nwc.edu/about/report/2016-17/profile.html?catId=20162017>.

A. Notice of Non-discrimination (34 C.F.R. § 106.9)

The Title IX implementing regulation, at 34 C.F.R. § 106.9, requires a recipient to implement specific and continuing steps to notify all applicants for admission and employment, students and parents, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of sex in its education programs or activities, and that it is required by Title IX not to discriminate in such a manner. The notice must also state that questions regarding Title IX may be referred to the recipient's Title IX coordinator or to OCR.

OCR's investigation thus far established that the College at this time publishes a compliant notice of non-discrimination on, for example, its website and various handbooks. In the Resolution Agreement, the College agrees to re-publish its notice of non-discrimination with the contact information for its Title IX Coordinator, as part of its efforts to widely and uniformly disseminate notice of that coordinator.

B. Title IX Coordinator (34 C.F.R. § 106.8(a))

The Title IX implementing regulation, at 34 C.F.R. § 106.8(a), requires that a recipient designate at least one employee to coordinate its responsibilities to comply with and carry out its responsibilities under that law.

The Title IX coordinator's role should be independent to avoid any potential conflicts of interest . . . . However, when designating a Title IX coordinator, a recipient should be careful to avoid designating an employee whose other job responsibilities may create a conflict of interest. For example, designating a disciplinary board member, general counsel, dean of students, superintendent, principal, or athletics director as the Title IX coordinator may pose a conflict of interest.<sup>2</sup>

The recipient is further required, by the Title IX implementing regulation at 34 C.F.R. § 106.8(a), to notify all students and employees of the name (or title), office address, and telephone number of the designated employee(s). Additionally, recipients "must make sure that all designated employees have adequate training as to what conduct constitutes sexual harassment and are able to explain how the grievance procedure operates."<sup>3</sup>

OCR's investigation thus far established that the College's Title IX Coordinator has changed several times over the course of the past several years. Questions remain as to the timing and continuity of designations over this time period. In the Resolution Agreement, the College has confirmed that it will designate at least one adequately trained, permanent Title IX Coordinator(s) whose job responsibilities are defined so as to avoid conflicts of interest. The

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<sup>2</sup> U.S. Dep't of Educ., Office for Civil Rights, *Dear Colleague Letter on Title IX Coordinators*, available at <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201504-title-ix-coordinators.pdf>, at 2-3.

<sup>3</sup> U.S. Dep't of Educ., Office for Civil Rights, *Revised Sexual Harassment Guidance* (66 Fed. Reg. 5512, Jan. 19, 2001), available at <https://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf>, at 21.

College will also widely disseminate uniform notice of the Coordinator(s) contact information, including in its notice of non-discrimination.

C. Grievance Procedures (34 C.F.R. § 106.8(b))

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 sexual harassment and sexual assault. Title IX does not require a recipient to provide separate grievance procedures for sexual harassment complaints, including sexual assault complaints. A recipient may use student disciplinary or other separate procedures for these complaints; however, any procedures used to adjudicate complaints of sexual harassment or sexual assault, including disciplinary proceedings, must afford the complainant a prompt and equitable resolution.

OCR examines a number of factors in evaluating whether a recipient's grievance procedures are prompt and equitable, including whether the procedures provide for the following: notice of the procedure to students and employees, including where to file complaints; application of the procedure to complaints alleging discrimination by employees, other students, or third parties; adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence; designated and reasonably prompt timeframes for major stages of the complaint process; notice to the parties of the outcome of the complaint; and an assurance that steps will be taken to prevent recurrence of any discrimination and to correct its effects.

The allegation in this case was that the College did not have a compliant, published Title IX grievance procedure in 2014 and 2015. According to an email from the Title IX Coordinator in November 2015, "At that time [2014] we did not have a separate sexual misconduct policy." OCR has not made a compliance determination as to whether any other policies functioned as a grievance procedure pursuant to Title IX during this time period. It is undisputed that the College has since enacted a "[Sexual Misconduct Policy](#)," the text of which indicates that it was originally adopted December 14, 2015 and revised and effective March 13, 2017.

OCR reviewed the policy and identified the opportunity to make clarifying revisions to the text of the policy, which the College has agreed to do via the Resolution Agreement. These revisions clarify that use of the procedure is not a prerequisite to filing with OCR and confirm that both parties have the opportunity to present witnesses and other evidence in investigations.

OCR's review also indicated that the latest iteration of the policy introduces the concept of "process advisors," defined as

[a] person (other than an individual who may be called to provide witness testimony) who aids the Reporting Party and the Respondent in understanding the sexual misconduct process, rules and proceedings. Process Advisors are College personnel and provided by the College. A Process Advisor will be offered to the Reporting Party and Respondent at the beginning of the investigation. The Process Advisor is not allowed to participate in the questioning or present information during the investigation.

OCR's investigation thus far indicates that two College staff, a web developer and a nursing instructor, may have received training to serve as such process advisors. In addition to process advisors, the policy calls for the Title IX Coordinator to appoint investigators to complete fact-finding investigations,<sup>4</sup> and appeals to be heard by the Title IX Coordinator, members of the Student Appeals Board, and/or the Dispute Resolution Officer. OCR's investigation thus far also indicates that the College's campus security officer has long served in a Title IX investigatory role, and OCR's investigation has raised questions (yet unanswered) as to whether that individual has been appropriately trained to respond to Title IX complaints. In the Resolution Agreement, the College has guaranteed that all of these individuals will receive adequate training.

D. Response to Reports of Sex Discrimination, including Sexual Harassment and Sexual Violence (34 C.F.R. § 106.31)

The Title IX regulation at 34 C.F.R. § 106.31 provides generally that no person shall on the basis of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination in education programs or activities operated by recipients of Federal financial assistance. Sexual harassment of student(s) that creates a hostile environment can result in the denial or limitation, on the basis of sex, of students' ability to participate in or receive education benefits, services, or opportunities and thereby violate Title IX.

Under the Title IX and the regulations, once a recipient has notice of potential sexual harassment of student(s), it is responsible for determining what occurred and responding appropriately. The recipient is not responsible for the actions of a harassing student, but rather for its own discrimination in failing to respond adequately. A recipient may violate Title IX and the regulations if: (1) the recipient knew or reasonably should have known about potential harassment on the basis of sex; and (2) failed to take prompt, thorough, and effective responsive action. These duties are the recipient's responsibility, regardless of whether a student has complained, asked the recipient to take action, or identified the underlying conduct as a form of discrimination.

OCR evaluates the appropriateness of the responsive action by assessing whether it was prompt, thorough, and effective. What constitutes a reasonable response will differ depending upon the circumstances. However, in all cases the recipient must conduct a prompt, thorough and impartial inquiry designed to reliably determine what occurred and if a hostile environment existed for the complainant(s) or others.

Whether a hostile environment based on sex exists depends on all the circumstances, including the degree to which the misconduct affected one or more students' education; the type, frequency, and duration of the misconduct; 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 school or recipient,

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<sup>4</sup> Specifically, the Title IX Coordinator is to determine if a report falls within the scope of the Sexual Misconduct Policy, and if so, appoint an investigator(s) to initiate a fact-finding investigation. OCR's investigation thus far indicates that several College staff, including the Human Resources Director, Campus Security Director, an institutional researcher, and an instructional technology specialist, may be serving as Title IX investigators and may have received training to do so.

location of the incidents, and the context in which they occurred; and other incidents at the school or recipient. The more severe the conduct, the less the need to show a repetitive series of incidents; this is particularly true if the harassment is physical. A single or isolated incident of sexual harassment may, if sufficiently severe, create a hostile environment. For example, a single instance of rape is sufficiently severe to create a hostile environment. Ultimately, a recipient, and OCR, must determine whether the hostile environment was sufficiently serious or pervasive to deny or limit, on the basis of sex, students' ability to participate in or receive education benefits, services, or opportunities.

If the recipient finds that a hostile environment existed, it should take reasonable, timely, age-appropriate, and effective corrective action, including steps tailored to the specific situation. The response must be designed to stop the harassment, eliminate the hostile environment, and remedy the effects of the harassment on the student who was harassed. The recipient must also take steps to prevent the harassment from recurring, including disciplining the harasser where appropriate. A series of escalating consequences may be necessary if the initial steps are ineffective in stopping the harassment.

Other actions may be necessary to repair the educational environment. These may include special training or other interventions, the dissemination of information, new policies, and/or other steps that are designed to clearly communicate the message that the recipient does not tolerate harassment and will be responsive to any student reports of harassment. The recipient should also take steps to prevent any retaliation against the student who made the complaint or those who provided information.

OCR's investigation thus far has established that the College's responses to sexual violence have changed over time and over the course of OCR's investigation; OCR's investigation has also identified some areas where improvements to the College's response to reports of sexual violence could potentially be made. The Resolution Agreement addresses these areas, and also provides that the College will report to OCR through January 2019 on its response to reports of sexual discrimination, ensuring that the College will continue to work with OCR as it continues to implement its relatively new Sexual Misconduct Policy.

## **II. Conclusion**

For all of the foregoing reasons, OCR has determined that it is appropriate to enter into the attached Resolution Agreement pursuant to Section 302 of our *Case Processing Manual* at this time.<sup>5</sup>

We thank the College for being willing to voluntarily address the issues raised by the Complainant. A copy of the signed Resolution Agreement is enclosed for your records.

OCR is closing the investigative phase of this case effective the date of this letter. The case is now in the monitoring phase. OCR will monitor implementation of this Agreement through periodic reports from the College demonstrating that the terms of the Agreement have been

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<sup>5</sup> The Resolution Agreement also simultaneously resolves OCR Case No. 08-17-2248, a case alleging retaliation filed by the faculty member who assisted the student who filed this complaint, in OCR Case No. 08-16-2101.

fulfilled. We will provide the College with written notice of any deficiencies regarding implementation of the terms of the Agreement and will promptly require actions to address such deficiencies. The monitoring phase will be completed when OCR determines that the College has fulfilled all of the terms of the Agreement. When the Agreement is fully implemented, the allegations will be resolved consistent with the requirements of Title IX and its implementing regulations. When the monitoring phase of this case is complete, OCR will close this case and send a letter to the College, copied to the Complainant, stating that this case is closed. If the College fails to implement the Agreement, we will take appropriate action, as described in the Agreement.

This letter addresses only the issues listed previously and should not be interpreted as a determination of the College's compliance or noncompliance with Title IX or any other federal law in any other respect.

This letter is a letter of finding(s) issued by OCR to address an individual OCR case. Letters of findings contain fact-specific investigative findings and dispositions of individual cases. Letters of findings are not formal statements of OCR policy and they 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.

Individuals filing a complaint or participating in our resolution process are protected from retaliation by Federal law. 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 investigation. If this happens, the individual may file another complaint alleging such treatment.

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, personal information, which if released, could constitute an unwarranted invasion of privacy.

Thank you for the courtesy and cooperation you extended to us during the investigation of this case. If you have any questions, please contact XXX.

Sincerely,

/s/

XXX  
Supervisory General Attorney

Enclosure: Resolution Agreement

cc: XXX, College's outside counsel