



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VIII
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WYOMING

May 4, 2018

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

Re: Northwest College
OCR Case Number: 08-17-2248

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 discriminated on the basis of sex; specifically, whether the College retaliated against the Complainant (a faculty member) after she engaged in activity protected by Title IX, by applying the Higher Learning Commission guidelines for faculty credentialing to her differently than to similarly situated College faculty who had not engaged in activity protected by Title IX.

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

A. Retaliation

The Title IX regulations, at 34 C.F.R. § 106.71, incorporate 34 C.F.R. § 100.7(e) of the regulations implementing Title VI of the Civil Rights Act of 1964 and prohibit school districts from intimidating, threatening, coercing, or discriminating (including retaliating) against

individuals because they engage in activities protected by Title IX.¹ For brevity, OCR refers to claims arising under this regulation as “retaliation” claims. In analyzing retaliation claims under Title IX, we first determine whether: the individual experienced an adverse action caused by the college; the college knew an individual engaged in activity protected by Title IX or believed the individual might engage in such activity in the future; and a causal connection existed between the adverse action and the protected activity. If OCR determines that a causal link exists between any adverse action and any protected activity, we next determine whether the college has a legitimate, non-retaliatory reason for its action; and whether such reason is a pretext for retaliation.

At this point of OCR’s incomplete investigation, there is no dispute that the Complainant engaged in activity protected by Title IX of which the College was aware, as, for example, she assisted a student in filing an OCR complaint, and the College was aware of her involvement with this student, and she participated in sexual assault prevention trainings on campus, of which the College was aware. There is also no dispute that the Complainant experienced an adverse action caused by the College, in that, beginning in 2015, the College indicated to the Complainant that the College had determined she did not meet guidelines promulgated by the College’s accrediting body, the Higher Learning Commission (HLC), related to faculty credentialing. What is still in dispute at this stage is whether the application of the HLC guidelines was causally connected to the Complainant’s protected activity, and, if so, whether the College had a legitimate, non-retaliatory, non-pretextual reason for its application of the HLC guidelines to the Complainant.

B. Title IX Procedural Requirements

The Title IX regulations establish procedural requirements that are important for the prevention and correction of sex discrimination. These requirements include issuance of a policy against sex discrimination (34 C.F.R. § 106.9), adoption and publication of grievance procedures providing for the prompt and equitable resolution of complaints of sex discrimination (34 C.F.R. § 106.8(b)), and the designation of at least one employee to coordinate compliance with the Title IX regulations, including coordination of investigations of complaints alleging noncompliance (34 C.F.R. § 106.8(a)).

The Complainant alleged that she sought to file an internal grievance that alleged prohibited retaliation in violation of Title IX, and, while she did so, it was unclear what College policy was to be used for (1) such complaints from faculty members, (2) complaints of retaliation in violation of Title IX, and (3) complaints against the Title IX Coordinator. The College contemporaneously responded to the Complainant’s concerns, explaining that it disagreed that its processes were unclear.

¹ Retaliation is a form of discrimination. *See, e.g., Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 173-74 (2005). Additionally, the Title IX regulations, at 34 C.F.R. § 106.51, prohibit discrimination in employment on the basis of sex.

C. Resolution Pursuant to Section 302 of our *Case Processing Manual*

Despite reviewing voluminous documents from the Complainant and College, and interviewing the Complainant as well as some (but not all available) current and former College staff, OCR has not yet made a determination as to the above-discussed issues. OCR has, however, identified even at this stage of its incomplete investigation improvements that could be made to the College's policies relating to the procedural requirements of Title IX. The Resolution Agreement addresses these improvements, in tandem with other improvements related to OCR Case No. 08-16-2101, the OCR case originating from the student the Complainant assisted. 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.

II. Conclusion

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 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