



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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August 22, 2018

Interim President Steven Gamble
Eastern New Mexico University - Roswell
52 University Blvd.
Roswell, NM 88203

Via email only to steven.gamble@enmu.edu

Re: Eastern New Mexico University - Roswell
Case Number: 08-17-2253

Dear Dr. Gamble:

This is to notify you of the disposition of the above-referenced complaint filed against Eastern New Mexico University - Roswell on June 8, 2017. The complaint alleged that the University discriminated against the Complainant on the basis of sex.

Specifically, the Complainant alleged that when investigating an incident of alleged sexual harassment where he was identified as the perpetrator, the University failed to apply its grievance procedures equitably.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681, and its implementing regulation, 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex by recipients of Federal financial assistance from the Department. As a recipient of Federal financial assistance from the Department, the University is subject to Title IX.

During the complaint investigation, OCR reviewed documentation provided by the Complainant and the University and interviewed the Complainant and University staff. OCR determined that there was insufficient evidence to conclude that the University discriminated against the Complainant as alleged. The basis for this determination is set forth in this letter.

In addition, during the course of our investigation, the University informed OCR that it had undertaken a review and begun the process of revising its Title IX policies and procedures. The University indicated that it wished to resolve any concerns relating to its designation of Title IX coordinator, notice of nondiscrimination, and Title IX grievance policies and procedures pursuant to Section 302 of OCR's *Case Processing Manual*.

Legal Standards

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

The Title IX regulation at 34 C.F.R. § 106.31 provides generally that, except as provided elsewhere in the regulation, no person shall on the basis of sex be excluded from participation in, denied the benefits of, or subjected to discrimination in education programs or activities operated by recipients of Federal financial assistance.

Title IX Coordinator

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 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). The recipient 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.

Notice of Non-discrimination

The regulation implementing Title IX, 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 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.

Grievance Procedures

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.

In evaluating whether a recipient's grievance procedures are prompt and equitable, OCR reviews all aspects of a recipient's policies and practices, including the following elements that are critical to achieve compliance with Title IX:

- 1) notice to students and employees of the procedures, including where complaints may be filed;

- 2) application of the procedure to complaints alleging discrimination and harassment carried out by employees, other students, or third parties;
- 3) provision for adequate, reliable, and impartial investigation of complaints, including the opportunity for both the complainant and respondent to present witnesses and other evidence;
- 4) designated and reasonably prompt timeframes for the major stages of the complaint process;
- 5) notice to both parties of the outcome of the complaint; and
- 6) assurance that the recipient will take steps to prevent recurrence of any sex discrimination or harassment found to have occurred, and to correct its discriminatory effects on the complainant and others, if appropriate.

Factual Background

X-paragraph redacted-X

On May 11, 2017, Student A filed a formal sexual harassment complaint against the Complainant. X-paragraph redacted-X

The University's X-redacted-X met with Student A on May 15, 2017, and initiated a Title IX investigation. X-paragraph redacted-X.

The University's Title IX Coordinator utilized the University's X-redacted-X to conduct the investigation. Between May 30 and June 1, 2017, the X-redacted-X interviewed Student A, the Complainant, the X-redacted-X, and the X-redacted-X.

X-paragraph redacted-X.

The University concluded its Title IX investigation on June 23, 2017. The final report includes a determination that the Complainant had sexually harassed Student A in violation of the University's sexual harassment policy. The report indicated that disciplinary action against the Complainant was not appropriate, as the Complainant was X-redacted-X. X-sentences redacted-X.

Analysis and Conclusion

The Complainant alleges that the University's Title IX investigation was inequitable because throughout the investigation, it was his impression that the University exhibited hostility against him, and he believes the University considered him guilty from the outset of the investigation.

The Complainant further alleges that the investigation was inequitable in that the University did not interview approximately 20 witnesses who he believes should have been interviewed.¹

OCR carefully reviewed the University's internal records, notes, and email communications, and found no evidence to support a finding that the University's investigation was biased or impartial against the Complainant. We note that the University's investigative determination against the Complainant relied heavily on its review of documentary evidence; specifically, the written communications between Student A and the Complainant. The University's conclusion was supported by the documentary evidence. Although the Complainant perceived the investigator's interview questions to be hostile towards him, OCR did not find that the questions were inappropriate or demonstrated bias. OCR also carefully reviewed internal communications and investigative records, and did not find any evidence to indicate that the University's X-redacted-X were biased against the Complainant.

The Complainant also indicated that the University's investigation was inequitable because the University did not interview 20 student witnesses who observed interactions between the Complainant and Student A. However, the Complainant did not indicate to OCR or the University how the information that the student witnesses may have been able to provide was relevant to the investigation. As previously indicated, Student A's complaint allegations related to text messages and other interactions to which there were not witnesses. OCR attempted to obtain additional information from the Complainant to clarify how those witnesses could have changed the outcome of the investigation, but the Complainant did not respond to OCR's telephone call or email. Based on the available evidence, we cannot conclude that the University's failure to interview the 20 students in the course was inappropriate or rendered the investigation inequitable.

Based on careful consideration of all the evidence, OCR determined that there is insufficient evidence to support the Complainant's allegation that the University failed to apply its grievance procedures equitably.

University Policies and Procedures

When investigating a recipient's response to an incident of sexual harassment, OCR typically reviews the recipient's designation of Title IX coordinator, notice of nondiscrimination, and Title IX grievance procedures. During the course of our investigation, the University informed OCR that it had undertaken a review and begun the process of revising its policies and procedures. The University indicated that it wished to resolve any concerns relating to its notice of nondiscrimination, designation of Title IX coordinator, and grievance policies and procedures pursuant to Section 302 of OCR's *Case Processing Manual*.

¹ The Complainant also expressed concern that the University did not provide him with written notice of his rights. Title IX does not specifically require recipients to provide the parties to a Title IX investigation with written notices of rights. OCR also noted that the University's policies and procedures were available to the Complainant online and in the Student Handbook.

On August 20, 2018, we received the University's signed Resolution Agreement (attached). When the Agreement is fully implemented, any deficiencies regarding the University's notice of nondiscrimination, designation of Title IX coordinator, and Title IX grievance procedures will have been resolved consistent with the requirements of Title IX and its implementing regulation. We will monitor implementation of the Agreement through periodic reports demonstrating the terms of the Agreement have been fulfilled. We will promptly provide written notice of any deficiencies with respect to the implementation of the terms of the agreement and will promptly require actions to address such deficiencies. If the University fails to implement the Agreement, we will take appropriate action, which may include enforcement actions, as described in the Agreement.

This concludes OCR's investigation of this 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 individual OCR cases. 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 University 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 XXXX, Equal Opportunity Specialist, at 303-844-XXXX or by email at XXXX@ed.gov.

Sincerely,

/s/

Sandra J. Roesti
Supervising General Attorney

Cc (via email only): Robert J. Johnston, Attorney