



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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July 18, 2018

Dr. Kirk H. Schulz  
President  
Washington State University  
P.O. Box 641048  
Pullman, Washington 99164-1048

Re: Washington State University  
OCR Reference Nos. 10122142, 10152153, and 10182046

Dear Dr. Schulz:

The U.S. Department of Education (Department), Office for Civil Rights (OCR) is concluding its investigation of the above-referenced complaints against Washington State University (university) as a result of the signed enclosed Resolution Agreement (Agreement). These complaints alleged that the university discriminated against students, on the basis of sex, by failing to adequately respond to allegations of sexual harassment, including incidents of sexual assault.

OCR initiated its investigation of the complaints under the authority of Title IX of the Education Amendments of 1972 (Title IX), as amended, 20 U.S.C. § 1681 *et seq.*, and its implementing regulation at 34 C.F.R. § 106, which prohibit discrimination on the basis of sex in educational programs or activities receiving federal financial assistance from the Department. The university is a recipient of federal financial assistance from this Department and is, therefore, required to comply with Title IX.

During the course of each of the investigations, the university expressed interest in resolving the issues under investigation in these complaints prior to the conclusion of OCR's investigations. OCR concluded that it would be appropriate to negotiate a resolution agreement in accordance with Sections 302 and 303 of OCR's *Case Processing Manual*. Prior to entering into the Agreement, OCR's investigations to date had identified concerns with the university's written grievance procedures. OCR also found violations regarding promptness for some of the university's internal investigations of reports of sexual assault along with concerns that the lack of promptness may have created an ongoing hostile environment for some complainants in the university's investigations. OCR also had concerns in one case with regard to the implementation of interim measures. Subsequent discussions with the university resulted in the university signing the enclosed Agreement on June 22, 2018. The signed Agreement resolves all of the concerns and violations identified by OCR.

OCR appreciates the university's cooperation throughout the investigation and resolution of these complaints. OCR recognizes that during the course of the investigations, the university has implemented a number of policies, procedures, and practices to proactively address its response to complaints of alleged sex discrimination, including sexual violence and sexual harassment.

### **Legal Standards**

The regulation implementing Title IX, 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, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient of Federal financial assistance.”

Sexual harassment that creates a hostile environment is a form of sex discrimination prohibited by Title IX at 34 C.F.R. § 106.31(a). Sexual harassment is unwelcome conduct of a sexual nature. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, such as sexual assault or acts of sexual violence. Sexual harassment of a student creates a hostile environment if the conduct is sufficiently serious that it denies or limits a student's ability to participate in or benefit from the recipient's program.

If a recipient knows or reasonably should have known about sexual harassment of students by employees, other students or third parties, Title IX requires a recipient to take immediate and appropriate steps to investigate or otherwise determine what occurred and take prompt and effective steps reasonably calculated to end any harassment, eliminate a hostile environment if one has been created, and prevent harassment from occurring again. These steps are the recipient's responsibility whether or not the student who was harassed makes a complaint or otherwise asks the recipient to take action. If a recipient fails to respond appropriately to a report of sexual harassment, and this failure permits a student to be subjected to a hostile environment, the recipient is also responsible for taking corrective action to remedy the effects on the student or students that could reasonably have been prevented had it responded promptly and effectively.<sup>1</sup>

OCR's guidance mandates that a recipient's response to alleged incidents of sexual harassment be prompt. Although there is no fixed timeframe to provide a prompt investigation, OCR will evaluate the recipient's good faith effort to provide a fair, impartial investigation of a Title IX complaint in a timely manner designed to provide resolution to all parties.

During the course of a recipient's investigation of sexual harassment complaints, including those of sexual violence, it may be appropriate for the recipient to provide interim measures to the parties. Interim measures may include counseling, extensions of time or other course-related adjustments, modifications of work or class schedules, campus escort services, restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of campus, and other similar accommodations. Interim measures must be appropriate both in the kind of interim measures offered and in the implementation of those interim measures. In

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<sup>1</sup> See OCR's 2001 Revised Sexual Harassment Guidance at 12.

assessing the need for interim measures, every effort should be made to avoid depriving any student of his or her education. The recipient should ensure that any interim measures are necessary and effective and, as appropriate, available to both parties.

The regulation implementing Title IX, at 34 C.F.R. § 106.8(a), requires each recipient to designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under the regulation implementing Title IX, including investigation of any complaint communicated to the recipient alleging any actions which would be prohibited by the regulation implementing Title IX. It requires each recipient to notify all of its students and employees of the name, office address and telephone number of the employee or employees so designated.

The regulation implementing Title IX, at 34 C.F.R. § 106.8(b), requires that a recipient adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action prohibited by the regulation implementing Title IX. OCR has identified a number of elements in evaluating whether grievance procedures provide for a prompt and equitable resolution, including whether the procedures address: (a) notice to students and employees of the procedures, including where complaints may be filed; (b) application of the procedures to complaints alleging harassment carried out by employees, other students, or third parties; (c) adequate, reliable, and impartial investigation, including the opportunity to present witnesses and evidence; (d) designated and reasonably prompt timeframes for the major stages of the complaint process; (e) notice to the parties of the outcome of the complaint; and, (f) an assurance that the institution will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate.

If interim measures are specifically addressed in a recipient's grievance procedures, they must be addressed in a manner consistent with Title IX. A recipient's grievance procedures may not make such measures available only to one party, and the recipient may not rely on fixed rules or operating assumptions that favor one party over another.

## **Findings of Fact and Conclusions**

### **Procedural Requirements**

During the times relevant to OCR's investigations, OCR determined that the university designated one or more Title IX Coordinators. Contact information for these individuals has been readily available on the university's website. Currently, the university's Title IX Coordinator has adequate training and has responsibility for coordinating the university's efforts to comply with and carry out its responsibilities under Title IX and its implementing regulations, and is primarily responsible for coordinating the investigation of all complaints of discrimination on the basis of sex. In addition to the Title IX Coordinator, who has ultimate oversight responsibility, the university has designated two additional employees as Deputy Title IX Coordinators and has provided them with appropriate training to carry out their responsibilities.

Over the pendency of OCR’s investigation, the university used a combination of Policies, Procedures and Administrative Student Conduct Codes to form the basis of their sexual harassment grievance procedures. The Policies state the university’s prohibitions against sexual harassment and provide some procedural information about how complaints will be handled. The Procedures provide greater detail about the complaint and investigative process. The Codes are used once a sexual harassment/misconduct investigation is complete and the case has entered into disciplinary proceedings. All three taken together form the basis of the university’s grievance procedures.

The Policies, Procedures, and Codes have all been revised multiple times over the course of the time period investigated by OCR. However, they have not been revised at the same time, so at any given time various Policies, Procedures, and Codes have been used with each other.<sup>2</sup>

Below are descriptions of the current Policy, Procedure, and Conduct Code used by the university.

- Executive Policy 15: Policy Prohibiting Discrimination, Sexual Harassment and Sexual Misconduct (Policy). Last revised on December 18, 2014 (Policy).
- Procedural Guidelines for Responding to Allegations Implicating: WSU Executive Policy #15, The Policy Prohibiting Discrimination, Sexual Harassment, and Sexual Misconduct (Procedure). Last revised on September 26, 2017.
- The Washington Administrative Code (WAC 504-26), Standards of Conduct for Students (Conduct Code).

Due to the overlap and interplay among the Policy, Procedure, and Conduct Code, OCR analyzes them together when addressing the requirements of Title IX below (collectively referred to as Current Procedures).

OCR determined that the university’s Current Procedures provide for notice to students and employees of the grievance procedures, including where complaints may be filed. Regarding application of the grievance procedures to complaints against employees, other students, or third parties, although the Current Procedures include limiting language on the application to third parties, OCR has determined that the limitation is reasonable because the Current Procedures allow for someone to file a complaint against any university community member or anyone who has a nexus to the university.

The Current Procedures provide designated and reasonably prompt time frames for the major stages of the complaint process and written notice to the complainant and respondent of the outcome of the complaint. While the Current Procedures’ notice of outcome language contains a possible exemption, the exemption is limited to extraordinary circumstances and OCR did not find any cases where a party did not receive notice of the outcome of the complaint. The Current Procedures provide assurance that the university will take steps to prevent recurrence of any sexual harassment and remedy discriminatory effects.

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<sup>2</sup> OCR did not identify any variations in the processing of cases as it related to Title IX due to variations in the grievance procedures that were in effect over the course of this investigation that impacted OCR’s analysis or findings.

In its review of these Current Procedures, OCR identified concerns regarding whether the respondent in a complaint investigation is clearly given an equal opportunity to present evidence, provide input and obtain information during the process. The Procedure specifically states that it will solicit information and names of witnesses from complainants, but does not enumerate these same rights for respondents. The Procedure also states that the office handling the complaint will request and consider the complainant's input when determining the appropriate resolution path, but not the respondent's input, and states that it will provide information on its prohibition against retaliation to complainants but not respondents. In contrast to the Procedures, the Policy states that both the complainant and respondent are given the opportunity to provide information and evidence, including names of witnesses, and the Policy states generally that retaliation is prohibited. OCR's concern is that these statements in the Policy are not sufficient to remedy the deficiencies on these points in the Procedures.

### Response to Complaints

In order to evaluate whether the university complied with the requirements of Title IX, OCR investigated whether the university provided a prompt and effective response to reports of sexual harassment and, if sexual harassment was found to have occurred that was sufficiently serious as to create a hostile environment, whether the university effectively took steps to end the harassment, eliminate the hostile environment, and prevent recurrence. OCR also evaluated whether there were instances in which the university's failure to properly respond to instances of sexual harassment may have permitted a hostile environment for the student or students involved.

Prior to completing its investigation and entering into the Agreement with the university, OCR identified both concerns and violations of Title IX with respect to the promptness of the university's response to complaints and reports of sexual harassment.

In OCR Reference No. 10122142, which raised systemic allegations as to the promptness and effectiveness of the university's responses, OCR reviewed over 900 files of sexual harassment reports received by the university from the beginning of the 2010-2011 school year through the 2015-2016 school year. From those files, OCR identified and reviewed 72 university investigations of student-student sexual assault reports. Of those files, OCR found that the average pendency of a complaint, from the date the university received notice until the conclusion of the complaint with a final decision, and, if appropriate, the issuance of sanctions, was 159 days, with a minimum of 12 days and a maximum of 343 days. OCR found that 56 of the 72 complaints investigated (77%) were open for investigation for more than 100 days, and 21 of 72 complaints investigated (29%) were open for investigation for more than 200 days. Prior to OCR ending its investigation, this information raised concerns that these cases may not have been resolved in as timely a manner as possible.

Specific examples that illustrate OCR's concern regarding promptness include a complaint that took 234 days for the investigation to be completed with no evidence in the file to justify the delay; a complaint that took 311 days for the investigation and sanctions process to be completed with no explanation in the file for the delay, which OCR believes may have contributed to an ongoing hostile environment for the complainant and other students; and a complaint that took 170 days for the

investigation and sanctions to be completed and for which the university's explanation for the delay was not sufficient to justify the 170 day time frame.

In addition to the above concerns, OCR found sufficient evidence to find violations with regard to the lack of promptness in three specific complaints filed with the university. For these three complaints (taking 139, 218 and 125 days to complete), there was no evidence in the university's investigative files to justify the delays in the investigation, and when interviewed about the delays, a university official cited a lack of investigatory resources as the reason for the delays. OCR finds that this is an insufficient justification under Title IX for a lack of prompt investigations, and as such, finds the university violated Title IX in these three specific instances. OCR also has a concern that the lack of promptness in these investigations may have contributed to a hostile environment for the complainants, given the amount of time between the report or complaint and the resolution.

In regard to OCR Reference No. 10152153, OCR found a violation regarding promptness of the university's investigation. OCR determined that the investigation was not prompt because it took 177 days to complete and the university did not provide sufficient information to demonstrate that the delay was justified. Beyond the issue of promptness, OCR found insufficient evidence to establish that the university otherwise failed to provide the respondent with an equitable grievance process.

In regard to OCR Reference No. 10182046, OCR found a concern about promptness as well as a concern regarding the equitable implementation of interim measures.

### **Resolution Agreement**

The enclosed Agreement addresses all of the allegations in the complaints for which OCR identified violations and concerns, as described above.

The complainants may have the right to file a private suit in federal court whether or not OCR finds a violation. This letter should not be interpreted to address the university's compliance with any other regulatory provisions or to address any issues other than those addressed in this letter. 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 or compliance review resolution process. If this should occur, an individual may file a complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this letter 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, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

OCR will monitor implementation of the Agreement. If the university fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce the Agreement, OCR shall give the university written notice of the alleged breach and 60 calendar days to cure the alleged breach. The university's first report under the Agreement is due to OCR on August 6, 2018.

Thank you for the cooperation that you and your staff extended to OCR staff in resolving this compliance review. We recognize and appreciate the dedication displayed by your staff throughout our interactions with them. If you have any questions, please feel free to contact Amy Klosterman, Attorney, by telephone at (206) 607-1622, or by e-mail at amy.klosterman@ed.gov, or Mark Farr, Senior Equal Opportunity Specialist, by telephone at (206) 607-1607, or by e-mail at mark.farr@ed.gov.

Sincerely,

Linda Mangel  
Regional Director

Enclosure: Resolution Agreement