



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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September 5, 2019

Dr. Daniel F. White  
Chancellor  
University of Alaska, Fairbanks  
P.O. Box 757500  
Fairbanks, Alaska 99775

Re: University of Alaska, Fairbanks  
OCR Reference No. 10152023

Dear Dr. White:

This letter is to notify you that the U.S. Department of Education (Department), Office for Civil Rights (OCR) is closing its investigation of the above-referenced complaint against the University of Alaska, Fairbanks (university). The complainant alleged that during the 2014-2015 academic year:

1. The university failed to respond appropriately to a complaint of sexual harassment filed by the student by failing to provide notice of outcome to the student;
2. The university retaliated against the student when a professor and program director in the student's program inappropriately disclosed details of her sexual harassment complaint to other students, causing those students to act negatively toward her;
3. The university retaliated against the student when the student's program director made negative statements about her because she filed a complaint of sexual harassment; and
4. The university retaliated against the student when the student's program director terminated her employment as a graduate assistant after she filed a complaint of sexual harassment.

OCR investigated the complaint under the authority of Title IX of the Education Amendments of 1972 (Title IX) and its implementing regulations, which prohibit discrimination on the basis of sex in education programs and activities that receive federal financial assistance. The regulation implementing Title IX also prohibits a recipient from intimidating, threatening, coercing, or discriminating against an individual for the purpose of interfering with any right or privilege or because the individual has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under OCR regulations. The university is a recipient of federal financial assistance from the Department and is therefore subject to Title IX.

As set forth below, OCR is dismissing allegation no. 1 because the specific allegation is moot and any systemic concerns raised by the allegation are being addressed in the monitoring of a Title IX compliance review with the University of Alaska system (system), including the university. OCR is dismissing allegation no. 2 because OCR determined that the evidence did not support a conclusion that the university violated Title IX with regard to that allegation. With respect to allegation nos. 3 and

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4, prior to completion of OCR’s investigation, the university expressed an interest in voluntarily resolving the concerns raised in these allegations and signed the enclosed Voluntary Resolution Agreement (agreement).

#### Allegation No. 1

The student was a first-year graduate student in a Ph.D. program (program) at the university. Together with a classmate (reporting students), she filed a Title IX complaint in fall 2014 against one of their professors in response to comments he had made to their class regarding a third student in the class.

The student alleged that the university failed to respond appropriately to the complaint of sexual harassment filed by the reporting students against the professor about the professor’s treatment of a third party, because the university failed to provide them with notice of the outcome regarding the complaint. The university informed OCR that its reason for not providing the student with notice of outcome was that she was a third-party reporter and not the student who was subject to the alleged sexual harassment. The university did provide notice of the outcome to the third party who was the subject of the alleged harassment, finding that the harassment did not occur, and the student did later learn about the outcome.

In February 2017, after the filing of OCR Reference No. 10152023, OCR entered into a resolution agreement with the University of Alaska system in the Title IX compliance review (OCR Reference No. 10146001). As part of this agreement, the University of Alaska system, including the university, agreed to address concerns raised about its failure to provide notice of outcome to complainants by revising its policies to include “a provision requiring concurrent written notification to both/all parties...of the outcome of the investigation” (Action Item C.11(i)). This includes third parties. OCR is currently monitoring the system’s compliance with this agreement.

OCR’s *Case Processing Manual* (CPM) provides that OCR will dismiss an allegation where OCR determines that the allegation is moot. OCR’s CPM also provides that OCR will dismiss an allegation where OCR has recently investigated or is currently investigating the same or similar allegation based on the same set of operative facts in a compliance review, directed investigation, or an OCR complaint.

Because the student was ultimately made aware of the outcome of the complaint, the allegation as it relates to her specifically is moot. The broader concern raised by the allegation, that the university’s policies or procedures failed to ensure that the student received notice of the outcome, has recently been investigated and resolved in the systemic compliance review (OCR Reference No. 10146001). As such, OCR is dismissing this allegation in accord with OCR’s CPM.

#### Allegation No. 2

##### *Findings of Fact*

The student told OCR that the professor and the program director told others that her Title IX complaint was false and groundless. She said that a classmate sent her a message informing her that he

learned from another classmate that the university had determined that the Title IX complaint the student had made against the professor was unfounded. The classmate corroborated this to OCR.

The student alleged that, subsequent to the disclosure of the details of her Title IX complaint, other students generally gave her dirty looks or stopped their conversations when she was near. She did not identify any specific examples of individuals who acted negatively in specific ways. The student said that it became very difficult to continue in the program due to the negativity she was experiencing both from peers and from having to work with the professor and the program director.

OCR interviewed ten students, who were a mix of first-year students and students in older cohorts, and several professors and program staff. All felt that a rift developed between the first year students and the older cohorts at some point after it became known that the reporting students had filed a Title IX complaint about the professor and that the entire first-year cohort wrote a letter to the deans that was partially about the university's alleged failure to respond appropriately to the reporting students' Title IX complaint about the professor. Many of the students, staff, and faculty members interviewed by OCR were aware that there had been some type of complaint filed regarding the professor, although most did not know the substance of it.

The professor told OCR that he was approached by students asking questions about the Title IX complaint, and he told them it was unsubstantiated. The program director stated that if he shared the findings with anyone, he shared it with appropriate staff only, most likely the program coordinator with whom he worked closely. The program director and the professor denied to OCR that they inappropriately shared details of the student's Title IX complaint.

### *Analysis*

The issue OCR investigated was whether the university retaliated against the student because of the student's Title IX complaint when a professor and program director in the program inappropriately disclosed details of her complaint to other students which caused the other students to act negatively toward her.

The regulation implementing Title VI, at 34 C.F.R. § 100.7(e), states that no recipient shall intimidate, threaten, coerce, or discriminate against an individual for the purpose of interfering with any right or privilege or because the individual has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under OCR regulations. The regulation implementing Title IX, at 34 C.F.R. § 106.71, incorporates the Title VI prohibition against retaliation.

To establish a potential violation of Title IX with respect to an allegation of retaliation, the evidence must establish that: (1) the individual engaged in a protected activity; (2) the individual experienced a materially adverse action by the recipient; (3) there is some evidence to infer a causal connection between the protected activity and the adverse action; and (4) there is no legitimate, non-discriminatory reason for the adverse action or the legitimate, nondiscriminatory reason is pretextual.

OCR found that the student engaged in a protected activity when she filed the Title IX complaint with the university. However, there is insufficient evidence in this case to establish that the student experienced an adverse action. While the evidence indicates that students had some information regarding the Title IX complaint, there is insufficient evidence to find that the program director or the professor inappropriately disclosed details of the student's complaint causing the social rift. Accordingly, OCR determined there is insufficient evidence to find that the university retaliated against the student in violation of Title IX.

Allegation Nos. 3 and 4

Before the conclusion of OCR's investigation, the university expressed an interest in voluntarily resolving allegation nos. 3 and 4.

With respect to allegation no. 3, OCR's investigation to date identified a concern that the university retaliated against the student when the program director made negative comments about her to faculty and staff. Specifically, OCR identified information demonstrating that, following the student's Title IX complaint, the program director stated at a faculty and staff meeting that he was terminating the student's assistantship and that the student had harmed clients, and that this statement could have damaged her professional reputation as to how she works with clients.

With respect to allegation no. 4, OCR's investigation to date identified a concern that the university retaliated against the student when the program director terminated her graduate assistantship. Specifically, OCR identified information reflecting that the student had received a graduate teaching assistantship during the 2014-2015 academic year that included a stipend and tuition award and that she was being supervised by the professor for her placement, that the student filed a Title IX complaint and co-wrote a letter to the deans of the university regarding her Title IX concerns involving the professor, that she raised concerns regarding the professor's continued supervision of her to the Title IX investigator and the program director because she feared retaliation, that the program director terminated the student from her graduate assistantship in XXXXXXXXX, and that as a result, the student lost her stipend and tuition award for the following semester.

In accordance with Section 302 of OCR's CPM, a complaint may be resolved at any time when, prior to OCR issuing a final determination, a recipient expresses an interest in resolving the complaint allegations, and OCR determines that it is appropriate to resolve the complaint allegations with a voluntary resolution agreement. OCR determined that a voluntary resolution agreement was appropriate with respect to allegation nos. 3 and 4. Subsequent discussions with the university resulted in the university signing the enclosed agreement, which when fully implemented, will address allegation nos. 3 and 4. OCR will monitor the implementation of the agreement until the university fulfills the terms of the agreement.

This letter sets forth OCR's determination in an individual OCR case and 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. The complainant may have the right to file a private suit in court regardless of OCR's determination.

The complainant has a right to appeal OCR's determination with respect to allegation no. 2 within 60 calendar days of the date indicated on this letter. In the appeal, the complainant must explain why the factual information was incomplete, inaccurate, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case with respect to allegation no. 2; failure to do so may result in dismissal of the appeal. If the complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the recipient. The recipient has the option to submit to OCR a response to the appeal. The recipient must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

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 occurs, the individual may file a complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related records upon request. In the event that OCR receives such a request, OCR 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 the implementation of the agreement and will close the complaint when OCR determines that the terms of the agreement have been satisfied. OCR looks forward to receiving the reports as set forth in the agreement.

Thank you for the cooperation that you and your staff extended to OCR in resolving this complaint. If you have any questions about this letter, you may contact Tina Sohaili, Attorney, by telephone at (206) 607-1634, or by e-mail at [tina.sohaili@ed.gov](mailto:tina.sohaili@ed.gov).

Sincerely,

Barbara Wery  
Team Leader

Enclosure: Voluntary Resolution Agreement