



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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May 25, 2021

Via email only to: president@ewu.edu

Dr. David May
Interim President
Eastern Washington University
214 Showalter Hall
Cheney, Washington 99004

Re: Eastern Washington University
OCR Reference No. 10172082

Dear Dr. May:

The U.S. Department of Education (Department), Office for Civil Rights (OCR) has resolved the above referenced discrimination complaint against Eastern Washington University (university). OCR investigated:

1. whether the university discriminated against a student on the basis of sex when it failed to provide an equitable response following his report of sexual harassment; and
2. whether the university retaliated against the student, following his report of sexual harassment, by:
 - a. asking the student to drop out of the university for a quarter or more or transfer to another university; and
 - b. requiring the student to drop his XXXXXX course which was necessary for the completion of his college degree.

OCR conducted its investigation under the authority to enforce Title IX of the Education Amendments of 1972 (Title IX). This law prohibits discrimination on the basis of sex and retaliation in education programs and activities receiving federal financial

assistance.¹ The university receives federal financial assistance from this Department and is required to comply with Title IX.

For the reasons explained below, OCR is dismissing allegation no.1 because the allegation fails to state a violation of one of the laws OCR enforces and dismissing allegation no. 2a as resolved. Regarding allegation no. 2b, prior to the completion of OCR’s investigation, the university expressed an interest in resolving this allegation and signed the enclosed Voluntary Resolution Agreement (agreement) to resolve OCR’s concern.

Allegation no. 1 – Equitable Response to Report of Sexual Harassment

XX

Allegation no. 2a – Retaliation By Asking the Student to Drop Out or Transfer

XX

Allegation no. 2b – Retaliation By Requiring the Student to Drop XXXXX

The Title IX regulation, at 34 C.F.R. § 106.71, incorporates the procedural provisions of the regulation implementing Title VI of the Civil Rights Act of 1964, including 34 C.F.R. § 100.7(e), which prohibits recipients from intimidating, threatening, coercing, or discriminating against an individual for the purpose of interfering with any right secured by the applicable regulation or because the individual made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the applicable regulation.

Prior to the conclusion of OCR’s investigation, the university expressed an interest in voluntarily resolving this allegation. OCR’s investigation to date found that the student was required to take at least one large ensemble course, such as XXXXX, each quarter as part of his degree requirements and XXXXX was taught by only one individual each quarter. During the entire 2016-2017 academic year, XXXXXXXX was taught by the Lecturer. The evidence also reflected that the student was willing to remain in the

¹ An amended Title IX regulation went into effect on August 14, 2020, and can be viewed [here](#). However, the Title IX regulation in effect at the time of the underlying events associated with the above-referenced complaint serves as the basis for OCR’s determination in this matter, which is available [here](#). For more information about Title IX, including the new Title IX regulation and related resources, visit OCR’s website at <https://www2.ed.gov/policy/ rights/guid/ocr/sexoverview.html>.

XXXXX course with the Lecturer during the Winter 2017 quarter while the university investigated his sexual harassment complaint against the Lecturer and a mutual no contact order was in place between the student and Lecturer. Despite the student's express interest in remaining in XXXXX, the university's former Title IX Coordinator stated to OCR that she was specifically instructed by the university to find the student a substitute course for XXXXX for the Winter 2017 quarter rather than exploring a way to keep the student in XXXX. The evidence indicated that, as a result, for the Winter 2017 quarter, the student was given credit for a small ensemble course he was already taking rather than having the opportunity to take XXXXXXXX. Based on these facts, OCR has a concern that the student may have been subjected to retaliation on the basis of sex when the university did not provide the student with an option to stay in XXXXX for the Winter 2017 quarter while the sexual harassment investigation was pending.

In accordance with Section 302 of the OCR's CPM, a complaint may be resolved at any time when, before OCR issues its final determination, the recipient expresses an interest in resolving the complaint allegations and OCR determines that it is appropriate to resolve the issues under investigation with an agreement. In light of the university's willingness to address the concern identified by OCR comprehensively without further investigation, OCR determined that entering into a voluntary resolution agreement was appropriate. Subsequent discussions with the university resulted in the university signing the enclosed agreement, which when fully implemented, will resolve the concern identified with respect to allegation no. 2b. 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. 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. This letter serves as OCR's final agency determination regarding allegation nos. 2a and 2b and there is no right to appeal. 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 regarding allegation no. 1 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; 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 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, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions regarding this matter, please contact Alexander Choi, Attorney, at (206) 607-1625 or at alexander.choi@ed.gov

Sincerely,

Sarah Dunne
Chief Attorney

CC: XXXXX Assoc. Vice President for Civil Rights, Compliance & Enterprise Risk Management, Title IX Coordinator