



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVENUE, SW
WASHINGTON, DC 20202-1475

REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, DC

November 25, 2014

Dr. Dan Lunsford
President
Mars Hill University
P.O. Box 370
Mars Hill, North Carolina 28754

Re: OCR Complaint No. 11-14-2282
Letter of Findings

Dear Dr. Lunsford:

This letter is to notify you of the disposition of the above-referenced complaint against Mars Hill University (the University) that was filed with the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) on June 4, 2014. The Complainant filed the complaint on behalf of a student (the Student), a former undergraduate at the University. The complaint alleges the University discriminated against the Student on the basis of sex when she was subjected to sexually harassing conduct by the XXXX Team Coach (the Coach) and when the University failed to take prompt and effective corrective action in response to a hostile environment created by sexually harassing conduct by members of the XXXX Team. More specifically, the complaint alleges that during Fall 2013 and culminating at a Christmas Party in December 2013, members of the XXXX Team used sexually offensive language and made disparaging and degrading comments about women in general, female body parts, and the sexual conduct of the female cyclists, and gave a gift of condoms to the Student and that the XXXX Team Coach publicized the gift that had been given to the Student, all of which created a “culture of hatred” toward women.

OCR enforces Title IX of the Education Amendments of 1972 (Title IX) and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any program or activity receiving Federal financial assistance from the Department. Because the University receives Federal financial assistance from the Department, OCR has jurisdiction over it pursuant to Title IX.

The Complainant provided OCR with information showing that the Student filed the same allegation with the University on March 3, 2014 and that the University issued a no violation letter on April 17, 2014. OCR’s policies provide that in cases in which the same allegations have been filed with and decided upon by another federal, state, or local agency, or through a recipient’s internal grievance procedures, OCR generally will not conduct its own investigation. Instead, OCR reviews the results of the other entity’s action and determines whether the other entity provided a comparable process and

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

met appropriate legal standards. Accordingly, OCR proceeded with a review of the University's formal inquiry and investigated the following allegation:

Whether the University provided a comparable process and met appropriate legal standards in compliance with Title IX and its implementing regulation in investigating the Student's March 3, 2014 complaint of sexually harassing conduct.

During the investigation, OCR reviewed several pieces of data, including the University's sexual misconduct policy, its Title IX investigation and adjudication process, and the complete and unredacted file detailing its investigation into the Student's complaint. OCR also conducted interviews with Complainant and the two University employees who investigated the Student's grievance and the University employee who originally received the Student's complaint. Based on the information reviewed, OCR concluded that the University's investigation of the Student's complaint did not provide a comparable process meeting appropriate legal standards in compliance with Title IX because of the University investigators' misunderstanding of the legal standards of sexual harassment. The University has agreed to enter into a resolution agreement to resolve OCR's concerns regarding the University's investigation. In addition, following the review of the University's grievance procedures and process, OCR communicated to University personnel that certain aspects fail to reflect some of OCR's recommendations regarding Title IX investigations. In response, the University voluntarily expressed a willingness to revise its grievance procedures and process to incorporate certain aspects that OCR regards as best practices. The enclosed Resolution Agreement reflects the revisions that the University has voluntarily agreed to make.

Discussion

OCR, consistent with Title IX, defines sexual harassment as unwelcome conduct of a sexual nature. If the sexual harassment of a student is sufficiently serious that it denies or limits a student's ability to participate in or benefit from the recipient's program, it creates a hostile environment for that student and possibly other students.

OCR considers a variety of related factors to determine if a sexually hostile environment has been created and considers the conduct in question from both an objective and subjective perspective. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment; a single or isolated instance of sexual harassment may create a hostile environment. A recipient has notice of harassment if a responsible employee actually knew or, in the exercise of reasonable care, should have known about the harassment. Once a recipient knows or reasonably should have known about sexual harassment that may create a hostile environment for its students, the recipient must take immediate and appropriate steps to investigate or otherwise determine what occurred. If a recipient delays responding to allegations of sexual harassment or responds inappropriately, the recipient's own action may subject the student to a hostile environment. In addition, if an employee who is acting (or who reasonably appears to be acting) on behalf of the recipient engages in sexual harassment against a student, the recipient is responsible for the discriminatory conduct and therefore is also responsible for remedying any effects of the harassment on the victim, as well as for ending the harassment and preventing its recurrence.

The University's Title IX policy explains that sexual harassment is unwelcome conduct or speech based on sex that "has the purpose or effect of substantially interfering with an individual's academic or professional performance or creating an intimidating, hostile, or demeaning employment or educational environment." Harassment is "typically persistent action that is part of an ongoing pattern

of behavior but can also be a single isolated incident.” A hostile environment is “one that both the person who is the object of the harassment finds to be, and a reasonable person in similar circumstances would find to be, hostile or abusive.”

In this case, the University responded to the Student’s initial formal complaint fairly quickly¹ and, after requesting additional information from the Student and not receiving a response, took the affirmative step of moving forward with an investigation into the actions of the Coach and the cycling team members. The University’s Grievance Administrator and another investigator interviewed the Student, the Coach, the former Assistant Coach of the cycling team, the Coach’s supervisor, the cycling team Captain, and several male and female members of the cycling team. The investigators summarized each interview and reviewed some documentary evidence, which was included in their final report to the Title IX Coordinator along with their conclusion that, using a preponderance of the evidence standard, no sexual harassment occurred. Despite the insufficient evidence determination, the Grievance Administrator recommended that the Coach participate in leadership and sensitivity training, that he work with his supervisor to ensure all cycling team issues are handled effectively, and that the cycling team members participate in a counseling session, or sessions, regarding respectful behavior. The Title IX Coordinator distributed the final written report and recommendations to all parties and each side was given an opportunity to appeal the determination, though no one did.

In her submission to OCR, the Complainant stated that the investigation was faulty because, in part, the Grievance Administrator’s investigative report did not explicitly address the presence, or absence, of a sexually hostile environment on the cycling team. As explained above, however, the record showed that the University did notify the Complainant of its finding that no sexual harassment occurred.

The Complainant also believed the Grievance Administrator’s decision regarding the nonexistence of sexual harassment was improperly based on his conclusion that the Coach did not *intend* to harass the Student. As is clear from the discussion above, intent of the harasser is not a requirement for establishing sexual harassment/hostile environment under either Title IX or the University’s policy. In interviews with the Grievance Administrator, OCR confirmed that he believed that for sexual harassment to exist, the harasser must have had the intent to sexually harass. Thus, in his estimation, because the Coach was unaware that the Student would be receiving condoms, he did not violate the University’s policy. In addition, although in an interview with OCR staff the Grievance Administrator was never able to fully explain sexual harassment, he did make it clear that in addition to requiring the harasser(s) to have specific intent to harass, for a hostile environment to exist, there had to be a pattern of sexual conduct. As previously explained, harassment can also be a single isolated incident. The Grievance Administrator further indicated that, rather than examining the conduct from the perspective of a reasonable person in the *victim’s* position, he would consider whether a reasonable person in the

¹ The University waited until the Student filed a formal complaint before proceeding with the investigation. However, it learned of the underlying conduct two weeks earlier when the Student’s counselor contacted the Title IX Coordinator. The Title IX Coordinator interviewed the Student immediately but waited an extra week to receive additional information from her before assigning a Grievance Administrator. The investigation then took nearly four weeks to complete. According to the University’s grievance policy, the Title IX Coordinator will take no longer than ten days to receive a Title IX grievance and assign a Grievance Administrator. Further, the investigation will be completed within fifteen days. However, in this case, the delays were due, in part, to the University’s weather closures and intervening week off for Spring Break and the large number of witnesses, some no longer associated with the University, who needed to be interviewed. For that reason, OCR finds the investigation and adjudication in Student’s grievance to be prompt. However, OCR cautions the University to abide by its own stated timelines and to review OCR’s guidance which states that the average Title IX grievance should take sixty calendar days to investigate and adjudicate (not including appeals) and here the University took a little more than sixty days to complete the investigation.

harasser's position would have known that the conduct was unwelcome. As explained in OCR's 2001 *Revised Sexual Harassment Guidance*, "[a]cquiescence in the conduct or the failure to complain does not always mean that the conduct was welcome." Further,

[s]chools should be particularly concerned about the issue of welcomeness if the harasser is in a position of authority. For instance, because students may be encouraged to believe that a teacher has absolute authority over the operation of his or her classroom, a student may not object to a teacher's sexually harassing comments during class; however, this does not necessarily mean that the conduct was welcome. Instead, the student may believe that any objections would be ineffective in stopping the harassment or may fear that by making objections he or she will be singled out for harassing comments or other retaliation.

Such concerns apply equally to alleged harassing conduct by coaches.

Conclusion

Based on the above information, OCR finds that an improper legal standard was applied to findings in the Student's grievance. Although the University conducted a prompt, thorough and impartial investigation into the Student's grievance, as a result of the Grievant Administrator's fundamental misunderstanding of what constitutes sexual harassment/hostile environment, it is unclear whether the appropriate conclusion was reached in the Student's grievance. As noted above, the University agreed to enter into a Resolution Agreement to address OCR's concerns regarding the investigation and to also make improvements to its Title IX policies and procedures. OCR will monitor the University's implementation of the Resolution Agreement.

This concludes OCR's investigation of the complaint. This letter 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 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. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the University may not retaliate against an individual who asserts a right or privilege under a law enforced by OCR or who files a complaint, testifies, or participates in an OCR proceeding. If this happens, the individual may file a retaliation complaint with OCR. Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

We appreciate the cooperation and assistance provided by University staff, most notably Deana Holland, as well as that of Cindy Rice, Counsel to the University, during the resolution of this

complaint. If you have any questions, feel free to contact Christa Cothrel at (202) 453-5926 or via e-mail at christa.cothrel@ed.gov or Betsy Trice at (202) 453-5931 or via email at betsy.trice@ed.gov.

Sincerely,

/S/

Kay Bhagat
Team Leader
District of Columbia Office
Office for Civil Rights

Enclosure

cc: Deana D. Holland, Director of Human Resources (via email)
Cindy M. Rice, Patla, Straus, Robinson & Moore, P.A. (via email)