



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

March 2, 2016

Dr. Steve Ballard, Chancellor
East Carolina University
East Fifth Street
Greenville, North Carolina 27858

Re: OCR Complaint No. 11-15-2003
Letter of Findings

Dear Dr. Ballard:

The Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) has completed its investigation of the complaint we received on October 8, 2014 against East Carolina University (the University). The Complainant alleged that the University discriminates on the basis of sex. Specifically, the Complainant alleged that the University subjected the her to a sexually hostile environment when, beginning in XXXX and continuing throughout the first semester of the XXXX school year, a professor at the University sent her suggestive messages, asked her out on dates, and engaged in other inappropriate behavior.

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.

In reaching a determination, OCR reviewed documents provided by the Complainant and the University, and interviewed the Complainant and University staff.

After carefully considering all of the information obtained during the investigation, OCR identified compliance concerns. The University agreed to resolve the concerns through the enclosed resolution agreement. OCR's findings and conclusions are discussed below.

Background

Before filing with OCR, the Complainant filed the same allegation with the University and completed the University's Level I and Level II¹ processes. OCR's policies provide that in cases

¹ For complaints against faculty members, the Level I grievance is the first part of the formal grievance process. To initiate a Level I grievance, an individual files a complaint with the University's Office for Equity and Diversity (OED). The OED will then initiate an investigation and issue findings.

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

where the same complaint allegations have been filed by the complainant against the same recipient through a recipient's internal grievance procedures, OCR will not conduct its own investigation; instead, OCR reviews the results of the recipient's determination and determines whether the other entity provided a process comparable to OCR's process and met appropriate legal standards. Accordingly, OCR reviewed the University's response to the Complainant's allegation of sexual harassment. In conducting the review of the results of the University's determination in this case, OCR considered whether the University has an adequate grievance process for complaints of sexual harassment, and whether the investigation took too long to complete. After conducting a thorough investigation, OCR identified violations with the University's Title IX grievance procedure and the role of the Title IX Coordinator. While OCR found that the University's response to the Complainant's complaint of sexual harassment was not conducted in a prompt manner, OCR found that the response was equitable (i.e., the University's process followed the correct legal standards and was comparable to OCR's process). A review of OCR's analysis and conclusions is discussed more below.

Legal Standards

Response to Sexual Harassment

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, OCR has jurisdiction over it pursuant to Title IX.

The regulation implementing Title IX, at 34 C.F.R. § 106.31(a), provides that 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 education program or activity operated by a recipient. Sexual harassment that creates a hostile environment is a form of sex discrimination prohibited by Title IX. 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.²

According to the Faculty Manual Part XII, if either party disagrees with the findings and conclusions in the report of the Grievance Officer, either party may notify the Grievance Officer, in writing, to request a Grievance Board Hearing. The only way to initiate the Level II process is by completing the Level I process.

² The applicable legal standards described herein are more fully discussed in OCR's 2011 Dear Colleague letter on Sexual Violence, which is available at: <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html> (April 4, 2011); for further clarification on this topic, see "Questions and Answers on Title IX and Sexual Violence," at <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf> (April 29, 2014). See also OCR's 2010 Dear Colleague letter on Harassment and Bullying, which is available at: <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.html> (October 26, 2010), and OCR's Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, at <http://www.ed.gov/about/offices/list/ocr/docs/shguide.html> (January 19, 2001).

In determining whether this denial or limitation has occurred, OCR examines all of the relevant circumstances from an objective and subjective perspective, including: the type of harassment (e.g., whether it was verbal or physical); the frequency and severity of the conduct; the age, sex, and relationship of the individuals involved (e.g., professor-student or student-student); the setting and context in which the harassment occurred; whether other incidents have occurred at the university; and other relevant factors. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the harassment is physical. For example, a single instance of sexual assault is sufficiently severe to create a hostile environment. Title IX also protects all students at colleges and universities from sex harassment, including male and female students.

If a recipient knows or reasonably should have known about sexual harassment that creates a hostile environment, a recipient must take immediate and appropriate action to investigate or otherwise determine what occurred. If an investigation reveals that discriminatory harassment has occurred, a recipient must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring. These duties are a recipient's responsibility regardless of whether a student has complained, asked the recipient to take action, or identified the harassment as a form of discrimination. A law enforcement investigation does not relieve the recipient of its independent Title IX obligation to investigate the conduct. A recipient should not wait for the conclusion of a criminal investigation or criminal proceeding to conduct its own Title IX investigation; and if needed, must take immediate steps to protect the complainant from further harassment prior to the completion of the Title IX investigation/resolution. Additionally, under Title IX, a recipient must process all complaints of sexual assault/violence, regardless of where the conduct occurred, to determine whether the conduct occurred in the context of an education program or activity or had continuing effects on the school environment or in an education program or activity that occurs outside of a school. Further, once a school is on notice of sexual assault/violence against a student that occurred outside of school property, it must assess whether there are any continuing effects within the college or university or in an off-site education program or activity that are creating or contributing to a hostile environment, and if so, address that hostile environment in the same manner in which it would address a hostile environment created by misconduct on the university's campus.

Sexual harassment of a student by a faculty member or other university employee violates Title IX. Recipients are responsible for taking prompt and effective action to stop the harassment, prevent its recurrence and remedy its effects. A recipient is responsible under Title IX regulations for the nondiscriminatory provision of aid, benefits, and services to students. If an employee who is acting (or who reasonably appears to be acting) in the context of carrying out these responsibilities over students engages in sexual harassment, the recipient is responsible for the discriminatory conduct. The recipient is also responsible for remedying any effects of the harassment on the complainant, as well as for ending the harassment and preventing its recurrence. This is true whether the recipient has notice of the harassment. 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.

If an investigation reveals that sexual harassment created a hostile environment, the recipient must then take prompt and effective steps reasonably calculated to end the sexual harassment, eliminate the hostile environment, prevent its recurrence, and, as appropriate, remedy its effects. A series of escalating consequences may be necessary if the initial steps are ineffective in stopping the harassment. 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. If it does, the recipient will be required to remedy the effects of both the initial sexual harassment and the effects of the recipient's failure to respond promptly and appropriately. A recipient's obligation to respond appropriately to sexual harassment complaints is the same irrespective of the sex or sexes of the parties involved.

Title IX Coordinator

The Title IX regulation at 34 C.F.R. § 106.8(a) requires schools to designate at least one employee to coordinate efforts to comply with Title IX and to notify students and employees about that designated coordinator. A Title IX coordinator's core responsibilities include overseeing the recipient's response to Title IX reports and complaints and identifying and addressing any patterns or systemic problems revealed by such reports and complaints. The Title IX coordinator must have knowledge of the requirements of Title IX, of the recipient's own policies and procedures on sex discrimination, and of all complaints raising Title IX issues throughout the recipient.

Title IX Grievance Procedures

The Title IX regulation 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 of sex discrimination. In evaluating whether a recipient's grievance procedures satisfy this requirement, OCR reviews all aspects of a recipient's policies and practices, including the following elements that are necessary to achieve compliance with Title IX:

1. notice to students and employees of the grievance procedures, including where complaints may be filed;
2. application of the grievance procedures to complaints filed by students or on their behalf alleging sexual harassment carried out by employees, other student, or third parties;
3. provision for adequate, reliable and impartial investigation of complaints, including the opportunity for both the complainant and alleged perpetrator to present witnesses and evidence;
4. designated and reasonably prompt time frames for the major stages of the complaint process;
5. written notice to the complainant and alleged perpetrator of the outcome of the complaint; and
6. assurance that the school will take steps to prevent recurrence of any sexual harassment and remedy discriminatory effects on the complainant and others, if appropriate.

To ensure that students and employees have a clear understanding of what constitutes sexual violence, the potential consequences for such conduct, and how the recipient processes

complaints, the recipient's Title IX grievance procedures should also include the following in writing:

1. a statement of the recipient's jurisdiction over Title IX complaints;
2. adequate definitions of sexual assault and an explanation as to when such conduct creates a hostile environment;
3. reporting policies and protocols, including provisions for confidential reporting;
4. identification of the employee or employees responsible for evaluating requests for confidentiality;
5. notice that Title IX prohibits retaliation;
6. notice of a student's right to file a criminal complaint and a Title IX complaint simultaneously;
7. notice of available interim measures that may be taken to protect the student in the educational setting;
8. the evidentiary standard that must be used (preponderance of the evidence) in resolving a complaint;
9. notice of potential remedies for students;
10. notice of potential sanctions against perpetrators; and
11. sources of counselling, advocacy and support.

The procedures for resolving complaints of sexual harassment should be written in language that is easily understood, be easily located, and should be widely distributed. It is permissible for a school to have either one grievance procedure that applies to all sex discrimination and harassment or separate procedures for discrimination and harassment. However, a recipient's grievance procedures for handling discrimination complaints must meet the Title IX requirement of affording a complainant a prompt and equitable resolution. In addition, a school may have one grievance procedure for complaints by students and employees or separate procedures for complaints by students and complaints by employees.

In addition, recipients should provide training to employees about its grievance procedures and their implementation. All persons involved in implementing a recipient's grievance procedures (e.g., Title IX coordinators, investigators and adjudicators) must have training or experience in handling complaints of sexual harassment, and in the recipient's grievance procedures as well as applicable confidentiality requirements. Recipients should also provide training about its grievance procedures and their implementation to any employees likely to witness or receive reports of sexual harassment; including teachers, recipient law enforcement unit employees, recipient administrators, recipient counselors, general counsels, health personnel, and resident advisors. Recipients need to ensure that their employees are trained so that they know to report sexual harassment to appropriate officials, and so that employees with the authority to address sexual harassment know how to respond properly.

Pending the outcome of an investigation of a report or complaint, Title IX requires a recipient to take steps to ensure equal access to its education programs and activities and to protect the complainant as necessary, including taking interim measures before the final outcome of an investigation. Such interim measures minimize the risk of harm and continued harassment while the recipient conducts its inquiry. The recipient should undertake these interim measures

promptly once it has notice of the harassment allegation and should provide the complainant with periodic updates on the status of the investigation. The specific interim measures implemented and the process for implementing those measures will vary depending on the facts of each case. In general, when taking interim measures, recipients should minimize the burden on the complainant. For example, if the complainant and alleged perpetrator share the same class or residence hall, the recipient should not, as a matter of course, remove the complainant from the class or housing while allowing the accused to remain without carefully considering the facts of the case. Recipients should also check with complainants to ensure that the interim measures are effective, and if ineffective, identify alternatives. Recipients should also ensure that the complainant is aware of his or her Title IX rights and any available resources, such as victim advocacy, housing assistance, academic support, counseling, disability services, health and mental health services, legal assistance, and the right to report a crime to campus or local law enforcement.

Throughout the recipient's investigation and in any hearing, both parties must have equal opportunity to present relevant witnesses and other evidence. Also, the recipient must use a preponderance of the evidence standard for investigating allegations of sexual harassment. If a recipient provides for appeal of the findings, it must do so for both parties. The recipient must maintain documentation of all proceedings.

For Title IX purposes, if a student requests that his or her name not be revealed to the accused or asks that the recipient not investigate or seek action against the accused, the school should inform the student that honoring the request may limit its ability to respond fully to the incident, including pursuing disciplinary action against the accused. The recipient should also explain that Title IX includes protections against retaliation, and that school officials will not only take steps to prevent retaliation but also take strong responsive action if it occurs. If the student still requests that his or her name not be disclosed to the accused or that the recipient not investigate or seek action against the accused, the recipient will need to determine whether or not it can honor such a request while still providing a safe and nondiscriminatory environment for all students, including the student who reported the harassment. If the school determines that it can respect the student's request not to disclose his or her identity to the accused, it should take all reasonable steps to respond to the complaint consistent with the request.

Analysis

The Complainant filed a Level I grievance with the University on XXXX, alleging that a professor (the Professor) sent her unwanted emails and text messages of a flirtatious nature. The University completed its investigation of the complaint in XXXX finding that the Professor's conduct, although unprofessional, did not amount to sexual harassment. On XXXX, the Complainant filed a complaint with OCR (Complaint No. 11-14-2259). During the course of the investigation, the Complainant informed OCR that she was going to invoke the Level II grievance process with the University. On July 30, 2014, OCR administratively closed Complaint No. 11-14-2259 pending the outcome of the Level II grievance process.

The Level II process was completed in XXXX, where the University upheld the decision of the Grievance Officer. On XXXX, the Complainant filed with OCR again. As discussed above,

OCR reviewed the University's grievance procedures and considered whether the University conducted a comparable resolution process in its investigation of the Complainant's grievance. OCR did not investigate the underlying allegation of sexual harassment.

OCR first reviewed the University's Title IX grievance procedures³ to determine whether they provided for a prompt and equitable process for responding to complaints of sexual harassment. OCR then considered whether the University's response to the Complainant's specific complaint of harassment was prompt and equitable. OCR notes that since its review of the University's policies and procedures, the University has made changes to its policies and procedures and continues to make changes. Thus the below analysis applies as of the time of OCR's review, in 2015. OCR will continue to analyze the University's policies and procedures throughout its monitoring of the resolution agreement.

Grievance Procedures

OCR identified several violations with the University's Title IX grievance procedures.

- *Complaints against Third Parties*

In evaluating whether a recipient's grievance procedures satisfy the requirements of the regulation, OCR will review whether a recipient's grievance procedures apply to complaints of sexual harassment, including sexual violence, carried out by third parties. In this case, OCR examined all of the University's written procedures and could find no mention of the fact that any of them apply when a grievant wishes to file a complaint against a third party, such as a visitor to campus or a contractor. Although the University's Title IX Coordinator stated that should a student file a complaint of sexual misconduct against a third party, it would be investigated, OCR finds that, as written, the University's grievance procedures do not comply with Title IX since complainants are not informed, in any of the published written materials, of the fact that they may file complaints against third parties.

- *Promptness of Process*

When evaluating whether grievance procedures provide for prompt and equitable resolution of a sexual harassment complaint, OCR will look at whether the procedures contain reasonably prompt timeframes for the major stages of the complaint process. In this case, OCR has identified a violation regarding the promptness of the University's Title IX grievance procedures.

According to the University's "Interim Regulation on Responding to Complaints of Sexual Harassment, Sexual Misconduct and/or Discrimination on the Basis of Sex," "[t]he University will make every effort to complete investigations within approximately sixty calendar days, depending on the complexity of the investigation and severity and extent of the alleged conduct." In an interview with OCR, the University's Title IX Coordinator stated that, although not written

³ The procedures applicable to cases against faculty members can be found in Part XII Section IV of the Faculty Manual. However, because the Complainant is a student, the procedures set for in the University's Interim Regulation on Responding to Complaints of Sexual Harassment, Sexual Misconduct and/or Discrimination on the Basis of Sex document were also applicable in this case.

in the Faculty Manual, this sixty day timeframe is understood to apply to the Level I grievance process, as outlined in the Faculty Manual.

Level I Process⁴

- Individual submits a complaint to the OED.
- Within **14** calendar days, the Grievance Officer meets with complainant
- If the complainant wishes to proceed with an investigation, both parties (complainant and respondent) are notified of the investigation no later than **14** calendar days following the decision to proceed to investigation.
- Investigation (gathering data, interviews, etc.) ensues – during this process, the Grievance Officer maintains an investigative record which is then provided to both parties for amendment.
- Once received, the parties have **14** calendar days to amend the investigative record.
- Within **21** calendar days after the 14 day period to amend the record, the Grievance Officer submits their findings to the Vice Chancellor. All parties are notified, at the same time, of the findings.
- The Vice Chancellor shall issue a letter to all parties that may or may not initiate the disciplinary process.

Level II Process

- When the disciplinary actions, if any, do not include a serious sanction, either party may, within **28** calendar days from the Vice Chancellor's issuance of a letter responding to the Grievance Officer's report, request an appeal to the Grievance Board. However, if serious disciplinary sanctions are imposed, the respondent has 14 calendar days to appeal to the Due Process Committee and not the Grievance Board
- Within **7** calendar days after receiving the request for a Level II Grievance Board hearing, the Grievance Officer must submit the investigative record to the Chair of the Grievance Board
- Within **3** calendar days from the formation of the Panel (aka Grievance Board), both parties are notified of the members of the Panel.
- The Panel will initiate a hearing no later than **42** calendar days after the date the respondent was notified that a hearing will occur.
- At least 28 calendar days prior to the start of the hearing, both parties are notified of the date, time and place of the hearing. A request for postponement for up to **35** calendar days may be granted, if requested.
- The hearing ensues (review of record and possible witness testimony).
- After hearing, the Panel may adjourn for no more than **2** calendar days.
- Within **21**calendar days of the Panel's determination, the decision will be communicated in writing to the Chancellor and both parties.

⁴ The more detailed version of the Level I and Level II process can be found in the Faculty Manual Part XII. This abbreviated outline is solely for the purposes of reviewing the promptness of the entire process.

- Within **42** calendar days of receiving the Panel’s report, the Chancellor shall notify both parties of his/her concurrence or non-concurrence with the findings and of the disciplinary action, if any

Although the Title IX regulations do not require recipients to offer an appeals process, when a recipient chooses to provide for an appeal of the findings or remedy, or both, the process must also be prompt and equitable.⁵ Based on OCR’s review of the timeframes given for both the Level I and Level II process, OCR finds that the process does not provide for a prompt resolution of complaints. As listed, the process has the potential to take 243 calendar days to reach resolution, which is not a prompt timeframe.

In addition to the promptness of the Level I and Level II processes, OCR finds that Section II.B.3 of the procedures provides that within twenty-one calendar days of the completion of the investigation, the Grievance Officer submits the record and the report of findings and conclusions to the Vice Chancellor. The Vice Chancellor, who is granted the authority to initiate disciplinary actions, then sends a letter to all parties that responds to the Grievance Officer’s report; this letter may or may not initiate the disciplinary process. The University’s procedures, as written, do not provide a timeframe for the Vice Chancellor to issue such a letter. OCR considers notification of the final outcome of the investigation to be a major state of the complaint process. Therefore, the procedures, as written, do not provide a timeframe for the parties to be notified of the final outcome of the investigation and the lack of specified timeframe for the Vice Chancellor to notify both parties has the potential to extend the complete complaint investigation process beyond what is reasonably prompt.

Title IX Coordinator

As mentioned above, a Title IX coordinator’s core responsibilities include, among other things, overseeing the recipient’s response to Title IX reports and complaints. OCR interprets this to mean that the Title IX coordinator must have knowledge of the requirements of Title IX, of the recipient’s own policies and procedures on sex discrimination, and of all complaints raising Title IX issues. During OCR’s interview with the University’s Title IX Coordinator, the Coordinator stated that she has little involvement or knowledge over a critical part of the grievance, the Level II process. She explained that the Faculty Senate Office runs the Level II grievance process and that she (i.e., the Title IX coordinator) does not have any control over the Level II grievance process. She was also not able to identify what training, if any, the panel members receive on sexual harassment.

Because the University’s procedures allow for the appeal of a Level I determination, when the complaint involves a faculty member, the Title IX coordinator is responsible for knowing about all parts of the grievance process, including the Level II process. Thus OCR finds that there is sufficient evidence to conclude that the Title IX coordinator lacks sufficient knowledge of the University’s grievance procedures on sex discrimination.

⁵ See “Questions and Answers on Title IX and Sexual Violence,” at <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf> (April 29, 2014).

University's Response to the Complainant's Allegation

In reviewing the University's investigative process for this case, OCR finds that the University's investigation was comparable to OCR's process and met appropriate legal standards. Specifically, the documentation reviewed indicates that the investigator interviewed both parties, both parties were given an opportunity to provide witnesses, other relevant witnesses (i.e., students in the Complainant's class with the Professor) were interviewed, and both parties were given an opportunity to provide documentary evidence and provided with an opportunity to review and amend the investigative record.

During the Level I process, the University applied a preponderance of the evidence standard when reviewing the documentary evidence, including text message correspondence between the Complainant and the Professor, interviewing each party, and interviewing other students and faculty members, and determined that the accused "acted inappropriately and unprofessionally with [the Complainant] and may have made other students uncomfortable during Sociology 6459 with conversations about his personal matters," but the conduct in question did not amount to sexual harassment. Specifically, in its XXXX letter, the University outlined the definition of sexual harassment, explaining that sexual harassment includes "verbal remarks . . . of a sexual nature" that "creat[e] or attempt[] to create a hostile university or working environment." In its XXXX letter, the University directly referred to the electronic communication between the parties and summarized the accounts of the alleged verbal communication between the Professor and the Complainant. The University found that the Professor,

commented on having dinner or feeding [the Complainant] four times . . . [the Professor] denied that the intention of his invitations were to request a date with [the Complainant] and denied he had romantic intentions. . . [The Professor's] comments to [the Complainant], though inappropriate if true, were not severe or pervasive enough to create a learning environment that a reasonable person would consider intimidating, hostile or abusive.

The University also considered that though the Complainant alleged that the Professor told her that she is "attractive and intelligent," it was not able to substantiate that this comment was made – through interviews with the Professor, other students, and a review of the written communications between the Professor and the Student. In the XXXX letter, the University analyzed each text message and e-mail that the Professor sent to the Complainant and explained its rationale for determining that the communications were inappropriate but did not meet the legal definition of sexual harassment. OCR found that the allegation was investigated under a resolution process and legal standards there were comparable to OCR's resolution process and legal standards.

With respect to the Level II process, the hearing panel reviewed the investigative file from the Level I process, and the testimony provided by the parties and witnesses when it upheld the Level I finding that the conduct was unprofessional but did not amount to sexual harassment. In an XXXX letter, the University's Chancellor upheld the hearing panel's findings and informed the Complainant that the Professor "engaged in behavior toward you that was unprofessional, but that his behavior did not meet the definition of sexual harassment or discrimination." OCR

reviewed the hearing transcript and the documentation that the hearing panel and the Chancellor relied upon in arriving at this determination. Based on this review, OCR found that the allegation was investigated under a resolution process and under legal standards that were comparable to OCR's process and standards.

Notwithstanding this finding, OCR identified concerns with the promptness of the University's investigation. Specifically, the Complainant filed a complaint with the University in XXXX and the University completed the Level I grievance process in XXXX, about five months after receiving the complaint. The University acknowledges that this complaint investigation was not completed in a timely manner, but states that the delays were due, in part, to staffing matters (the original investigator resigned from the University and the complaint had to be reassigned). The University also states that personally identifiable and other sensitive information needed to be redacted from the record prior to releasing the record to both parties, which took a substantial amount of time. In this case, the investigative record was 330 pages. The University informed OCR that it no longer provides copies of the entire record, including personnel files, but only provides documentation relevant to the investigation.

Notwithstanding the University's assertion, OCR is concerned that the investigation took five months. The Title IX regulation requires a prompt resolution to a complaint alleging sexual harassment. In reviewing the facts of this case and the information provided by the University, OCR finds that the delay in resolving the complaint was not due to the complexity of the complaint itself, but rather it was due to personnel issues. Because the investigation concluded that there was no sexual harassment and that that determination was made through a comparable resolution process that applied comparable legal standards, OCR finds that there is no individual remedy available for the University's failure to promptly respond to the complaint allegation.

Conclusion

On February 24, 2016, the University agreed to implement the enclosed Resolution Agreement (Agreement), which commits the University to take specific steps to address the identified areas of noncompliance. The Agreement entered into by the University is designed to resolve the issues of noncompliance. Under Section 303(b) of OCR's *Case Processing Manual*, a complaint will be considered resolved and the University deemed compliant if the University enters into an agreement that, fully performed, will remedy the identified areas of noncompliance (pursuant to Section 303(b)). OCR will monitor closely the University's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively. OCR may conduct additional visits and may request additional information as necessary to determine whether the University has fulfilled the terms of the Agreement and is in compliance with Title IX with regard to the issues raised. As stated in the Agreement entered into by the University on February 24, 2016, if the University fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings, including 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, including to enforce the Agreement, OCR shall give the University written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

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 must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or 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 University's cooperation in the resolution of this complaint. If you have any questions regarding this letter, please contact Todd Rubin, at 202-453-5923 or todd.rubin@ed.gov, or Kendra Riley, at 202-453- 5905 or kendra.riley@ed.gov.

Sincerely,

/S/

David Hensel
Supervisory Attorney, Team III
Office for Civil Rights
District of Columbia Office

Enclosure

cc: Donna Gooden Payne, Esq.