



**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

September 8, 2022

By email only to President@gmu.edu

Dr. Gregory Washington
President
George Mason University
4400 University Drive
Fairfax, VA 22030

Re: Case No. 11-20-2256
George Mason University

Dear Dr. Washington:

The U.S. Department of Education, Office for Civil Rights (OCR) has completed its investigation of this complaint filed against George Mason University. While we strive to resolve the complaints we receive in a timely manner, we acknowledge the length of time OCR has taken to resolve this case, and we thank the University for its patience.

The Complainant alleged that the University discriminates on the basis of sex as follows:

Allegation 1: The University discriminates against female students on the basis of sex by listing on its website and promoting the Lax Scholarships Fund for Gay Men that is exclusive to, or expresses a preference for, male students, such that it is unavailable to female students; and

Allegation 2: The University discriminates against male students on the basis of sex by listing on its website and promoting the following scholarships that are exclusive to, or express a preference for, female students, such that they are unavailable to male students:

1. Entertainment Software Association Scholarship
2. AAUW (American Association of University Women): Beaver Valley Branch
3. New Jersey State Federation of Women's Clubs: Margaret Yardley Fellowship
4. AAUW (American Association of University Women) Educational Foundation
5. Eugenie V. Mielczarek Endowed Scholarship
6. Mary Ruth Giansante Nursing Scholarship

OCR enforces Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 et seq., 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 Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

www.ed.gov

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

After carefully considering all of the information obtained during the investigation, OCR found sufficient evidence of violations of Title IX regarding the listing of five scholarships operated by outside organizations. The University agreed to resolve these violations through the enclosed resolution agreement. However, OCR is closing the allegations involving two scholarships. OCR's findings and conclusions are discussed below.

Legal Standard

The Title IX regulation, at 34 C.F.R. § 106.37, addresses financial assistance. Section 106.37(a) sets forth the general rule that a recipient shall not, on the basis of sex: (1) provide different amounts or types of financial assistance; (2) assist any organization or person in providing assistance in a manner which discriminates; or (3) apply any rule or assist in the application of any rule that treats people differently with regard to marital or parental status.

Section 106.37(b) outlines an exception for financial aid established by certain legal instruments. Pursuant to 34 C.F.R. § 106.37(b)(1), a recipient may administer scholarships or other forms of financial assistance that are established by domestic or foreign wills, trusts, bequests, or similar legal instruments or by acts of a foreign government that require the award to be made to members of a particular sex—as long as the overall effect of awarding these sex-restricted scholarships and other forms of financial assistance does not discriminate on the basis of sex. To comply with 34 C.F.R. § 106.37(b) and ensure that assistance is awarded in a nondiscriminatory manner, recipients must develop and adhere to procedures that: (i) select students based on nondiscriminatory criteria; (ii) allocate appropriate sex-restricted financial assistance to each student selected; and (iii) ensure that no student selected is denied financial assistance due to the absence of a scholarship or other form of financial assistance designated for someone of that student's sex.

In addition, the Title IX regulation, at 34 C.F.R. § 106.3(b), provides that “[i]n the absence of a finding of discrimination on the basis of sex in an education program or activity, a recipient may take affirmative action to overcome the effects of conditions which resulted in limited participation therein by persons of a particular sex.”

Facts

The Complainant alleged that the seven scholarships listed above discriminate against students at the University on the basis of sex because the criteria for eligibility include restrictions based on the applicant's sex. OCR determined that all but one of the scholarships listed are administered by a third party unaffiliated with the University. The University stated to OCR that it has no role in administering those six third-party scholarships beyond listing them on its websites, and OCR found no evidence to suggest otherwise.

The University informed OCR that four of the six third-party scholarships are currently listed on the University's law school internal intranet site, which is not available to the public but is available to anyone affiliated with the University, including students. A fifth scholarship is listed

on the College of Visual and Performing Art's website, which is available to any member of the public. The five listed third-party scholarships all state a restriction or preference based on sex. The five third-party scholarships, and their corresponding descriptions, are as follows:

- Entertainment Software Association Scholarship: Provides scholarship funds for “women and minority students across the United States.”¹
- AAUW (American Association of University Women): Beaver Valley Branch: “Incoming or current female students (preference for current students) who are residents of western Pennsylvania. Preference for residents of Beaver County.”
- AAUW (American Association of University Women) Educational Foundation: “Variety of scholarships for women of color.”
- New Jersey State Federation of Women's Clubs: Margaret Yardley Fellowship: “Incoming and current undergraduate and graduate, female students who are residents of New Jersey.”
- Lax Scholarship Fund for Gay Men: “Scholarship awarded to men who live in the five-county Philadelphia region (Bucks, Chester, Delaware, Montgomery and Philadelphia) and Camden County, who are attending colleges, graduate or professional schools anywhere.”

OCR did not find any evidence that the sixth third-party scholarship, the Mary Ruth Giansante Nursing Scholarship, is listed on a University website. The University confirmed to OCR that this scholarship had been removed and the University has no intention of listing it in the future.

OCR interviewed the Assistant Dean for Student Academic Affairs (Assistant Dean), who is responsible for the listing of outside scholarships at the law school. The Assistant Dean confirmed that the law school vets third-party scholarships to ensure that they are legitimate scholarship opportunities, and then lists them on either the intranet or internet pages for students to access. In further communication with the University, OCR learned that the University has no criteria for determining when a third-party scholarship will be listed on its websites. The University noted that, as a matter of practice, it lists all scholarships of which it becomes aware, but retains the right to refuse to list a scholarship at any time.

The Assistant Dean stated that she did not believe any of the scholarships investigated by OCR had been listed on the law school's website as a form of affirmative action to overcome the effects of conditions which resulted in limited participation by persons of a particular sex. The Director of Game Design Programs in the College of Visual and Performing Arts confirmed the same with respect to the Entertainment Software Association Scholarship.

The University acknowledged that one scholarship – the Eugenie V. Mielczarek Endowed Scholarship (the EVM Scholarship) – is administered by the University and states a “strong preference” for the award to be given to a female student. OCR confirmed that the EVM Scholarship was created by a domestic bequest from two donors who entered into a legal gift agreement with the University. The University further acknowledged that the EVM Scholarship was awarded twice by the Physics Department, once in 2018 and once in 2020, and that both times the recipient was selected by reviewing the academic standing of all female students in the

¹ This scholarship is listed on the College of Visual and Performing Art's website. The remaining scholarships are listed on the University's intranet site.

department and selecting the one with the highest grade point average. The University stated that the selection process used by the Physics Department in both instances was not in accordance with University policies, which state that in the event a scholarship administered by the University contains sex-restricted criteria for selection, the awardee is to be selected based on non-discriminatory criteria and, if the selected individual does not qualify for the scholarship because of his/her sex, he/she is to be awarded the same amount of financial assistance from a general fund created by the University. This process is referred to as the “pool and match” system by the University and is outlined in the University’s procedure entitled “Office of Student Financial Aid Scholarship Policy and Procedures.” The University also provided OCR with a copy of materials it uses in annual training to staff about the use of the “pool and match” system.² The University has advised OCR that the Physics Department will use the “pool and match” system in the administration of the EVM Scholarship moving forward.

Analysis

OCR finds that the listing of the Lax Scholarships Fund for Gay Men; the AAUW: Beaver Valley Branch; New Jersey State Federation of Women's Clubs: Margaret Yardley Fellowship; AAUW Educational Foundation; and the Entertainment Software Association Scholarship, each of which restricts access to a particular sex, violates 34 C.F.R. § 106.37(a), which expressly prohibits limiting eligibility on the basis of sex.³

OCR is closing the allegation pertaining to the Mary Ruth Giansante Nursing Scholarship under Section 110(n) of OCR’s *Case Processing Manual*, which states that OCR will close an allegation that is moot or unripe. OCR has determined that this scholarship is no longer listed on the University’s website, and the allegation is therefore moot.

Finally, OCR is closing the allegation pertaining to the EVM scholarship under Section 110(d) of OCR’s *Case Processing Manual*, which states that OCR will close an allegation if it obtains credible information indicating that the allegation is currently resolved. The University acknowledged that the EVM Scholarship is administered by the University and states a “strong preference” for the award to be given to a female student. The University further acknowledged that the EVM Scholarship was awarded twice by the Physics Department but not in accordance with University policies. The University notified OCR of this miscommunication between the Physics Department and the Office of Financial Aid and stated the Physics Department will implement the “pool and match” process for any future awards of the EVM Scholarship. The

² The University indicated that the training was not provided in 2020 due to the COVID-19 pandemic, but that staff from the Office of Financial Aid instead worked closely with departments or units that were responsible for the administration of a sex-restricted scholarship. These units were advised to remove all personally identifying information from the applications before considering them and to use the “pool and match” method if they were administering a sex-restricted scholarship.

³ OCR notes that the AAUW Educational Foundation Scholarship and the Entertainment Software Association Scholarship also reference “women of color” and “minority students.” Under another law enforced by OCR, Title VI of the Civil Rights Act of 1964, a recipient may not, directly or through a contractual or other arrangement, deny an individual any financial aid provided under the program or treat an individual differently in determining whether he/she satisfies any requirement or condition which he/she must meet in order to be provided any financial aid. However, OCR did not uncover evidence to suggest that the University had a direct, contractual, or other arrangement with the entities administering these two scholarships.

Complainant could not identify, nor could OCR otherwise find through its investigation, any specific students who were harmed by the aforementioned miscommunication.⁴

Using the “pool and match” system to administer the EVM Scholarship complies with the exception outlined in the Title IX regulation. Here, OCR determined that the EVM scholarship was created by an appropriate legal instrument such that the University can rely upon the exception outlined in 106.37(b). Though the EVM Scholarship’s strong preference for female recipients is a form of sex restriction, the University’s “pool and match” system will ensure a non-discriminatory effect because awardees will be selected based on non-discriminatory criteria (grade point average), and if the selected student meeting the criteria is not female, the University will instead award the student with an equal amount of scholarship money from a different source, thereby remedying any sex-based discrimination associated with the particular scholarship. Accordingly, OCR is closing the allegation that the awarding of the EVM Scholarship discriminates against male students in violation of Title IX because OCR determined that it is resolved.

Conclusion

On September 8, 2022, the University agreed to implement the enclosed Resolution Agreement, which commits the University to take specific steps to address the identified areas of noncompliance. 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 visits and may request information as necessary to determine whether the University has fulfilled the terms of the agreement. If the University fails to implement the agreement, OCR may initiate proceedings to enforce the specific terms and obligations of the agreement. Before initiating such proceedings, OCR will 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. OCR would like to make you aware that individuals who file complaints with OCR 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, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint against the University with OCR.

⁴ OCR notes that the Resolution Agreement, described below, includes a provision requiring that the University train each department head and other relevant University personnel on the “pool and match” process.

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, OCR will seek to protect, to the extent provided by law, personally identifiable information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

We appreciate the University's cooperation in the resolution of this complaint. If you have any questions, please contact Sebastian Amar, the OCR attorney assigned to this complaint, at 202-245-8112 or Sebastian.amar@ed.gov.

Sincerely,

Jennifer Barmon
Team Leader, Team III
Office for Civil Rights
District of Columbia Office

Enclosure

cc: XXXXX, Esq.