



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

February 22, 2022

Via Email to pres_office@emu.edu

Dr. Susan Schultz Huxman
President
East Mennonite University
1200 Park Road
Harrisonburg, Virginia 22802

RE: OCR Complaint No. 11-20-2322
Resolution Letter

Dear Dr. Huxman:

This letter is to advise you of the outcome of the complaint that the Office for Civil Rights (OCR) of the U.S. Department of Education received on July 28, 2020 against Eastern Mennonite University. The Complainant alleged that the University discriminated against him on the basis of his sex XXXXX.

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.¹ Because the University receives federal financial assistance from the Department of Education, OCR has jurisdiction over it pursuant to Title IX.

During the investigation to date, OCR reviewed information provided by the Complainant and the University and interviewed the Complainant. Before OCR completed its investigation, the University expressed a willingness to resolve the allegation pursuant to Section 302 of OCR's *Case Processing Manual*, which states that allegations may be resolved prior to OCR making a determination if the recipient expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified concerns that can be addressed through a resolution agreement. The following is a summary of the evidence obtained by OCR during the investigation to date.

¹ Amendments to the Title IX regulation went into effect on August 14, 2020, and can be viewed [here](https://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html). However, OCR is evaluating your complaint based on the prior Title IX regulation that was in effect at the time when the alleged acts occurred. You can find that regulation [here](https://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html). For more information about Title IX, including the new Title IX regulation and related resources, visit OCR's website at <https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/index.html> and https://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html.

Legal Standard

The regulation implementing Title IX, at 34 C.F.R. § 106.31(a), states as follows: “Except as provided elsewhere in this part, 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 academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives Federal financial assistance.”

The Title IX regulation in effect at the time of the underlying events contained a number of procedural requirements, including a requirement that recipients adopt and publish procedures that provide for the equitable resolution of student and employee complaints alleging any actions prohibited by Title IX and its implementing regulation. *See* 34 C.F.R. § 106.8(b). An equitable response requires a trained investigator to analyze and document the available evidence to support reliable decisions, and any rights or opportunities that a recipient makes available to one party during an investigation should be made available to the other party on equal terms.

Sexual harassment is a form of sex discrimination prohibited by Title IX. 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. Under Title IX, a school has a responsibility to respond promptly and effectively to notice of sexual harassment. This includes taking appropriate steps to investigate or otherwise determine what occurred and taking immediate and effective action to end the harassment, prevent its recurrence, and, as appropriate, remedy its effects.

It may be appropriate for a school to take interim measures prior to or during the investigation of a complaint. Interim measures are individualized services offered as appropriate to either or both the reporting and responding parties involved in an alleged incident of sexual misconduct. Interim measures include counseling, extensions of time or other course-related adjustments, modifications of work or class schedules, campus escort services, restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of campus, and other similar accommodations.

A school should take steps to stop further harassment and prevent any retaliation against the person who made the complaint (or was the subject of harassment) or against those who provided information as witnesses. At a minimum, the school’s responsibilities include making sure that the harassed individual knows how to report any subsequent problems, conducting follow-up inquiries to see if there have been any new incidents or any instances of retaliation, and responding promptly and appropriately to address continuing or new problems.

Factual Background

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OCR notes that the Policy did not require the University to offer interim and supportive measures, which the Policy refers to as “accommodations,” to responding parties in a Title IX investigation. Additionally, under Section 8.2.4 of the Policy, University employees could request “working

accommodations” only if that employee reported the Title IX violation. According to the University’s website, the University updated the Policy in August 2020, and the revised policy now permits responding parties to receive supportive measures when a formal Title IX complaint is filed.

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Analysis

Based on the evidence above, OCR has a concern that the University did not respond to the Complainant’s requests for interim measures in a manner consistent with Title IX.

On February 18, 2022, the University signed the enclosed Resolution Agreement which, when fully implemented, will address the allegation investigated. The provisions of the Agreement are aligned with the allegation and the information obtained during OCR’s investigation, and are consistent with applicable law and regulation. The Agreement requires the University to provide mandatory Title IX training to certain University personnel, with an emphasis on providing supportive measures and the prohibition against retaliation, as well as developing a plan to assess the appropriateness of the Complainant’s termination. Please review the enclosed Agreement for further details. OCR will monitor the University’s implementation of the Agreement until the University has fulfilled the terms of the 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. 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 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, please contact Sebastian Amar, the OCR attorney assigned to the complaint, at 202-245-8112 or sebastian.amar@ed.gov.

Sincerely,

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

Enclosure

cc: Lindsay Brubaker, Esq. (via email)