



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION XV

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REGION XV
MICHIGAN
OHIO

Elizabeth L. Peters, Esq.
Masud Labor Law Group
4449 Fashion Square Boulevard, Suite 1
Saginaw, Michigan 48603

Re: OCR Docket #15-13-2147

Dear Ms. Peters:

This letter is to notify you of the disposition of the above-referenced complaint that was filed on April 25, 2013, with the U.S. Department of Education's Office for Civil Rights (OCR), against Northwood University (the University), alleging discrimination based on sex. The complaint alleged that a student in the University's xxxxx xx xxxxxxxx xxxxxxxxxxxxxxxx program (the Student) filed a xxxxx appeal with the University in xxx xxxx that included a complaint of sex discrimination, but that the University failed to fully remedy the discrimination.

Please note that in our letter to the University, dated June 20, 2013, we inadvertently included a statement that the complaint also included an allegation that, during the xxxxxx xxxx semester, the Student was subjected to discrimination based on xxx during a xxxxxx xxxxxxxx with members of xxx xxxxxxx xx xxxxxxxx xxxxxxxxxxxxxxxx xxxxxx xxxxxxx in the program's xxxxxxxxxxxx xx course and received an x in the course as a result. OCR dismissed this allegation as untimely effective June 20, 2013. OCR granted a waiver of its 180-day filing requirement with respect to the allegation regarding the University's response to the Student's complaint of sex discrimination and proceeded to investigation of this allegation only. We apologize for any confusion this may have caused with respect to our investigation.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.*, and its implementing regulation, 34 C.F.R. Part 106 (Title IX), which prohibit discrimination on the basis of sex in education programs and activities operated by recipients of Federal financial assistance from the U.S. Department of Education (the Department). As a recipient of Federal financial assistance from the Department, the University is subject to this law.

Based on the complaint allegation, OCR commenced an investigation to determine whether the University provided a prompt and equitable resolution of a student's complaint alleging an action prohibited under Title IX as required by the Title IX implementing regulation at 34 C.F.R. § 106.8(b).

Prior to the completion of OCR's investigation, the University requested to voluntarily resolve the complaint pursuant to Section 302 of OCR's *Complaint Processing Manual* (the *Manual*) and signed the enclosed resolution agreement (the Agreement), which, once implemented, will fully address the allegations raised in this complaint.

Applicable Legal Standards and OCR Policy

The Title IX regulation, at 34 C.F.R. § 106.8(b), requires a recipient to adopt and publish procedures that provide for the prompt and equitable resolution of student and employee complaints alleging sex discrimination, including complaints of sexual harassment. In evaluating whether a recipient's grievance procedures satisfy this requirement, OCR will review all aspects of a recipient's policies and practices, including the following elements that are critical to achieve compliance with Title IX:

- 1) notice to students and employees of the procedure, including where complaints may be filed;
- 2) application of the procedure to complaints alleging discrimination and harassment carried out by employees, other students, or third parties;
- 3) provisions for adequate, reliable, and impartial investigation of complaints, including the opportunity for both the complainant and the respondent to present witnesses and other evidence;
- 4) designated and reasonably prompt timeframes for the major stages of the complaint process;
- 5) written notice to both parties of the outcome of the complaint; and
- 6) assurance that the recipient will take steps to prevent recurrence of any sex discrimination or harassment found to have occurred, and to correct any discriminatory effects on the grievant and others, if appropriate.

In addition, a school's sex discrimination grievance procedures must apply to complaints of sex discrimination in the school's education programs and activities filed by students against school employees, other students, or third parties.

Title IX does not require a school to adopt a policy specifically prohibiting sexual harassment or to provide separate grievance procedures for sexual harassment complaints. However, its nondiscrimination policy and grievance procedures for handling discrimination complaints must

provide effective means for the prompt and equitable resolution of complaints alleging any action which would be prohibited by the Title IX regulation, not just sexual harassment. A Title IX grievance procedure cannot be prompt or equitable unless students know it exists, how it works, and how to file a complaint. Distributing the procedures to administrators, or including them in the school's administrative or policy manual, may not by itself be an effective way of providing notice, as these publications are usually not widely circulated to and understood by all members of the school community.

With regard to Title IX grievance procedures that apply to complaints of sexual harassment, OCR will examine whether the recipient:

- 1) maintains documentation of any proceedings;
- 2) provides training for those implementing grievance procedures (Title IX Coordinator, investigator, adjudicators). This includes training in:
 - a) handling of complaints of sexual harassment/violence
 - b) the school's grievance procedures; and
 - c) confidentiality requirements
- 3) does not allow conflicts of interest (real or perceived) by those handling the procedures;
- 4) informs students at regular intervals of the status of the investigation;
- 5) includes a range of potential remedies and sanctions;
- 6) addresses confidentiality for the complainant/victim; and
- 7) disallows evidence of past relationships.

Finally, in order to ensure that students and employees have a clear understanding of what constitutes sexual violence, the potential consequences for such conduct, and how the school processes complaints, a school's Title IX grievance procedures that apply to sexual harassment should also explicitly include the following in writing:

- 1) a statement of the school's jurisdiction over Title IX complaints;
- 2) adequate definitions of sexual harassment (which includes sexual violence) 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) (*i.e.*, more likely than not) in resolving a complaint;
- 9) notice of potential remedies for students;
- 10) notice of potential sanctions against perpetrators; and
- 11) sources of counseling, advocacy, and support.

Additionally, pursuant to the *Manual*, OCR will administratively close a complaint allegation where it receives credible information indicating that the allegations raised by the complaint have been resolved, and there are no class-wide allegations.

Summary of OCR's Investigation to Date

- **Background**

During the xxxxxx xxxx semester, the Student was enrolled in the University's xxx program and was attending classes at the University's xxxxx xxxxxxxx xxxxxxxx. In xxxxx xxxxxx the Student was assigned to a final paper group project with xxx xxxx students from xxx xxxxxxxx xxxxxxxx in her xxxxxxxxxxxx xx class. According to the Student, the two male students excluded xxx from the project and created a hostile environment for xxx based on sex by assigning xxx demanding tasks, changing xxx assignments, and imposing on xxx unreasonable timeframes within which to complete the assigned tasks. Additionally, xxx said that the xxx xxxx students commented negatively about the Student in front of the rest of the xxxxxxxx members. The Student complained to xxx instructor, who advised xxx to meet with her group members to discuss the issues. The Student met with her group members in the presence of xxx instructor on xxxxx xxx xxxxx. According to the Student, the group members informed xxx that they wanted xxx to xxxxx x xxxxxxxxxxxx xxx xxx continued participation in the group project. The Student provided OCR with a copy of this xxxxxxxxxxxx which required the Student to xxxxxxxx xxxxxxxx xxxxxx on the project to continue being part of the team; otherwise, if the Student did not agree to the xxxxx xx xxx xxxxxxxx the Student would have to present xxx project on her own. The two male students offered that, if the Student presented the project on her own, they would help xxx add data to xxx project. The Student refused to consent to xxxxx xxx xxxxxx xx xxx xxxxxxxx and told OCR that she was forced to complete the final paper on xxx own. xxx ultimately received an x in the class,

after having a mid-point grade of x. The Student told OCR that the instructor sided with the xxxx students.

- **The University's Response to the Student's Allegations of Discrimination**

On xxxxx xxx xxxxx the Student e-mailed the dean of the xxxxxxxx xxxxxxx xx xxxxxxxxxxxx (the dean) to request a xxxxxxx change. xxx alleged discrimination against women and a pattern of behavior against working with women in groups, based on xxx experience dealing with the xxx xxxx students in xxx group. The Student also identified xxx xxxxx xxxxxxx students, whom xxx copied on the e-mail, who xxx alleged had similar experiences to xxxxx. Additionally, the Student stated that xxx xxxxxxx xxx xxx xxxxxxx because xxx xx xxx xxx xxx in her group asked xxx where xxx lived.

X---paragraph redacted---X

On xxxxx xxx xxxxx the instructor wrote to the dean in response to the Student's allegations. The instructor first noted that the Student's accusations were the most recent in a series of other concerns xxx raised during the school semester. He stated that she complained to him of racism against another student xxx xxx xxx xxxx xxxxxxxx xxxxxxxx xxxxxxxx xx xxx xxxxxxx and approached him about an alleged xxxxxxxxxxxxxx created by xxx peers of xxxxxxx students who would not be good group members. The instructor pointed out that the Student did not claim to be included on that list. With regard to the Student's allegations at issue in this case, the instructor indicated that he had not seen any evidence to support the Student's claims. The instructor acknowledged that the behavior of xxx xx xxx xxx xxxx students could be "abrasive at times," and that he had personally observed xxx being "directive/authoritative" with the Student at the xxxxx xx meeting. The instructor stated, however, that he had no reason to believe that the xxxx student's behavior was more abrasive because xx was addressing a xxxxxxx. He pointed out that he had seen the xxxx student accept criticism from students of both genders during cohort discussions. The instructor also explained in his response to the dean that xxx xx xxx xxx xxxxxxx students who were allegedly discriminated against shared with him that the xxxx student was rude to xxx in the past, but noted that xxx was not sure how much of the xxxx student's behavior was the result of his frustration with xxx xxxxxxx xxxxx for an xxxxx xxxxx combined with an approaching class deadline. Regarding the safety concerns raised by the Student, the instructor dismissed the question about xxxxx xxx xxxxxxx xxxxx as "a very common question group members ask in determining logistics necessary to complete the assignment they've been given." He also added that he had not observed any threatening behavior from the xxxxx xxxx student toward the Student.

On xxxxx xxx xxxxx the dean discussed the Student's concerns with xxx over the telephone. On xxx xx xxxxx the Student wrote to the dean alleging a continuing pattern of threats and intimidation by the xxxxx xxxx student, who xxx claimed was talking and e-mailing other students about xxx to isolate xxxx. The dean responded by e-mail the same day, stating that, based on their discussion on xxxxxxx xxxxx xxx xxxxx she would connect with the Student the following week after xxx final class to discuss the next steps. Additionally, the dean asked the Student to clarify whether xxx was requesting something xxxxx xxxx x xxxxxxx xxxxxxx. The

Student wrote back the next day confirming the xxxxx xx xxxxxxxx as one option. xxx also stated that xxx was still weighing xxx options, but that delaying xxx xxx was not one of them.

On xxx xxx xxxxx the Student wrote the dean a letter “formally request[ing] an appeal to extensively look at the events that transpired in xxxxx xxxxxxx xxxxx and xxxxx xxxxx that affected xxxxx xxxxx xxxxxxxx The Student identified the xxx xxxxx students who allegedly discriminated against xxx and xxx xxxxx xxxxx who had allegedly been subjected to the same treatment by those students. Additionally, the Student detailed xxx interactions with the xxxxx students, claiming that xxx was disrespected and excluded because of xxx xxxxxxx and that xxx instructor took the xxxxx students’ side when xxx complained to him. The Student asked the dean to allow xxx to continue in xxx xxx program, given that xxx grade was the result of the “hostile treatment and discrimination” from the xxxxx students.

On xxx xxx xxxxx the University advised the Student that xxx was being xxxxxxxxxxxxxxxx xxxxxxxxxxxxxxxx from the xxx program for failing xxx xxxxxxxxxxxxxxxx xx class. The Student immediately appealed xxx grade to the dean, arguing that xxx grade was the result of the alleged xxx xxxxxxxxxxxxxxxx and the hostility xxx faced in xxx xxxxxxxx In xxx appeal, the Student once again mentioned the xxx xxxxx xxxxxxx students who allegedly had similar experiences working with xxx xx xxx xxx xxxxx students in the Student’s group.

The Student told OCR that when xxx appealed xxx grade to the dean and complained about discrimination, the dean told xxx that xxx would address the grade appeal but that the discrimination allegation would be addressed separately by the University’s human resources (HR) office. The documents OCR received from the University in the investigation to date contain no reference to an investigation conducted by the HR office into the Student’s allegation of discrimination. The documents do, however, contain one e-mail from the University’s human rights representative (the Title IX coordinator), dated xxxxx xxx xxxxx advising the dean to obtain input from the instructor and not to contact the other students implicated by the Student.

On xxx xxx xxxxx the Student met with the dean and later wrote her requesting a “formal and definitive decision” relative to xxx grade appeal. The Student met with the dean again on xxxxx xx xxxxx xx xxxxx xxx xxxxx the University advised the Student in writing that xxx grade appeal was denied and informed xxx of xxx right to appeal that decision. That letter, however, made no reference to the Student’s allegation of xxx discrimination. According to the Student, the dean informed xxx verbally that if xxx were to appeal xxx decision to the chief academic officer (CAO) she would be able to address both the grade appeal and the allegation of xxx discrimination.

On xxxxx xxx xxxxx the Student appealed the dean’s decision to the CAO. The CAO spoke to the Student on xxxxx xxx xxxxx and later met xxx in person. On xxxxx xxx xxxxx the CAO overturned the Student’s dismissal. In xxx e-mail to the Student announcing xxx decision, the CAO also allowed the Student to xxxxxxx xxxxxxxx and complete the xxxxxxxxxxxxxxxx xx course as an independent study with another instructor. The e-mail did not address the Student’s allegation of xxx discrimination.

The Student told OCR that xxx was satisfied with the CAO's decision; xxx retook the course and completed it in xxxxx xxxxx earning an xxx. On xxxxx xxx xxxxx the Student contacted the dean to ask that the x from the xxxxx xxxx xxxxxxxxxxxx xx course be removed from xxx transcript. xxx told the dean that, although the CAO did not put it in writing, the CAO had represented to xxx that the second xxxxxxxxxxxx xx course would "replace" the first one. On xxxxx xxx xxxxx the dean informed the Student that the new grade replaced the original grade, but that the F could not be removed from xxx transcript because it was part of xxx academic record. xxx xxxx xxxx the Student filed this complaint with OCR.

On xxxx xxx xxxxx a month after receiving notification from OCR that it was investigating the Student's complaint, the dean interviewed the xxx xxxx students the Student alleged were discriminating against xxx based on sex. The dean told the xxxx students that she was interviewing them for "due diligence because Northwood University takes discrimination complaints very seriously." xxxx students denied discriminating against the Student based on xxxxxx and stated that the main issue with the Student was one of performance and her failure to meet the group's expectations. xxx xx xxx xxxx students told the dean that the Student was not contributing to the group for a number of reasons such as inability to attend meetings or computer issues.

- **The University's Harassment Policies and Procedures**

OCR requested that the University provide OCR a copy of its anti-discrimination policies and Title IX grievance procedures. In response to this request, the University provided OCR with its "Harassment and Violence Policy" (the policy), which addresses harassment against students based on race, color, gender, national origin, and disability. The policy, however, does not mention other forms of discrimination based on any of these categories.

In addition to the policy's failure to address discrimination other than harassment, OCR's preliminary review of this document found several other Title IX compliance concerns.

For example, with respect to the University's investigation of complaints, the policy does not make it clear that both parties have the opportunity to present witnesses and other evidence. While the policy states that the investigation will be completed "no later than fourteen days from receipt of a report," it does not designate time frames for the major stages of the complaint process, such as when the parties will receive written notification of the outcome of the complaint and the stages of the appeal process mentioned in the policy. The policy also does not articulate the standard the University will use in evaluating the evidence gathered during its investigation. Additionally, the policy does not provide a clear and consistent assurance that the University will take steps to prevent recurrence of any sex discrimination and to remedy its discriminatory effects on the complainant and others, as appropriate; however, this is alluded to in several sections of the policy. The policy states that the investigation will be conducted by an impartial investigator and that complaints can be filed with the University's "Human Rights representative" and provides her contact information. The policy also provides that filing with the University president is an alternative to filing the complaint with the human rights

representative if the human rights representative is the subject of the complaint, but does not provide the contact information for the president and the policy does not make it clear that the University will not allow conflicts of interest (real or perceived) by those handling the process.

With respect to matters of sexual assault and/or sexual violence, the policy does not explicitly state that it disallows evidence of past relationships in its investigation of sexual harassment and it does not discuss provisions for confidential reporting or identify employee(s) responsible for evaluating requests for confidentiality. Furthermore, the policy does not make clear that complainants have the right to file a criminal complaint simultaneously with the Title IX complaint, although it states that the human rights representative's obligation to conduct an investigation will not be extinguished by the fact that a criminal investigation involving the same or similar allegations is also pending or has been conducted. The policy mentions that the campus provost or human rights representative may be responsible for ensuring "interim protection of the victim during the course of the investigation," but does not explain how or what interim measures may be provided.

The policy or portions of the policy appear to have been cut and paste from an elementary and secondary school's policy and therefore include some provisions that do not seem to apply effectively to a postsecondary institution, such as mention of parent-teacher conferences as a possible method for addressing harassment found to have occurred. Additionally, OCR notes that the policy lists OCR's headquarters contact information instead of contact information for OCR Cleveland.

Voluntary Resolution and Conclusion

During the pendency of OCR's investigation, the University informed OCR that it concluded its investigation of the complaint and determined as a result of its investigation that the Student was not discriminated against based on sex; rather, the Student had difficulty in the xxxxxxxxxx xx course because xxx failed to contribute to the group. By letter dated xxxx xxx xxxxx the University notified the Student, in writing, of the outcome of its investigation. The University's letter to the Student included a statement of the allegation(s) of sex discrimination that it investigated, an explanation that the University applied the preponderance of the evidence legal standard in analyzing the evidence obtained during its investigation, and the University's findings following its investigation. Based on this information, OCR concludes that the individual allegation in this case has been resolved, and OCR is administratively closing this allegation effective the date of this letter.

Additionally, as noted above, before OCR completed its investigation, the University expressed an interest in resolving the remaining issue raised during the investigation regarding the University's Title IX grievance procedures under Section 302 of the *Manual*. The *Manual* provides that a complaint may be resolved before the conclusion of an OCR investigation if a recipient asks to resolve the complaint and signs a resolution agreement that addresses the complaint allegations. Such a request does not constitute an admission of liability on the part of the University, nor does it constitute a determination by OCR that the University has violated any of the laws that OCR enforces. The provisions of the resolution agreement are to be aligned

with the complaint allegations or the information obtained during the investigation and consistent with applicable regulations. Under the terms of the enclosed Agreement, the University will revise the policy to fully comply with Title IX, adopt, implement, and publicize the revised policy, and train staff on the revised policies and procedures.

In light of the University's actions and the signed Agreement, OCR finds that this complaint is resolved, and OCR is closing its investigation of this complaint as of the date of this letter. OCR will, however, monitor the University's implementation of the agreement.

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 harmed individual may file another complaint alleging such treatment.

The complainant may file a private suit in federal court, whether or not OCR finds a violation.

We appreciate your cooperation and that of the University during the preliminary investigation and resolution of this complaint. If you have any questions about this letter or OCR's resolution of this case, please contact xxxx xx xxxxx Supervisory Attorney/Team Leader, at (216) 522-xxxx or by email at xxxxxxxxxx@ed.gov. For questions about implementation of the Agreement, please contact xxx xxxxxx xxxxxxxx who will be monitoring the University's implementation, at xxxxxxxxxxxxxx@ed.gov or at (216) 522-xxxx. We look forward to receiving the University's first monitoring report by September 30, 2014. Should you choose to submit your monitoring reports electronically, please send them to OCRCleMonitoringReports@ed.gov.

Sincerely,

/s/

Meena Morey Chandra
Acting Director

Enclosure