



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

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CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

John E. Hart, Esq.
General Counsel
Cedarville University
251 N. Main Street
Cedarville, Ohio 45314

Re: OCR Docket #15-13-2163

Dear Mr. Hart:

This letter is to notify you of the disposition of the above-referenced complaint filed on May 17, 2013, with the U.S. Department of Education's Office for Civil Rights (OCR) against Cedarville University (the University), which alleged that the University does not have a Title IX coordinator and prompt and equitable grievance procedures that address sex discrimination.

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 prohibits 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. Accordingly, OCR had jurisdiction to investigate this complaint.

Based on the complaint allegations, OCR opened an investigation into the following legal issues:

- Whether the University failed to designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX, including the investigation of any complaint communicated to the University alleging noncompliance with the Title IX regulation or alleging any actions which would be prohibited by the Title IX regulation, and to notify its students and employees of the name, office address and telephone number of the employee(s) as required by the Title IX implementing regulation at 34 C.F.R. § 106.8(a).
- Whether the University failed to adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by Title IX as required by 34 C.F.R. § 106.8(b).

During its preliminary investigation, OCR interviewed the Complainant and obtained information from former and current students. OCR also reviewed documents and information provided by the University.

Prior to the completion of OCR's investigation, however, the University expressed interest in resolving this complaint pursuant to Section 302 of OCR's *Case Processing Manual (Manual)*. The University submitted the enclosed resolution agreement (the Agreement), described below, to resolve the complaint. The information obtained to date in OCR's investigation indicates that at the time the complaint was filed the University had Title IX policies and procedures, but that they were not readily available to students and University employees and that they were under revision. The University also had designated an individual to investigate sexual harassment complaints, but it had not identified this individual in writing as the University's Title IX Coordinator and it had not published her contact information.

Applicable Legal Standards and OCR Policy

- **Title IX Coordinator**

The Title IX implementing regulation, at 34 C.F.R. § 106.8(a), requires that a recipient designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX, including the investigation of any complaint communicated to the recipient alleging noncompliance with the Title IX regulation or alleging any actions which would be prohibited by the Title IX regulation. 34 C.F.R. § 106.8(a) also requires a recipient to notify all its students and employees of the name (or title), office address, and telephone number of the employee(s) appointed to coordinate the recipient's Title IX compliance. A Title IX coordinator should not have other job responsibilities that may create a conflict of interest, and recipients should also notify all students and employees of the e-mail address of the Title IX coordinator. Also, recipients must ensure that employees designated to serve as Title IX coordinators have adequate training on what constitutes sex discrimination, including sexual harassment/violence, and that they understand how the recipient's grievance procedures operate.

- **Title IX Grievance Procedures**

The Title IX implementing regulation, at 34 C.F.R. § 106.8(b), requires recipients to adopt and publish grievance procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by Title IX, including sex discrimination and sexual harassment. To comply with these regulatory requirements, a recipient's grievance procedures must be responsive to complaints of sex discrimination in the recipient's education programs and activities filed by students alleging discrimination by employees, other students, or third parties. Title IX does not require a recipient to provide separate grievance procedures for sexual harassment complaints. 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. OCR has identified a number of elements in evaluating whether a recipient's grievance procedures are prompt and equitable, including whether the procedures provide for:

- (1) notice to students and employees of the procedure, including where complaints may be filed;
- (2) application of the procedure to complaints alleging sex discrimination and sexual harassment carried out by employees, other students, or third parties;
- (3) adequate, reliable, and impartial investigation of complaints, including the opportunity for both the complainant and accused to present witnesses and other evidence;
- (4) designated and reasonably prompt timeframes for the major stages of the complaint process;
- (5) written notice to the parties of the outcome of the complaint and any appeal; 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 complainant and others, if appropriate.

The procedures for resolving complaints of sex discrimination, including sexual harassment/violence, should be written in language that is easily understood, be easily located, and be widely distributed.

Pending the outcome of an investigation of a 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. For complaints of sexual harassment/violence, 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 sexual harassment/violence allegation and should provide the complainant with periodic updates on the status of the investigation. It should notify the complainant of his or her options to avoid contact with the accused and allow the complainant to change academic and extracurricular activities or his or her living, transportation, dining, and working situation appropriate. The recipient 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, and legal assistance, and the right to report a crime to campus or local law enforcement.

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.

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 recipient 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 violence. 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.

When a recipient knows or reasonably should know of possible retaliation by other students or third parties, including threats, intimidation, coercion, or discrimination (including harassment), it must take immediate and appropriate steps to investigate or otherwise determine what occurred. OCR has advised recipients to be aware that complaints of sexual harassment/violence may be followed by retaliation by the alleged perpetrator or his or her associates. For instance, friends of the alleged perpetrator may subject the complainant to name-calling and taunting. As part of their Title IX obligations, recipients must have policies and procedures in place to protect against retaliatory harassment. At a minimum, recipients must ensure that complainants know how to report any subsequent problems, and should follow-up with complainants to determine whether any retaliation or new incidents of harassment have occurred and respond promptly and appropriately to address any new problems.

Grievance procedures generally may include voluntary informal mechanisms (*e.g.*, mediation) for resolving some types of sexual harassment complaints; however, it is improper for a complainant alleging harassment to be required to work out the problem directly with the alleged perpetrator, and certainly not without appropriate involvement by the recipient (*e.g.*, participation by a trained counselor, a trained mediator, or, if appropriate, a university faculty member or administrator). The complainant must be notified of the right to end the informal process at any time and begin the formal stage of the complaint process. Moreover, in cases involving allegations of sexual assault/violence, mediation is not appropriate even on a voluntary basis. OCR recommends that recipients clarify in their grievance procedures that mediation will not be used to resolve sexual assault/violence complaints.

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/violence. If a recipient provides for appeal of the findings or remedy, it must do so for both parties. The recipient must maintain documentation of all proceedings.

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 sex discrimination, including sexual harassment, and in the recipient's

grievance procedures as well as applicable confidentiality requirements. A recipient should also provide training about its grievance procedures and their implementation to any employees likely to witness or receive reports of sex discrimination, including sexual harassment; including teachers, university law enforcement unit employees, university administrators, university counselors, general counsels, health personnel, and resident advisors. Recipients need to ensure that their employees are trained so that they know to report sex discrimination and harassment to appropriate officials, and so that employees with the authority to address the discrimination and/or harassment know how to respond properly.

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 sex discrimination complaints must provide effective means for preventing and responding to sexual harassment. Thus, if, because of the lack of a policy or procedure specifically addressing sexual harassment, students are unaware of what kind of conduct constitutes sexual harassment or that such conduct is prohibited sex discrimination, a school's general policy and procedures relating to sex discrimination will not be considered effective. A grievance procedure applicable to sexual harassment complaints 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.

Voluntary Resolution and Conclusion

As noted above, before the conclusion of OCR's investigation, the University expressed interest in voluntarily resolving this complaint pursuant to 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 voluntary Agreement the University will:

- Notify students and employees of the University's Title IX coordinators and their contact information.
- Revise its policies and procedures related to sex discrimination, including sexual harassment and sexual violence, to fully comply with Title IX.
- Adopt, implement, and publicize the revised policies and procedures.
- Train relevant staff and students on the revised policies and procedures.

- Conduct periodic climate assessments of campus climate to assess the effectiveness of steps taken pursuant to this Agreement.

In light of the signed Agreement, OCR finds that this complaint is resolved, and OCR is closing its investigation as of the date of this letter. OCR will, however, monitor the University's implementation of the Agreement. Should the University fail to fully implement the Agreement, OCR will reopen the complaint and resume its investigation of the complaint allegations.

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 a complaint alleging such treatment. A complainant may have the right to file a private suit in Federal court, whether or not OCR finds a violation.

We appreciate the cooperation 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 Ms. Lisa M. Lane, Supervisory Attorney/Team Leader, at (216) 522-2678 or Lisa.M.Lane@ed.gov. For questions about implementation of the Agreement, please contact Mr. Ted Wammes at Ted.Wammes@ed.gov or at (216) 522-7022, who will be monitoring the University's implementation. 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