



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

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CLEVELAND, OH 44115

REGION XV  
MICHIGAN  
OHIO

June 4, 2020

**Via E-mail Only to Nikki.wright@wayne.edu**

Ms. Nikki Wright  
Director, Office of Equal Opportunity  
Wayne State University  
656 W. Kirby Street  
Ste. 4324 F/AB  
Detroit, Michigan 48202

Re: OCR Docket No. 15-18-2287

Dear Ms. Wright:

This letter is to notify you of the disposition of the above-referenced complaint filed on July 26, 2018, with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Wayne State University (the University) alleging that the University retaliated against a student (the Student). Specifically, the complaint alleged that, XXXXX, the University XXXXX SENTENCE REMOVED 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 education program or activity operated by a recipient of federal financial assistance from the Department. Persons who seek to enforce their rights under this law are also protected from retaliation. As a recipient of federal financial assistance from the Department, the University is subject to this law.

Based on the complaint allegations, OCR opened an investigation of the following legal issue: whether the University intimidated, threatened, coerced or discriminated against an individual for the purpose of interfering with any right or privilege secured by Title IX, or because she made a complaint, testified, assisted or participated in any manner in an investigation, proceeding or hearing under Title IX, in violation of Title IX's implementing regulation at 34 C.F.R. § 106.71.

To conduct its investigation, OCR reviewed information provided by the Student and the University and interviewed the Student and University staff. After a careful review and analysis of the information obtained during its investigation, OCR has determined that the evidence is sufficient to support a finding that the University violated the regulations implementing Title IX as alleged. The bases for OCR's determination are explained below.

**Summary of OCR's Investigation**

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### **Applicable Regulatory Standards**

The regulation implementing Title VI, at 34 C.F.R § 100.7(e), prohibits recipients of federal financial assistance from intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by the regulation or because that individual has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the regulation. This requirement is incorporated by reference in the Title IX implementing regulation at 34 C.F.R. § 106.71.

In analyzing retaliation claims, OCR examines whether: 1) an individual experienced an adverse action caused by the recipient; 2) the recipient knew that the individual engaged in a protected activity or believed the individual might engage in a protected activity in the future; and 3) there is some evidence of a causal connection between the adverse action and the protected activity.

Although all three elements must exist to establish a prima facie case, OCR need not address all three elements if it determines one is missing.

Protected activity includes participation in an investigation, proceeding, or hearing under OCR's regulations; actions taken in furtherance of a substantive or procedural right guaranteed by the statutes and regulations enforced by OCR; or expression of opposition to any practice made unlawful by a statute or regulation that OCR enforces. An act of intimidation, threat, coercion, or discrimination constitutes adverse action for purposes of the anti-retaliation regulations if it is likely to dissuade a reasonable person in the individual's position from making or supporting a charge of discrimination or from otherwise exercising a right or privilege secured under the statutes or regulations enforced by OCR. Petty slights, minor annoyances, and lack of good manners will not normally constitute adverse actions. Under some factual circumstances, the promise of a benefit can be just as coercive as the threat of harm.

Causal connection between protected activity and adverse action may be established through either direct or circumstantial evidence. Direct evidence consists of a recipient's written statement, oral statement, or action demonstrating unambiguously that the recipient took the adverse action because the individual engaged in a protected activity or for the purpose of interfering with protected activities. Circumstantial evidence of retaliatory motive can include (but is not limited to): changes to treatment of the individual after protected activity; the proximity in time between protected activity and the adverse action; the recipient's treatment of the individual compared to others; or the recipient's deviation from established policies or practices.

When investigating retaliation by interference, OCR considers whether the recipient's adverse action was intended to deter, discourage, prevent, slow, or stop the individual from engaging in a protected activity.

If the above elements of a prima facie case of retaliation are established, OCR examines whether the recipient has identified a facially legitimate, non-retaliatory reason for the adverse action. If the recipient identifies a facially legitimate, non-retaliatory reason for the adverse action, OCR next conducts a pretext inquiry to determine whether this reason is genuine or is a cover for retaliation. The evidentiary factors for causal connection discussed above are equally applicable for determining pretext.

### **Analysis and Conclusion**

It is undisputed that the Student engaged in protected activity XXXXX SENTENCE REMOVED XXXXX. With regard to adverse action, XXXXX SENTENCE REMOVED XXXXX. The parties disputed whether there was a causal connection between the protected activity and the adverse action.

XXXXX PARAGRAPH REMOVED XXXXX

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For these reasons, OCR finds that the University XXXXX the Student XXXXX, at least in part, based on activity protected by Title IX. However, OCR further finds that the evidence supports that the University would have XXXXX even if it had not considered the Student's protected activity, and therefore, individual relief is not warranted in this case.

On June 3, 2020, the University signed the enclosed Resolution Agreement, which, when fully implemented, will address the violation identified by OCR's investigation of this complaint. OCR will monitor the implementation of the Resolution Agreement.

This concludes OCR's investigation of the complaint and 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.

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 individual may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, OCR will seek to protect, to the extent provided by law, personally identifiable information, which, if

released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

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

OCR looks forward to receiving the University's first monitoring report by November 6, 2020. For questions about implementation of the Agreement, please contact Ms. XXXXX. She will be overseeing the monitoring and can be reached by telephone at XXXXX or by e-mail at XXXXX. If you have questions about this letter, please contact me by telephone at (216) 522-7640, or by e-mail at [Sacara.Miller@ed.gov](mailto:Sacara.Miller@ed.gov).

Sincerely,

/s/

Sacara E. Miller  
Supervisory Attorney/Team Leader

Enclosure