



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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CLEVELAND, OH 44115-1812

REGION XV
MICHIGAN
OHIO

August 3, 2022

Via e-mail only to: k.m.king55@csuohio.edu

Kelly M. King
Deputy General Counsel
Cleveland State University
2121 Euclid Avenue, AC 327
Cleveland, Ohio 44115

Re: OCR Docket No. 15-22-2057

Dear Kelly M. King:

This letter is to notify you of the disposition of the above-referenced complaint filed on XXXXXXXX XX, 2022, with the U.S. Department of Education, Office for Civil Rights (OCR), against Cleveland State University (the University) alleging that the University discriminated against a student (the Student) based on sex and age. Specifically, the complaint alleged that:

1. the University discriminated against the Student based on sex and age by XXXXXXXX XXX X XXXXXXXX XXXXXX XX XXX XX XXX XXXXXXXXXXXX XXXXXXXX (the XXXXXXXX) in XXXXXXXX XXXX; and
2. the University did not provide the Student with a XXXXXXXX XXX XXXXXXXXXXXX XXXXXXXX to the XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXX XX XXXXX XXXXXXXXXXXX XXX XXXXXX XX XXX XXXXXXXX XX XXXXXXXXXXXX XXXX.

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. OCR also enforces the Age Discrimination Act of 1975 (the Age Act), 42 U.S.C. § 6101 *et seq.*, and its implementing regulation at 34 C.F.R. Part 110, which prohibit discrimination on the basis of age by recipients of federal financial assistance. As a recipient of federal financial assistance from the Department of Education, the University is subject to these laws.

Based on the complaint allegations, OCR opened an investigation of the following legal issues to determine whether the University discriminated against the Student based on his sex and age:

- whether the University provided a prompt and equitable resolution to a student complaint alleging a violation of the Title IX regulation as required by the Title IX implementing regulation at 34 C.F.R. § 106.8(c);

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- whether the University provided a prompt and equitable resolution to a complaint alleging a violation of the Age Act as required by the Age Act implementing regulation at 34 C.F.R. § 110.25(c);
- whether, in providing any aid, benefit, or service to a student, the University, on the basis of sex, treated one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service; provided different aid, benefits, or services or provided aid, benefits, or services in a different manner; or subjected any person to separate or different rules of behavior, sanctions, or other treatment, in violation of the Title IX implementing regulation at 34 C.F.R. § 106.31(b)(1), (2), or (4); and
- whether the University, in any program or activity receiving federal financial assistance, used age distinctions or took any other actions that had the effect, on the basis of age, of denying or limiting a student in his opportunity to participate in any program or activity, in violation of the regulation implementing the Age Act at 34 C.F.R. § 110.10(b).

During its investigation to date, OCR reviewed documents provided by the University, and interviewed the Student.

After carefully considering all of the information obtained during the investigation, OCR is dismissing Allegation #1, as the Student filed the same allegation against the University with the XXXX XXXXX XXXXXXX XXXXXXXXXXXX XXXXXX, and OCR anticipates that the allegation will be investigated, the remedy obtained will be the same as the remedy that would be obtained if OCR were to find a violation regarding the allegation, and that there will be a comparable resolution process under comparable legal standards. With respect to Allegation #2, OCR found cause for concern that the University did not provide the Student with a prompt and equitable response to the discrimination complaint XX XXXXX XX XXXXXXXXXXXX XXXX regarding XXX XXXXX XX XXX XXXXXXX. However, prior to the completion of OCR's investigation, the University asked to resolve this allegation pursuant to Section 302 of OCR's *Case Processing Manual* (CPM). OCR has drafted a proposed resolution agreement, which once implemented, will fully address the compliance concerns OCR identified.

Allegation #1 – Different treatment based on sex and age

Facts

During the time period relevant to this complaint, the Student was a student at the University, and was studying to XXXXXX X XXXXXXXXXXX. The Student asserted XXXX was discriminated against based on XXX sex, as a XXXX XXXXXXX, and his age, as a student XXXX XXXXXXXXXXXXXXX, when he received a XXXXXXX XXXXX XX XXX XXXXXXX XX XXXXXXX XXXX. The Student asserted that XX—REMAINDER OF SENTENCE REMOVED--XX

The Student informed OCR that he also filed a complaint with the XXXX XXXXX XXXXXXX XXXXXXXXXXXXXXX XXXXXX. In XXXXX and XXXX, XXXX, OCR staff requested a copy of the XXXX XXXXXXXXXXXX from the Student, and at the Student's request, attempted to schedule

a phone call with the Student. However, the Student never made himself available for a phone call or called OCR staff back, nor did he provide OCR with a copy of his XXXX XXXXXXXXXXXX.

The University provided OCR with a copy of the Student's XXXX XXXXXXXXXXXX, which shows that it was received by the XXXX on XXXXXXXXXXXX XX, XXXX. In the XXXX XXXXXXXXXXXX, the Student made numerous allegations, including that he was discriminated against by the University based on his sex and his age, based on XX—REMAINDER OF SENTENCE REMOVED—XX. Thus, the XXXX XXXXXXXXXXXX contained the same allegation as Allegation #1 in the instant OCR complaint.

Pursuant to OCR's *Case Processing Manual* (CPM), OCR will dismiss an allegation where the same allegation has been filed by the complainant against the same recipient with another federal, state, or local civil rights enforcement agency or through a recipient's internal grievance procedures, including due process proceedings, and OCR anticipates that the allegation will be investigated, the remedy obtained will be the same as the remedy that would be obtained if OCR were to find a violation regarding the allegation, and that there will be a comparable resolution process under comparable legal standards.

With regard to the Student's allegation that the University discriminated against him based on sex and age by XXXXXX XXX X XXXXXXXXXXX XXXXX XX XXX XXXXXX XX XXXXXX XXXX, the information obtained during OCR's investigation shows that the Student filed the same allegation against the University with the XXXX, and that that allegation is still pending with the XXXX. Further, OCR anticipates that the allegation will be investigated, the remedy obtained will be the same as the remedy that would be obtained if OCR were to find a violation regarding the allegation, and that there will be a comparable resolution process under comparable legal standards. Based on this information, OCR is dismissing Allegation # 1 as of the date of this letter.

The Student may re-file his allegation within 60 days of the completion of the other entity's (the OCRC's) action. Should the Student refile, OCR generally will not conduct its own investigation; instead, OCR will review the results of the XXXXXX determination and decide whether it provided a comparable resolution process in which it applied comparable legal standards.

Allegation #2 – Not providing a prompt and equitable response to the Student's XXXXXXXXXXXX XXXX discrimination complaint

Facts

The Student informed OCR that on XXXXXXXXXXXX X, XXXX, he filed a complaint with the XXXXXXXXXXXX alleging that he was discriminated against when in XXXXXX XXXX he XXXXXXXXXXX X XXXXXXXXXXX XXXXX XX XXX XXXXXX. The Student told OCR the complaint he filed with the XXXXXXXXXXXX was the same or substantially the same as the complaint allegation he filed with OCR. The Student told OCR that, in his complaint, he notified the XXXXXXXXXXXX of discrimination, retaliation, and XXXXX XXXXXXXXXXXX. The Student alleged that the XXXXXXXXXXXX did not appropriately respond to his discrimination

complaint. Specifically, the Student alleged that the University XXXX XXXXXXXX XX XXX XXXXX XXXXXXXX XX XXX XXXXXXXXXXXX, and not on the discrimination allegations.

OCR requested from the University documentation related to the Student's complaint with the XXXXXXXXXXXX. The University provided OCR with a copy of the Student's complaint with the XXXXXXXXXXXXXXX XXXXXXX XXX XXXXXXXXXXXXXXXXXXX XXXXXXX XXXXXXX, which XXXX filed on or around XXXXXXXXXXXX X, XXXX. In the XXX complaint, the Student alleged that he was discriminated against based in part on his age and sex with respect to XXX XXXXX XX XXXXXXXXXXX XX XXX XXXXXXX. The documentation the University provided to OCR did not include XXX XXXXXXXXXXXXXXXXXXX XXXXXXX, XXXXXXXXXXX XXXXXXX or XXXXXXX XXXXXXXXXXX XXXXXXX XXX XXXXXXX XX XXX XXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXX into the Student's discrimination allegations.

XX—SENTENCE REMOVED—XX. OCR staff asked the University for a copy of any documents demonstrating the University XXXXXXXXXXXXXXX XX XXXXXXX the Student's discrimination complaint. In response to OCR's request, the University informed OCR staff that the matter was XX—REMAINDER OF SENTENCE REMOVED—XX.

The University provided OCR a copy of the University's Policy Against Discrimination, Harassment, Sexual Violence and Retaliation. That policy shows that the University prohibits discrimination based on, among other bases, sex and age. The University also provided OCR with a copy of its Procedures for Investigating Complaints of Discrimination, Harassment, Sexual Violence and Retaliation. Those procedures provide that, unless a student elects an informal process in lieu of a formal process, complaints of prohibited forms of discrimination will be considered and investigated by the OIE. It further provides that a written "Investigator's Report" will be prepared at the conclusion of an investigation, which will include "the allegations, a description of the investigation, the factual findings, the basis on which the conclusions were reached, recommended action steps and/or remedial measures, and other relevant information." These policies also require that the Investigator's Report will be provided to the student, respondent, and appropriate administrator(s).

Legal Standard

The Title IX implementing regulation, at 34 C.F.R. § 106.8(c), requires recipient universities to adopt grievance procedures that provide for the prompt and equitable resolution of complaints alleging any action prohibited by Title IX. Additionally, the Age Act implementing regulation, at 34 C.F.R. § 110.25(c), requires recipient universities to adopt grievance procedures that provide for the prompt and equitable resolution of complaints alleging any action prohibited by the Age Act. Such procedures must apply to sex and age discrimination carried out by students, employees and third parties. The recipient must make sure that all designated employees have adequate training as to what conduct constitutes sex and age discrimination and are able to explain how the grievance procedure operates.

Analysis

The evidence OCR has obtained to date raises a cause for concern that the XXXXXXXXXXXX failed to properly address the Student's complaint of sex and age discrimination in violation of

Title IX and the Age Act. The documentation the University provided confirmed that the Student XX—REMAINDER OF PARAGRAPH REMOVED—XX.

In light of the foregoing, OCR has cause for concern that the University failed to adequately respond to the Student's complaint of sex and age discrimination, in violation of Title IX and the Age Act.

Resolution

Under Section 302 of OCR's *Case Processing Manual*, allegations under investigation may be resolved at any time when, prior to the issuance of a final investigative determination, 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. In this case, the University expressed an interest in resolving the allegation prior to the conclusion of OCR's investigation and OCR determined resolution was appropriate. On August 3, 2022, the University signed the enclosed Resolution Agreement, which, when fully implemented, will address all of the allegations in the complaint. OCR will monitor the implementation of the Resolution Agreement.

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.

The Student has the right, pursuant to the regulation at 34 C.F.R. § 110.39 implementing the Age Act, to file a civil action for injunctive relief in federal court following the exhaustion of administrative remedies. Administrative remedies are exhausted if: (1) 180 days have elapsed since the Student filed the complaint with OCR, and OCR has made no finding, or (2) OCR issues any finding in favor of the recipient. A civil action can be brought only in a United States district court for the district in which the recipient is found or transacts business. A Student prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but these costs must be demanded in the complaint filed with the court. Before commencing the action, the Student shall give 30 days' notice by registered mail to the Secretary of the Department of Education, the Secretary of the Department of Health and Human Resources, the Attorney General of the United States, and the recipient. The notice shall state the violation of the Age Act, the relief requested, the court in which the action will be brought, and whether or not attorney's fees are demanded in the event the Student prevails. The Student may not bring an action if the same alleged violation of the Age Act by the same recipient is the subject of a pending action in any court of the United States.

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, it 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.

The Student has a right to appeal OCR's determination with respect to Allegation # 1 within 60 calendar days of the date indicated on this letter. In the appeal, the Student must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal.

OCR looks forward to receiving the University's first monitoring report by August 30, 2022. For questions about implementation of the Agreement, please contact XXX XXXXXXXXXX. XX. XXXXXXXXXX will be overseeing the monitoring and can be reached by telephone at (216) 522- XXXX or by e-mail at XXXXXXXXXXXXXXXXXXXXXXXX@ed.gov. If you have questions about this letter, please contact me by telephone at (216) 522- 2667, or by e-mail at Brenda.Redmond@ed.gov.

Sincerely,

(For) Brenda Redmond
Supervisory Attorney/Team Leader

Enclosure