



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

1350 EUCLID AVENUE, SUITE 325
CLEVELAND, OH 44115-1812

REGION XV
MICHIGAN
OHIO

January 24, 2023

Via e-mail only to: XXXXXX

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Re: OCR Docket No. 15-22-2135

Dear XXXXXX XXXXXX:

This letter is to notify you of the disposition of the above-referenced complaint filed on XXXXXX XXXXXX, XXXXXX, with the U.S. Department of Education, Office for Civil Rights (OCR), against Northwood University (the University) alleging that the University discriminated against men on the basis of sex. Specifically, the Complainant alleged that:

1. The University restricts eligibility for the Distinguished Women Award to women.
2. The University only offers the Distinguished Women Endowed Scholarship¹ to women.

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. 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 issues:

- whether the University, on the basis of sex, excluded an individual from participation in, denied him the benefits of, or subjected him to discrimination with respect to any education program or activity, in violation of the Title IX implementing regulation at 34 C.F.R. § 106.31; and/or provided or otherwise carried out any of its education programs or activities separately on the basis of sex, in violation of 34 C.F.R. § 106.34; and
- whether the University, in providing financial assistance to any of its students, on the basis of sex, provides different amount or types of such assistance, limits eligibility for such assistance which is of any particular type or source, applies different criteria, or

¹ The University refers to this scholarship as the Women in Enterprise Scholarship.

otherwise discriminates; and/or, through solicitation, listing, approval, provision of facilities or other services, assists any foundation, trust, agency, organization, or person which provides assistance to any of the University's students in a manner which discriminates on the basis of sex, in violation of 34 C.F.R. § 106.37.

Summary of OCR's Investigation

To conduct its investigation, OCR reviewed information provided by the Complainant and the University. OCR determined there is a cause for concern that both the Distinguished Women Award and the Distinguished Women Endowed Scholarship violate the regulations implementing Title IX. The bases for OCR's determinations are explained below.

Distinguished Women Award

The University explained that the Distinguished Women Award (the Award) is "intended to honor the contributions of women as leaders in the workforce," and "recipients who embody values that Northwood espouses for its own students." Its purpose "is to provide role models for Northwood students and to provide a mechanism for bringing Northwood to the attention of individuals who share a dedication to its principals of higher education." The University states that the "Award can be given to any woman who meets the eligibility criteria, who commits to supporting one of the University's initiatives, and who is able to attend the Awards Gala in person."

The "About" section of the Award webpage states that the Award was created in 1970 by the Northwood University Board of Trustees to honor the enormous contributions of women. It explains that the Award is "bestowed at a multi-day celebration held annually and never given in absentia."² The webpage further states that it encourages the "Distinguished Women to become involved with the University and its students, and to participate in the growth of the Distinguished Women Endowed Scholarship Fund."

The Award Nomination Form provides the following criteria for nominee eligibility:

- Is a proven leader and highly respected in their industry.
- Supports the [University] philosophy of free enterprise, personal responsibility, limited government, rule of law[,] and freedom.
- Believes in the importance of education and has demonstrated community involvement.
- Has a sincere interest in helping [the University] students succeed.
- Can provide inspiration and motivation for students and is willing and able to engage with them.
- Commits to supporting one or more of the four program initiatives – Scholarship and Enrollment, Internship, Mentorship and/or Teaching Presentations.

² The University website lists November 4, 2023, for the date of the next Award gala.

- Commits to attending the [...] Awards Gala.

The University's data response states that the Award "is restricted to women in order to fulfill its purpose of honoring the contributions of women in the workforce." It further states that the University "reaches out to alumni, supporters of the University, past recipients, and other individuals to ask them to consider submitting a nomination for this [A]ward," and explains that nominees are submitted through a public, online form and approved by a volunteer nomination committee with input and guidance from the Vice President of Advancement and the President of the University. The recipients are honored at a gala that is sponsored by private donors. Recipients receive tickets to the gala for themselves and one guest. They also receive a bronze medallion and are provided accommodations for the evening of the gala.

The University informed OCR that it has no knowledge of any nominees for the Award that did not identify as women. The Awards were not provided in 2020 due to the Covid-19 pandemic. In 2021, there were 31 nominations and seven recipients. In 2022, there were 17 nominations and six recipients. During a call with OCR, the University XXXXX emphasized that the Award is not awarded to students, but members of the community at large.

Distinguished Women Endowed Scholarship

The University data response explained that "there is no scholarship specifically titled the "Distinguished Women Endowed Scholarship." Instead, the Distinguished Women of Northwood and others "who support the educational goals of women entering business and management careers" sponsor the Women in Enterprise Scholarship (the Scholarship). The University states that proceeds from donations sponsoring the Distinguished Women Award Gala are donated to this scholarship (after expenses are paid). The University states that there have been 92 recipients of the Scholarship to date, with all recipients identifying as women.

The University's data response further states that "University students do not 'apply' for private donor scholarships, including the Women in Enterprise Scholarship. Instead, students "opt in" to the private donor scholarship pool. Students who opt in are sorted by the criteria for each scholarship and a scholarship committee then selects a recipient among all eligible students. In a phone call with OCR, the University's XXXXX described the process for awarding the Scholarship. XXXXX stated that the process is the same for all endowed scholarships and that students who want to be considered for endowed scholarships fill out a very basic form with their information. The form does not specify the scholarship(s) the student is applying for. Based on the information provided by the student, they are pre-matched with the scholarships whose eligibility criteria they meet. The University's XXXXX stated that the eligibility criteria for some scholarships include gender. Once all eligible students have been pre-matched, a committee of several University staff members selects the scholarship recipients.

The University provided OCR with the "Agreement for the Operation of The Women in Enterprise Annual Private Donor Scholarship Fund." The Agreement was created in 1994 by the Distinguished Women of Northwood. The Agreement states that the Distinguished Women of Northwood, who are "cognizant of the need for educational support to individuals desiring further training as Business Management professionals, have established the Women in Enterprise Fund." The Fund has three purposes: (1) to offer a scholarship for qualified women

students who exhibit a talent for enterprise to pursue a career in Business Management; (2) to continue the annual Distinguished Women’s Awards program that was established 25 years ago by the University to honor the achievements of leadership women from all aspects of endeavor (business, management, the arts, the media, public services, volunteerism, philanthropy, civic leadership); and (3) to support a program of campus visitation by the women honorees to encourage a useful mentorship dialogue between University students and outstanding leaders.

The Agreement states that the Scholarship is based on academic merit, and that applicants must be women students who are U.S. citizens in their junior and/or senior year at the Michigan, Florida, or Texas campuses of the University. Business Management students receive priority although students from all academic programs are encouraged to apply. The Agreement further states that applying students must be accepted at the University for the year in which they are applying and have a minimum 3.0 grade point average. Scholarship recipients are required to: (1) participate in three campus or community-related projects; (2) demonstrate career interest; (3) maintain measurable academic progress, (4) communicate with the donor; and (5) remain enrolled full time for the full academic year of the award. Also, the Scholarships are in amounts determined by annual contributions, and are renewable for two years if the student remains in good standing.

The Agreement states that funds are contributed by the Distinguished Women of Northwood and others who support the educational goals of women entering business and management careers. The Agreement notes that contact for the following year’s funding is made in January, and invoices for scholarship pledges are sent in August of each year.

Applicable Legal Standards

The regulation implementing Title IX, at 34 C.F.R. § 106.31(a), generally provides that “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.”

Sub-section 106.31(b) of the regulation lists specific prohibitions, including examples of different treatment and, notably, sub-section (b)(1) which prohibits a recipient from “[t]reat[ing] one person differently from another in determining whether such person satisfies any requirement or condition for the provision of [an] aid, benefit, or service,” and subsection (b)(3) which prohibits a recipient from, denying, on the basis of sex any “aid, benefit, or service[.]”

Similarly, 34 C.F.R. § 106.34(a) states that “a recipient shall not provide or otherwise carry out any of its educational programs or activities separately on the basis of sex” Section 106.34 includes certain exceptions to the prohibition on single-sex classes—i.e., contact sports; physical education classes; human sexuality classes; choruses; and, in elementary or secondary schools, certain nonvocational single-sex classes or extracurricular activities. However, none of these exceptions apply here.

Also, the regulation implementing Title IX, at 34 C.F.R. § 106.37(a) states that, “in providing financial assistance to any of its students, a recipient shall not: (1) [o]n the basis of sex, provide

different amount or types of such assistance, limit eligibility for such assistance which is of any particular type or source, apply different criteria, or otherwise discriminate[.]” However, pursuant to 34 C.F.R. §106.37(b)(1), “[a] recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established pursuant to domestic or foreign wills, trusts, bequests, or similar legal instruments or by acts of a foreign government which requires that awards be made to members of a particular sex specified therein[, p]rovided [that] the overall effect of the award of such sex-restricted scholarships, fellowships, and other forms of financial assistance does not discriminate on the basis of sex” (emphasis added). 34 C.F.R. § 106.37(b)(2) establishes a procedure that must be used by the recipient to ensure nondiscriminatory awards of assistance under 34 C.F.R. §106.37(b)(1) as follows:

- (i) Students are selected for award of financial assistance on the basis of nondiscriminatory criteria and not on the basis of availability of funds restricted to members of a particular sex;
- (ii) An appropriate sex-restricted scholarship, fellowship, or other form of financial assistance is allocated to each student selected under paragraph (b)(2)(i) of this section; and
- (iii) No student is denied the award for which he or she was selected under paragraph (b)(2)(i) of this section because of the absence of a scholarship, fellowship, or other form of financial assistance designated for a member of that student's sex.

Analysis and Conclusion

Distinguished Women Award

The University acknowledges that the Award is restricted on the basis of sex, but provides two legal justifications. The University alleges that Title IX does not apply because: (1) the Awards are not “educational in nature,” and (2) the Award recipients are non-student, non-employees receiving at most, an economic benefit. OCR finds that Title IX protections extend to “persons,” and is not limited to students and employees. Second, the Award is likely an “education program or activity” for purposes of Title IX, because, among other things, its stated purpose is “to provide role models for Northwood students and to provide a mechanism for bringing Northwood to the attention of individuals who share a dedication to its principals of higher education.” Accordingly, based on the information reviewed to date, OCR has a cause for concern that the Award violates 34 C.F.R. §106.31 and 34 C.F.R. §106.34 by carrying on an educational program or activity separately on the basis of sex, and that none of the legal justifications apply here.

Women in Enterprise Scholarship

The University acknowledges that the Scholarship is restricted on the basis of sex and does not assert a legal justification for the manner in which it offers the Scholarship. Based on the information reviewed to date, OCR has a cause for concern that the Scholarship violates 34 C.F.R. §106.37(a) by limiting eligibility for financial assistance on the basis of sex, without falling under the safe harbor exception in 34 C.F.R. §106.37(b).

Under Section 302 of OCR's *Case Processing Manual*, allegations under investigation may be resolved at any time when, prior to the conclusion of the investigation, 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 January 23, 2023, 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. 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.

OCR looks forward to receiving the University's first monitoring report by **February 13, 2023**. For questions about implementation of the Agreement, please contact Mr. Patrick Vrobel or Ms. Aleksandra Chojnacki, who will oversee the monitoring. Mr. Vrobel can be reached by telephone at XXXXX or by e-mail at XXXXX. Ms. Aleksandra Chojnacki can be reached by

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telephone at XXXXX or by e-mail at XXXXX. If you have questions about this letter, please contact me by telephone at XXXXX or by e-mail at XXXXX.

Sincerely,

Nathaniel J. McDonald
Supervisory Attorney/Team Leader

Enclosure