



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS  
THE WANAMAKER BUILDING, SUITE 515  
100 PENN SQUARE EAST  
PHILADELPHIA, PA 19107-3323

**August 9, 2016**

**IN RESPONSE, PLEASE REFER TO: 03152014**

Dr. Burton J. Webb  
President  
Office of the President  
University of Pikeville  
147 Sycamore Street  
Pikeville, KY 41501

Dear Dr. Webb:

This is to inform you that the U.S. Department of Education (the Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed against the University of Pikeville (the University) by XXXXXX. The Complainant alleged that the University discriminated against her on the basis of sex by failing to adequately respond to her complaint of sexual harassment, XXXXXX.

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

OCR investigated whether the University failed to provide a prompt and equitable response to the Complainant's complaint of sexual harassment as required by law. OCR also investigated:

- A. Whether the University disseminated a notice of nondiscrimination on the basis of sex in compliance with 34 C.F.R. § 106.9;
- B. Whether the University appointed and disseminated information with respect to a Title IX Coordinator in compliance with 34 C.F.R. § 106.8(a); and
- C. Whether the University's policies and practices provide for a prompt and equitable response to sexual harassment complaints and reports in compliance with 34 C.F.R. § 106.31.

During the investigation, OCR reviewed evidence including documents, correspondence and records provided by the Complainant and the University, as well as the University's policies and procedures relating to sexual harassment, and interviewed University staff, and an independent investigator. XXXXXX.

*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*

OCR determined that the University's grievance procedures and notice of nondiscrimination in place at the start of our investigation failed to comply with the requirements of Title IX. However, upon notice from OCR of these deficiencies, the University revised its policies and procedures to comply with Title IX. In addition, on June 24, 2016, the University signed a Resolution Agreement describing the steps it will take to fully implement the revised policies and procedures.

OCR also recognizes that, during the course of our investigation, the University has engaged in ongoing and proactive efforts to enhance the effectiveness of its policies, procedures and practices in an effort to improve its response to complaints of alleged sex discrimination, as required by Title IX.

### **LEGAL STANDARDS**

Sexual harassment is unwelcome conduct of a sexual nature and is a form of sex discrimination prohibited by Title IX. Sexual harassment of a student can result in the denial or limitation, on the basis of sex, of the student's ability to participate in or receive education benefits, services, or opportunities.

#### *Sexually Hostile Environment*

Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, including acts of sexual violence. Sexual violence refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to the victim's use of drugs or alcohol or an intellectual or other disability. A number of different acts fall into the category of sexual violence, including rape and sexual assault.

When a student sexually harasses another student, the harassing conduct creates a hostile environment if it is sufficiently serious that it interferes with or limits a student's ability to participate in or benefit from the school's program. If a recipient knows or reasonably should know about student-on-student harassment, Title IX requires the recipient to respond in a prompt and equitable manner by taking immediate action to eliminate the harassment, prevent its recurrence, and address its effects. Even if the misconduct did not occur in the context of an education program or activity, a school must consider the effects of the off-campus misconduct when evaluating whether there is a hostile environment on campus or in an off-campus education program or activity because students often experience the continuing effects of off-campus sexual violence while at school or in an off-campus education program or activity. Recipients should also take steps to protect a student who was assaulted off campus from further sexual harassment or retaliation, as well as to prevent its recurrence, and address its effects if appropriate. Regardless of where the conduct occurred, the recipient must process complaints in accordance with its procedures.

If an employee who is acting, or reasonably appears to be acting, in the context of carrying out their responsibilities either (1) conditions an educational decision or benefit on a student's submission to unwelcome sexual conduct, or (2) engages in sexual harassment that is sufficiently serious to deny or limit a student's ability to participate in or benefit from the program, the recipient is responsible for the discriminatory conduct whether or not it has notice. When responding to alleged sexual harassment, a recipient must take immediate and appropriate action to investigate or otherwise determine what occurred. The inquiry must be prompt, reliable, and impartial. Pending the outcome of an investigation, Title IX requires a

recipient to take steps to protect the complainant from further harassment as necessary, including taking interim measures. The recipient also should take steps to prevent any retaliation against the student who made the complaint or those who provided information. Other actions may be necessary to repair the educational environment.

#### *Notice of Nondiscrimination*

The regulations implementing Title IX, at 34 C.F.R. § 106.9, require the recipient to take specific and continuing steps to notify applicants for admission and employment, student and parents, employees, sources of referral of applicants, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of sex in its education programs and activities, including with respect to employment. The notice of nondiscrimination must include that inquiries concerning Title IX may be referred to the Title IX Coordinator or to OCR and must identify and include contact information, including the name, address, and phone number for the Title IX Coordinator. The notice must also include an email address for the Title IX Coordinator.

#### *Title IX Coordinator*

The Title IX regulations, at 34 C.F.R § 106.8(a), require that recipients designate at least one employee to coordinate compliance with the regulations, including coordination of investigations of complaints alleging noncompliance. This provision further requires that the recipient notify all of its students and employees of the name (or title), address, and telephone number of the employee(s) so designated; recipients must also notify all students and employees of the email address of the Title IX Coordinator(s). The recipient must ensure that employees designated to serve as Title IX Coordinators and all persons involved in implementing a recipient's grievance procedures have adequate training or experience in handling sexual harassment complaints and in the operation of the recipient's grievance procedures.

#### *Grievance Procedures*

The Title IX regulations establish procedural requirements that are important for the prevention and correction of sex discrimination. These requirements include issuance of a policy against sex discrimination (34 C.F.R. § 106.9) and adoption/publication of grievance procedures providing for a prompt and equitable resolution of complaints of sex discrimination (34 C.F.R. § 106.8(b)).

### **BACKGROUND**

The University is a private liberal arts university located in Pikeville, Kentucky. It enrolled 1,871 students during the 2015-2016 academic year, approximately 51% female and 49% male.

OCR requested and reviewed documentation from the University including: the University's current and prior Title IX policies and procedures; notices and information to students and faculty/staff; descriptions of training on sexual harassment for students and faculty/staff, and descriptions of training provided to individuals responsible for investigating complaints. OCR reviewed records and reports of all complaints of sexual harassment (including those filed by the Complainant) filed with the University during two academic years (2013-14 and 2014-15) to determine whether each complaint was addressed in a prompt and equitable manner.

xxx – paragraph redacted -- xxx

## **FACTUAL FINDINGS AND ANALYSIS**

***Whether the University discriminated against the Complainant on the basis of sex by xxx***  
– paragraphs redacted -- xxx

***Whether the University disseminated a notice of nondiscrimination on the basis of sex in compliance with 34 C.F.R. section 106.9***

OCR found that at the time the Complaint was filed with OCR, the University's notice of nondiscrimination was not in compliance, as it did not identify the University's Title IX Coordinator or provide the contact information of the Title IX Coordinator.

In the course of the investigation, the University revised its notice of nondiscrimination pursuant to 34 C.F.R. § 106.9, which notifies students and employees and other relevant persons that it does not discriminate on the basis of sex in the education programs or activities that it operates and that it is required by Title IX not to discriminate in such a manner. The notice states that inquiries concerning the application of Title IX should be referred to the Title IX Coordinator, and it includes the name or title, office address, email address, and telephone number for the University's Title IX Coordinator. The University will publish this notice consistent with the requirements of Title IX at 34 C.F.R. § 106.9.

***Whether the University appointed and disseminated information with respect to a Title IX Coordinator in compliance with 34 C.F.R. section 106.8(a).***

OCR found that throughout the period of investigation, the University employed and properly identified a Title IX Coordinator. The Title IX Coordinator is identified on the University's website, in the notice of nondiscrimination and in the grievance procedures. Students and employees are notified of the name, office address, and telephone number of the designated employee. Both the former and current Title IX Coordinators attended appropriate training and education and are otherwise qualified to carry out the responsibilities of coordinating the investigation of and response to Title IX complaints using the appropriate legal standards.

In addition, the University provides training to students, faculty and staff regarding Title IX and conducts specific training for individuals responsible for addressing complaints of sexual harassment/assault/violence, as well as those individuals serving in a resource capacity, including the Title IX Coordinator.

The University's Title IX Coordinator is responsible for overseeing the University's centralized response to complaints and reports of sexual harassment, including sexual assault/violence, developing policies and procedures for the University that relate to Title IX, and training faculty, staff and students on Title IX sexual assault awareness and prevention. The University has provided OCR with a description of its centralized record-keeping process for documenting and tracking complaints of sexual harassment, including gender-based harassment. The University confirmed that this process allows it to maintain information that includes the name of the individual who reported the allegation, the identification of the alleged victim and alleged perpetrator, notes from witness interviews, documentation of investigative steps completed, and the determination, including disciplinary sanctions, if any of all parties involved. The University also confirmed that its Title IX Coordinator is responsible for maintaining and reviewing this information and the records are maintained in the Title IX Coordinator's office.

For these reasons, OCR found that the University is in compliance with Title IX with respect to this issue.

***Whether the University's policies and practices provide for a prompt and equitable response to sexual harassment complaints and reports in compliance with 34 C.F.R. § 106.31***

At the time this Complaint was filed, the University had several policies and procedures in place to address complaints of sex discrimination (including sexual and/or gender-based harassment and sexual violence), as required by Title IX:

- Title IX Statement and Procedures;
- Statement on Harassment/Sexual Harassment Policy;
- Reporting Sexual Misconduct;
- Sexual Misconduct Policy; and
- Student Handbook.

These policies and procedures did not comply with Title IX because:

- They were not clear regarding whom students should contact to file a complaint;
- They did not explain that they should be used to file complaints regarding sex discrimination committed by employees, students, and third parties;
- They did not contain an assurance that the University will take steps to prevent the recurrence of any sexual violence and remedy discriminatory effects on the complainant and others, if appropriate;
- They did not include provisions for confidential reporting; and
- They did not identify which University staff members were responsible for evaluating requests for confidentiality.

In addition to the sexual harassment complaint filed by the Complainant, the University provided data showing that there XXXXXX. The complaints investigated by the Title IX Coordinator and Deputy Coordinator were generally completed within 60 days. There were reasonable and justifiable reasons for any delays in investigations beyond the 60 day timeframe. Moreover, interim measures were routinely offered and provided for students who complained of sexual harassment and/or assault.

In the course of the investigation, the University revised its policies and practices. OCR found that the University's revised policies and procedures provide a prompt and equitable resolution of complaints of sexual harassment. OCR has reviewed and approved the University's revised Title IX grievance procedures, addressing complaints alleging discrimination on the basis of sex (including sexual harassment, sexual assault, and sexual violence) as required by Title IX's implementing regulation at 34 C.F.R. § 106.8(b). The procedures include the provisions below, providing for the prompt and equitable resolution of complaints by students and all types of employees alleging all forms of sex discrimination (including sexual harassment, sexual assault, and sexual violence) against students, employees and third parties:

- a) notice to students and employees of the grievance procedures, including where complaints may be filed;
- b) application of the grievance procedures to complaints filed by students or on their behalf alleging discrimination or sexual and/or gender-based harassment (including sexual violence) carried out by employees, other students, or third parties;
- c) provisions for adequate, reliable, and impartial investigation of complaints, including the opportunity for both the complainant and alleged perpetrator to present witnesses and evidence;

- d) designated and reasonably prompt time frames for the major stages of the complaint process;
- e) written notice to the complainant and alleged perpetrator of the outcome of the complaint;
- f) assurance that the University will take steps to prevent recurrence of any harassment (including sexual violence) and remedy discriminatory effects on the complainant and others, if appropriate;
- g) a statement of the University's jurisdiction over Title IX complaints;
- h) adequate definitions of sexual harassment (which includes sexual violence) and an explanation as to when such conduct creates a hostile environment;
- i) reporting policies and protocols, including provisions for confidential reporting;
- j) identification of the employee or employees responsible for evaluating requests for confidentiality;
- k) notice that Title IX prohibits retaliation;
- l) notice of a student's right to file a criminal complaint and a Title IX complaint simultaneously;
- m) notice of available interim measures that may be taken to protect the student in the educational setting;
- n) a statement that preponderance of the evidence (i.e., more likely than not that sexual violence occurred) will be the standard used in investigating a complaint;
- o) notice of potential remedies for students;
- p) notice of potential sanctions against perpetrators; and
- q) sources of counseling, advocacy, and support.

## **CONCLUSION**

Based on the factual information gathered during the investigation of this case and applying Title IX statutory and regulatory principles, OCR concluded that the preponderance of the evidence XXXXXX. XXXXXX supports a conclusion that the University did violate Title IX with respect to its grievance procedures and notice of nondiscrimination.

On June 24, 2016, the University signed the enclosed Resolution Agreement. When fully implemented, the Resolution Agreement will address the aforementioned violations. OCR will monitor the implementation of the agreement until the University is in compliance with the regulations implementing Title IX, at 34 C.F.R. §§ 106.8, 106.9, and 106.31, which were at issue in the case.

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. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

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.

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, we 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.

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 Complainant may file another complaint alleging such treatment.

If you have any questions, please contact Marcia Jones at (215) 656-8555 or by email at [marcia.jones@ed.gov](mailto:marcia.jones@ed.gov).

Sincerely,

/s/

Nancy E. Potter  
Team Leader

cc: Jim Newberry, Esquire

Enclosure