



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVENUE, SW
WASHINGTON, DC 20202-1475

REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, D.C.

December 23, 2014

Mr. Reed N. Wilcox
President
Southern Virginia University
One University Hill Drive
119 Main Hall
Buena Vista, Virginia 24416

Re: OCR Complaint Nos. 11-14-2288 and 11-14-2290
Letter of Findings

Dear Mr. Wilcox:

This letter is to inform you that the District of Columbia Office, Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) has completed its investigation of the complaints received on June 16, 2014, against Southern Virginia University (the University). The Complainants, XXXX, alleged that the University discriminated against them on the basis of sex. Specifically, the allegations were:

OCR Complaint No. 11-14-2288 (Complainant 1)

Allegation 1: The University failed to provide a prompt and equitable response in compliance with Title IX and its implementing regulation in investigating and resolving the XXXX, complaint alleging Complainant 1 was subjected to sexually harassing conduct XXXX.

Allegation 2: Complainant 1 was subjected to a hostile environment based on sex XXXX.

OCR Complaint No. 11-14-2290 (Complainant 2)

Allegation 1: The University failed to provide a prompt and equitable response in compliance with Title IX and its implementing regulation in investigating and resolving Complainant 2's XXXXX complaint of sexually harassing conduct XXXX.

Allegation 2: Complainant 2 was subject to a hostile environment on the basis of sex when XXXX.

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 enforces Title IX of the Education Amendments of 1972 (Title IX) 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 receiving Federal financial assistance from the Department. Because the University receives Federal financial assistance from the Department, OCR has jurisdiction over it pursuant to Title IX.

During the investigation, OCR reviewed several pieces of data, including the University's grievance processes and its investigation into the Complainants' allegations of sexual harassment. OCR conducted interviews with the Complainants, the University's Provost and the University's Title IX Coordinator. Based on the information reviewed, OCR found insufficient evidence that Complainant 1 and Complainant 2 were subject to sex discrimination, as alleged. However, OCR found a violation regarding the University's Title IX policy and procedures.

General Background

The University's Title IX Policies and Procedures

The University, a private liberal arts college, requires all students to sign a pledge agreeing to abide by the school's "Code of Honor" (the Code). The Code outlines standards of conduct that prohibit students from engaging in sexual relations outside of marriage, drinking alcohol, or taking illicit substances. Violations of the Code are handled by the University's Office of Student Life and sanctions may be assessed by the student honor council. The Code does not specifically address sexual harassment.

The University's Safety and Security Manual (the Manual) mentions that the University prohibits sexual harassment against any student, faculty, or staff member. It notes that faculty and staff complaints of sexual harassment will be handled in accordance with the Employee Handbook and student complaints of possible sexual harassment should be reported to the Dean of Students. The Manual also states that sexual assault will not be tolerated and that criminal prosecution will not automatically exclude the offender from any administrative discipline that may be imposed by the University. However, it does not provide a grievance or adjudication process for addressing student or employee sexual assault complaints. The Employee Handbook provides additional details to employees about reporting sexual harassment but there is no further guidance to students concerning the reporting, investigation, or adjudication of sexual harassment allegations.¹

Additionally, the University outlines an informal and formal student grievance process for academic and honor related complaints. Although the grievance procedures state that they will apply to "alleged discrimination on the basis of race, color, religion, gender, age, national origin, or disability, as well as problems arising in the relationship between a student and the university," they do not speak specifically to sexual harassment or violence and the University, as discussed below, did not apply these procedures to the complaints of sexual harassment raised by Complainants.

¹ The Faculty Handbook repeats similar information and explains that any romantic involvement between a faculty member and a student is inappropriate.

<XXXX 4 PARAGRAPHS REDACTED XXXX>

Sexual harassment that creates a hostile environment is a form of sex discrimination prohibited by Title IX. Sexual harassment is unwelcome conduct of a sexual nature. Title IX does not prohibit discrimination based solely on sexual orientation, but does prohibit discrimination on the basis of sex, including gender stereotyping. Harassing conduct may take many forms, including verbal acts and name calling, as well as nonverbal behavior, such as graphic and written statements, or conduct that is physically threatening, harmful, or humiliating. Harassment does not have to include intent to harm, be directed at a specific target, or involve repeated incidents. Conduct is unwelcome if the student did not request or invite the conduct and regarded it as undesirable or offensive.

OCR considers a variety of related factors to determine if a sexually hostile environment has been created and considers the conduct in question from both an objective and a subjective perspective. Factors examined include the degree to which the misconduct affected one or more students' education; the type, frequency, and duration of the misconduct; the identity of and relationship between the alleged harasser and the subject or subjects of the harassment; the number of individuals involved; the age and sex of the alleged harasser and the subject of the harassment, location of the incidents, and the context in which they occurred. The more severe the conduct, the less the need to show a repetitive series of incidents; this is particularly true if the harassment is physical. A single or isolated incident of sexual harassment may, if sufficiently severe, create a hostile environment.

<XXXX 10 PARAGRAPHS REDACTED XXXX>

The Title IX implementing regulation, at 34 C.F.R. § 106.9(a), requires each recipient to implement specific and continuing steps to notify students and employees that it does not discriminate on the basis of sex. The notification must state that the requirement of non-discrimination in educational programs and activities extends to employment. It also must say that questions about Title IX may be referred to the employee designated to coordinate Title IX compliance or to the assistant secretary for civil rights. Recipients are required to include the name, address, and telephone number of the designated coordinator in their notifications.

In addition, the Title IX regulation, at 34 C.F.R. § 106.8(a), requires a recipient to designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX and its implementing regulation, including the investigation of any complaint communicated to such recipient alleging its noncompliance with Title IX or alleging any actions which would be prohibited by Title IX. The recipient must notify all of its students and employees of the name, office address, and telephone number of the employee or employees appointed.

Further, the Title IX regulation, at 34 C.F.R. § 106.8(b), requires a recipient to adopt and publish procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any actions prohibited by Title IX and its implementing regulation. 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 of the procedure, including where complaints may be filed; (2) application of the procedure to complaints alleging

harassment carried out by employees, other students, or third parties; (3) adequate, reliable, and impartial investigation of complaints; (4) designated and reasonably prompt timeframes for the major stages of the complaint process; (5) notice to the parties of the outcome of the complaint (both parties must be notified, in writing, about the outcome of both the complaint and any appeal); and (6) an assurance that the school will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate.

Regardless of whether sex discrimination occurred, a recipient violates the Title IX regulation if it does not have procedures in place that provide for the prompt and equitable resolution of student and employee complaints alleging any actions prohibited by Title IX and its implementing regulation.

Title IX does not require a recipient to adopt a policy specifically prohibiting sexual harassment/violence or to provide separate grievance procedures for sexual misconduct complaints. However, its nondiscrimination policy and grievance procedures for handling discrimination complaints must provide effective means for preventing and responding to sexual harassment, including sexual violence. Thus, if, because of the lack of a policy or procedure specifically addressing sexual harassment, members of the school community 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.

The University does not currently have any policy or process in place to address allegations of sexual harassment. The University's existing Student Grievance Procedure does not clearly apply to sexual harassment, including sexual violence, and the University did not process these complaints pursuant to that procedure. For example, the Student Grievance Procedure requires the Office of Student Life to investigate complaints and to issue a written determination that states the reasons for the decision, the action to be taken, and that the student has the right to a review by the appropriate vice-president. To the knowledge of the Provost and the Title IX Coordinator, the Complainants' allegations of sexual harassment were the first Title IX complaints ever filed with the University. <XXXX SENTENCE REDACTED XXXX> The handling of these complaints suggests that the University may seek to investigate and resolve each sexual harassment complaint it receives in an *ad hoc* manner, rather than establishing and following policies or procedures that comply with Title IX.

Of additional concern is that the Title IX Coordinator's name and contact information are not listed or displayed on any website or publication produced by the University, including the University's nondiscrimination statement. Furthermore, in an interview with OCR, the Title IX Coordinator stated he is not clear regarding his duties under the statute.

Additionally, the Provost stated he believes a statement against sex discrimination is in every University course syllabus, but there is no such statement on the University website.

Based on the above information, OCR finds that the University is not complying with Title IX's procedural requirements. To resolve OCR's concerns, the University has entered into the attached Resolution Agreement.

Conclusion

This concludes OCR's investigation of the complaint. This letter 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. The complainants may have the right to file a private suit in federal court whether or not OCR finds a violation.

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, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law. Please be advised that the University may not retaliate against an individual who asserts a right or privilege under a law enforced by OCR or who files a complaint, testifies, or participates in an OCR proceeding. If this happens, the individual may file a retaliation complaint with OCR.

Special thanks to Mr. Rick Reiter for his assistance in this matter. If you have any questions, feel free to contact Christa Cothrel at (202) 453-5926 or by e-mail at christa.cothrel@ed.gov or Amanda Dallo at (202) 260-7841 or by e-mail at amanda.dallo@ed.gov.

Sincerely,

/S/

Kay Bhagat
Team Leader
District of Columbia Office
Office for Civil Rights

Enclosure

cc: Mr. Rick Reiter (via e-mail)