



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS -- REGION VII

July 20, 2015

(b)(6); (b)(7)(C)

Re: Docket # 07152238

Dear (b)(6); (b)(7)(C)

On February 12, 2015, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received your complaint against the University of Kansas (University), Lawrence, Kansas, alleging discrimination on the basis of sex and retaliation. We have completed our evaluation of your complaint and we have determined that we have the authority to investigate complaint allegations 1 and 2 consistent with our complaint procedures and applicable law. OCR does not have authority to investigate complaint allegation 3, as explained below.

You specifically alleged:

1. The University failed to promptly and equitably investigate your complaint of sexual assault by a male student (b)(6); (b)(7)(C) (b)(6); (b)(7)(C), and thereby failed to eliminate sexual harassment, prevent its recurrence, and address its effects, based on the following allegations:
  - a. The University's investigation exceeded 60 days (the total length of time for the investigation was 202 days) and the University failed to provide you with periodic status updates of the investigation or an estimated timeframe for completion, contrary to the University's published procedures.
  - b. The investigator in the University's Office of Institutional Opportunity and Access (IOA) was not impartial when she repeatedly asked you to explain how you were subjected to a hostile environment, when a single rape can constitute a hostile environment.
  - c. The IOA investigator was not impartial when she asked you to sign a (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) to allow the IOA investigator to talk to (b)(6); (b)(7)(C) which you believe was a request to waive your rights to privacy and discredit you.

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- d. The University offered releases of information to you and reporters after media inquiries, which you believe was a request to waive your rights to privacy and chill your interaction with media.
  - e. The IOA investigator was not impartial when she used examples of incapacitation with extremely high standards that were not supported by the law, including stating that victims of sexual assault need to be vomiting profusely, passed out under a table, or walking around outside in extremely cold winter weather without shoes before IOA would conclude intoxication at a level at which the victim's capacity to consent would be negated.
  - f. The University's investigation was not adequate, reliable or impartial when the IOA investigator treated the male student's evidence more favorably than your evidence and gave more weight to the male student's statements than to your corroborated statements.
  - g. The University's investigation was not adequate, reliable or impartial in that it failed to comply with its own published policies in determining whether you consented to sexual intercourse with the male student, including, but not limited to, the University's policy that consent must be freely given and that "If It's Not Clear, It's Not Consent."
  - h. The Vice Provost for Administration and Finance was not impartial in her review of your appeal when she used examples of incapacitation with extremely high standards that were not supported by the law or by the University's published policies and when she failed to consider the totality of the circumstances in determining whether you had consented to sexual intercourse with the male student.
  - i. The review of your appeal by the Vice Provost for Administration and Finance was not adequate, reliable or impartial in that it simply concluded IOA was impartial and that IOA did not give favor to the male student but failed to provide you any specific evidence to support those conclusions.
2. The University retaliated against you by:
- a. Engaging in the conduct described in allegations 1(a-i), above.
  - b. Failing to timely inform you of the male student's enrollment status at the University.

- c. Disseminating inaccurate information to students via University staff and to the public in response to media attention about providing survivors a hearing to pursue sanctions.
3. The University violated the amended Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act) by:
  - a. Publishing several statements with respect to sexual harassment training and investigation by the University, which you believe are inaccurate.
  - b. Responding to media attention by stating that if a survivor believes the University should impose a suspension or expulsion the University did not otherwise intend to pursue, a hearing will take place to pursue such a sanction, which you believe is not accurate based on the University's response to your first complaint of sexual assault.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), 20 United States Code (U.S.C.) § 1681, and its implementing regulation, 34 Code of Federal Regulations (C.F.R.) Part 106. Title IX prohibits discrimination on the basis of sex in any education program or activity operated by a recipient of Federal financial assistance. The Title IX regulation at 34 C.F.R. § 106.71 incorporates by reference the anti-retaliation provision of Title VI of the Civil Rights Act of 1964 at 34 C.F.R. § 100.7(e), which prohibits a recipient from intimidating, threatening, coercing, or retaliating against individuals who engage in an activity protected under Title VI, including complaining of discrimination or harassment or participating in an OCR investigation.

As a recipient of Federal financial assistance from the Department, the University is subject to Title IX. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

#### *Allegations 1 and 2*

Because OCR has determined that it has jurisdiction of your complaint allegations 1 and 2 and that these complaint allegations were filed in a timely manner, OCR is opening complaint allegations 1 and 2 for investigation. Please note that opening these complaint allegations for investigation in no way implies that OCR has made a determination with regard to their merits. During the investigation, OCR is a neutral fact-finder, collecting and analyzing relevant evidence from the complainant, the recipient, and other sources, as appropriate. OCR will ensure that its investigation is legally sufficient and is dispositive of

the complaint allegation, in accordance with the provisions of Article III of OCR's *Case Processing Manual* (CPM).<sup>1</sup>

OCR offers, when appropriate, an Early Complaint Resolution (ECR) process to facilitate the voluntary resolution of complaints by providing an early opportunity for the parties involved to resolve the allegations. The OCR document entitled *OCR Complaint Processing Procedures* (enclosed) includes information about ECR.

In addition, when appropriate, a complaint may be resolved before the conclusion of an investigation after the recipient asks OCR to resolve the complaint. In such cases, a resolution agreement signed by the recipient and submitted to OCR must be aligned with the complaint allegations or the information obtained during the investigation and must be consistent with applicable regulations. Information about this resolution process is also explained in the enclosed document.

If not resolved through ECR or resolution before the conclusion of the investigation, OCR investigates the complaint allegations and makes a compliance determination. If OCR determines a recipient has not complied with a regulation enforced by OCR, OCR will attempt to negotiate a written agreement with the recipient in which the recipient commits to take specific steps to bring it into compliance with the applicable laws and regulations.

We will communicate with you periodically regarding the status of your complaint. If you have additional information related to your complaint that you would like OCR to consider, you may submit the information to the staff person referenced below. Your submission may be in hard copy form (e.g., photocopies of documents), or you may scan the information into an electronic format (e.g., a PDF format). For instance, if you copy data or documents onto removable media, such as USB drives or CD/DVD disks, this data may be submitted to OCR as an alternative to reproducing the information in a hard copy format.

### *Allegation 3*

As set out in Section 104 of the CPM, OCR must have jurisdiction over the subject matter of the complaint. For OCR to establish subject matter jurisdiction, the complaint must allege, or OCR must be able to infer from the facts given, an allegation of: (1) discrimination based on race, color, national origin, sex, disability or age, (2) discrimination in violation of the Boy Scouts of America Equal Access Act of 2001, or (3) retaliation for the purpose of interfering with any right or privilege secured by the civil rights laws enforced by OCR, or as a result of making a complaint, testifying, or participating in any manner in an OCR proceeding. See 34 C.F.R. §§ 100.7(e), 104.61, 106.71, 108.9, 110.34; and 28 C.F.R. § 35.134.

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<sup>1</sup> The *Case Processing Manual* is available on OCR's website at <http://www.ed.gov/about/offices/list/ocr/docs/ocrcpm.html>.

When the subject matter of a complaint allegation(s) does not fall under any of the following statutory and regulatory authorities, OCR will dismiss the allegation(s) pursuant to CPM Section 108.

In allegation 3, you alleged the University violated the Clery Act. OCR does not have jurisdiction over the subject matter of allegation 3 as it does not state a violation of a law we enforce. Accordingly, OCR is dismissing your allegation 3 effective the date of this letter.

When OCR is unable to investigate a complaint, we attempt to locate an agency that might be able to address your concerns. The Department's Federal Student Aid (FSA) Office enforces the Clery Act. You may file your complaint with the FSA Kansas City Office by calling (816) 268-0410.

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

If you have any questions, please contact Julie Riege, Attorney, at (816) 268-0566 (voice) or (877) 521-2172 (telecommunications device for the deaf), or by email at [julie.riege@ed.gov](mailto:julie.riege@ed.gov).

Sincerely,  
(b)(6)

Joshua Douglass  
Chief Attorney

Enclosure



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS -- REGION VII

July 20, 2015

Rachel E. Rolf  
Associate General Counsel  
University of Kansas  
1450 Jayhawk Boulevard  
245 Strong Hall  
Lawrence, Kansas 66045-7535

Re: Docket # 07152238

Dear Ms. Rolf:

On February 12, 2015, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint alleging discrimination on the basis of sex and retaliation by the University of Kansas (University), Lawrence, Kansas. We have determined that we have the authority to investigate this complaint consistent with our complaint procedures and applicable law.

The complainant specifically alleged:

1. The University failed to promptly and equitably investigate the complainant's complaint of sexual assault by a male student (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) and thereby failed to eliminate sexual harassment, prevent its recurrence, and address its effects, based on the following allegations:
  - a. The University's investigation exceeded 60 days (the total length of time for the investigation was 202 days) and the University failed to provide the complainant with periodic status updates of the investigation or an estimated timeframe for completion, contrary to the University's published procedures.
  - b. The investigator in the University's Office of Institutional Opportunity and Access (IOA) was not impartial when she repeatedly asked the complainant to explain how the complainant was subjected to a hostile environment, when a single rape can constitute a hostile environment.
  - c. The IOA investigator was not impartial when she asked the complainant to sign (b)(6); (b)(7)(C) to allow the IOA investigator to talk to the (b)(6); (b)(7)(C) which the complainant believes was a request to waive her rights to privacy and discredit her.

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- d. The University offered releases of information to the complainant and reporters after media inquiries, which the complainant believes was a request to waive her rights to privacy and chill her interaction with media.
  - e. The IOA investigator was not impartial when she used examples of incapacitation with extremely high standards that were not supported by the law, including stating that victims of sexual assault need to be vomiting profusely, passed out under a table, or walking around outside in extremely cold winter weather without shoes before IOA would conclude intoxication at a level at which the victim's capacity to consent would be negated.
  - f. The University's investigation was not adequate, reliable or impartial when the IOA investigator treated the male student's evidence more favorably than the complainant's evidence and gave more weight to the male student's statements than to the complainant's corroborated statements.
  - g. The University's investigation was not adequate, reliable or impartial in that it failed to comply with its own published policies in determining whether the complainant consented to sexual intercourse with the male student, including, but not limited to, the University's policy that consent must be freely given and that "If It's Not Clear, It's Not Consent."
  - h. The Vice Provost for Administration and Finance was not impartial in her review of the complainant's appeal when she used examples of incapacitation with extremely high standards that were not supported by the law or by the University's published policies and when she failed to consider the totality of the circumstances in determining whether the complainant had consented to sexual intercourse with the male student.
  - i. The review of the complainant's appeal by the Vice Provost for Administration and Finance was not adequate, reliable or impartial in that it simply concluded IOA was impartial and that IOA did not give favor to the male student but failed to provide the complainant any specific evidence to support those conclusions.
2. The University retaliated against the complainant by:
    - a. Engaging in the conduct described in allegations 1(a-i), above.
    - b. Failing to timely inform the complainant of the male student's enrollment status at the University.

- c. Disseminating inaccurate information to students via University staff and to the public in response to media attention about providing survivors a hearing to pursue sanctions.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), 20 United States Code (U.S.C.) § 1681, and its implementing regulation, 34 Code of Federal Regulations (C.F.R.) Part 106. Title IX prohibits discrimination on the basis of sex in any education program or activity operated by a recipient of Federal financial assistance. The Title IX regulation at 34 C.F.R. § 106.71 incorporates by reference the anti-retaliation provision of Title VI of the Civil Rights Act of 1964 at 34 C.F.R. § 100.7(e), which prohibits a recipient from intimidating, threatening, coercing, or retaliating against individuals who engage in an activity protected under Title VI, including complaining of discrimination or harassment or participating in an OCR investigation.

As a recipient of Federal financial assistance (FFA) from the Department, the University is subject to Title IX. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

Because OCR has determined that it has jurisdiction and that this complaint was filed in a timely manner, it is opening this complaint for investigation. Please note that opening the complaint for investigation in no way implies that OCR has made a determination with regard to its merits. During the investigation, OCR is a neutral fact-finder, collecting and analyzing relevant evidence from the complainant, the recipient, and other sources, as appropriate. OCR will ensure that its investigation is legally sufficient and is dispositive of the allegation, in accordance with the provisions of Article III of OCR's *Case Processing Manual*.<sup>1</sup>

Please read the enclosed document entitled *OCR Complaint Processing Procedures*, which includes information about:

- OCR's complaint evaluation and resolution procedures;
- Regulatory prohibitions against retaliation, intimidation, and harassment of persons who file complaints with OCR or participate in an OCR investigation; and
- Application of the Freedom of Information Act and the Privacy Act to OCR investigations.

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<sup>1</sup>The *Case Processing Manual* is available on OCR's website at <http://www.ed.gov/about/offices/list/ocr/docs/ocrcpm.html>.



OCR offers, when appropriate, an Early Complaint Resolution (ECR) process to facilitate the voluntary resolution of complaints by providing an early opportunity for the parties involved to resolve the allegations. The enclosed document includes information about the ECR process.

In addition, when appropriate, a complaint may be resolved before the conclusion of an investigation after the recipient asks OCR to resolve the complaint. In such cases, a resolution agreement signed by the recipient and submitted to OCR must be aligned with the complaint allegations or the information obtained during the investigation and must be consistent with applicable regulations. Information about this resolution process is also explained in the enclosed document.

If not resolved through ECR or resolution before the conclusion of the investigation, OCR investigates the complaint allegations and makes a compliance determination. If OCR determines a recipient has not complied with a regulation enforced by OCR, OCR will attempt to negotiate a written agreement with the recipient in which the recipient commits to take specific steps to bring it into compliance with the applicable laws and regulations. OCR intends to conduct a prompt investigation of this complaint. The regulation implementing Title VI at 34 C.F.R. § 100.6 (b) and (c) requires that a recipient of FFA make available to OCR information that may be pertinent to reach a compliance determination. This requirement is incorporated by reference in the Title IX regulation at 34 C.F.R. § 106.71. Pursuant to 34 C.F.R. § 100.6(c) and 34 C.F.R. § 99.31(a)(3)(iii), of the regulation implementing the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, OCR may review personally identifiable records without regard to considerations of privacy or confidentiality.

To expedite our investigation, we request that you provide the following information to OCR within 15 calendar days of the date of this letter. An OCR staff member will contact you within five days to provide you the name of the complainant.

(b)(7)(A)



(b)(7)(A)



The University may provide OCR the information requested above in a scanned (PDF) electronic format or, if the most current documentation is available online, by providing OCR a reference in its data response to the website address or a link where OCR may access the information. For instance, if the University prefers, it may provide OCR links to online information that OCR can access or may scan information to a CD or DVD instead of reproducing the information in a hard copy format. If the University has previously submitted a current version of a requested document to OCR in another complaint investigation, please inform us of the docket number of the OCR complaint, and OCR will determine if the information is responsive to our data request.

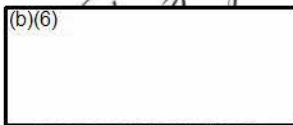
Thank you for your cooperation in this matter. In addition to the information requested above, OCR may need to request additional information and interview pertinent personnel. If OCR determines an on-site visit is necessary, we will contact you to schedule a mutually convenient time for the visit.

Please notify OCR of the name, address, and telephone number of the person who will serve as the University's contact person during the resolution of this complaint. We would like to talk with this person as soon as possible regarding the information requested in this letter.

OCR is committed to prompt and effective service. If you have any questions, please contact Julie Riege, Attorney, at (816) 268-0566 (voice) or (877) 521-2172 (telecommunications device for the deaf), or via email at [julie.rieger@cd.gov](mailto:julie.rieger@cd.gov).

Sincerely,

(b)(6)



Joshua Douglass  
Chief Attorney

Enclosure