



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, DC

March 28, 2017



Re: OCR Complaint No. 11-16-2295
Notification/Partial Dismissal Letter

On August 31, 2016, the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) received your complaint against your complaint against American University (the University). You allege that the University discriminated against you on the basis of sex when it failed to promptly and equitably investigate a complaint of sexual violence filed against you in

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

You further allege that the University subjected you to retaliation.

If you disagree with the way OCR stated your allegations, please contact the OCR staff person identified below within 10 days of the date of this letter.

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 program or activity receiving Federal financial assistance from the Department. The laws enforced by OCR, including Title IX, prohibit retaliation against any individual who asserts rights or privileges under these laws or who files a complaint, testifies, or participates in an OCR proceeding. Because the University receives Federal financial assistance from the Department, OCR has jurisdiction over it pursuant to Title IX.

Because OCR determined that it has jurisdiction and that the allegation was timely filed, OCR is opening for investigation your sex discrimination allegation. Please note that opening the allegation for investigation in no way implies that OCR has made a determination on the merits of the allegation. During the investigation, OCR is a neutral fact-finder, collecting and analyzing relevant evidence from you, the University, and other sources, as appropriate. OCR will ensure that its investigation is legally sufficient and fully responds to the allegation in accordance with the provisions of the *Case Processing Manual*, available at <http://www.ed.gov/ocr/docs/ocrcpm.html>.

After carefully reviewing the information you provided, OCR determined that we will not investigate your allegation that the University retaliated against you. OCR is dismissing your

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retaliation allegation under Section 108 of OCR's *Case Processing Manual* because you did not provide sufficient details (i.e., who, what, where, when, how) for OCR to infer that retaliation may have occurred or is occurring. For example, you did not provide information concerning what protected activity (that is, filing a complaint or asserting a right under a law OCR enforces) provoked the University's retaliation, or what materially adverse action the University took against you as a result.

On October 4, 2016, OCR sent you an email explaining the information we needed to open an investigation of your complaint and attempting to schedule a phone interview with you on October 12 or 13, 2016. When you failed to respond, we attempted to contact you by phone on October 25, 2016 and November 4, 2016. However, you failed to respond to these requests. On December 6, 2016, OCR sent you another email explaining that because your complaint references retaliation, we need to know the specific actions by the University that you allege are retaliatory, the dates of those actions, and the reasons you believe those actions constitute retaliation. We notified you that your complaint might be dismissed if we did not receive the required information within 20 calendar days (by December 26, 2016). On December 27, 2016, you responded by email stating that you were (b)(6), (b)(7)(C) and that you would "follow[] up with this issue at a later date...." On February 24, 2017, you emailed OCR in connection with your complaint. We offered you the opportunity to provide any additional information in response to our October 4, 2016 and December 6, 2016 emails by February 27, 2017, but you did not do so. Because you did not provide the information we requested concerning your allegation of retaliation, we are dismissing that allegation as of the date of this letter and will take no further action on it. However, as noted above, we are opening an investigation of your sex discrimination allegation.

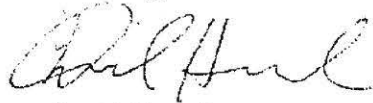
This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The complainant 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, or participates in an OCR proceeding. 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, 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.

If you have any questions, please contact Kathryn Love, the OCR attorney assigned to this complaint, at 202-453-6948 or Kathryne.Love@ed.gov.

Sincerely,

A handwritten signature in cursive script, appearing to read "David Hensel".

David Hensel
Supervisory Attorney
District of Columbia Office
Office for Civil Rights



UNITED STATES DEPARTMENT OF EDUCATION
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REGION VI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, DC

March 28, 2017

Via Facsimile to (202) 885-3279

Neil Kerwin
Office of the President
American University
4400 Massachusetts Avenue, NW
Washington, DC 20016-8060

Re: OCR Complaint No. 11-16-2295
Notification/Data Request Letter

Dear President Kerwin:

The Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) received a complaint on August 29, 2016 against American University (the University). The Complainant alleges that the University discriminated against him on the basis of sex when it failed to promptly and equitably investigate a complaint of sexual violence filed against him in (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

OCR will contact the University to provide the name of the Complainant.

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 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.

Because OCR determined that it has jurisdiction and that the complaint was timely filed, OCR is opening the complaint for investigation. Please note that opening the complaint for investigation in no way implies that OCR has made a determination on the merits of the complaint. During the investigation, OCR is a neutral fact-finder, collecting and analyzing relevant evidence from the Complainant, the University, and other sources, as appropriate. OCR will ensure that its investigation is legally sufficient and fully responds to the allegation in accordance with the provisions of the *Case Processing Manual*, available at <http://www.ed.gov/ocr/docs/ocrepm.pdf>. Our goal is the prompt, appropriate resolution of the complaint. Information on OCR's complaint processing procedures is available at <http://www.ed.gov/ocr/complaints-how.html>.

Attached is a request for data necessary to investigate this complaint. OCR requests that the University submit this information within 30 calendar days of the date of this letter (i.e., by April 27, 2017). We prefer that you submit information electronically, if feasible. If any item in our

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request is unclear, or if you experience any difficulty complying with this request, please contact us as provided below prior to the expiration of the 30-day period. Please be aware that OCR anticipates conducting an on-site investigation of the complaint. We will notify you in advance of our proposed plans to visit the University.

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, or participates in an OCR proceeding. 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, 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.

We look forward to your cooperation during the resolution of this complaint. If you have any questions, please contact Kathryn Love, the OCR attorney assigned to this complaint, at 202-453-6948 or Kathryn.Love@ed.gov.

Sincerely,

A handwritten signature in cursive script, appearing to read "D. Hensel", written in black ink.

David Hensel
Supervisory Attorney
District of Columbia Office
Office for Civil Rights

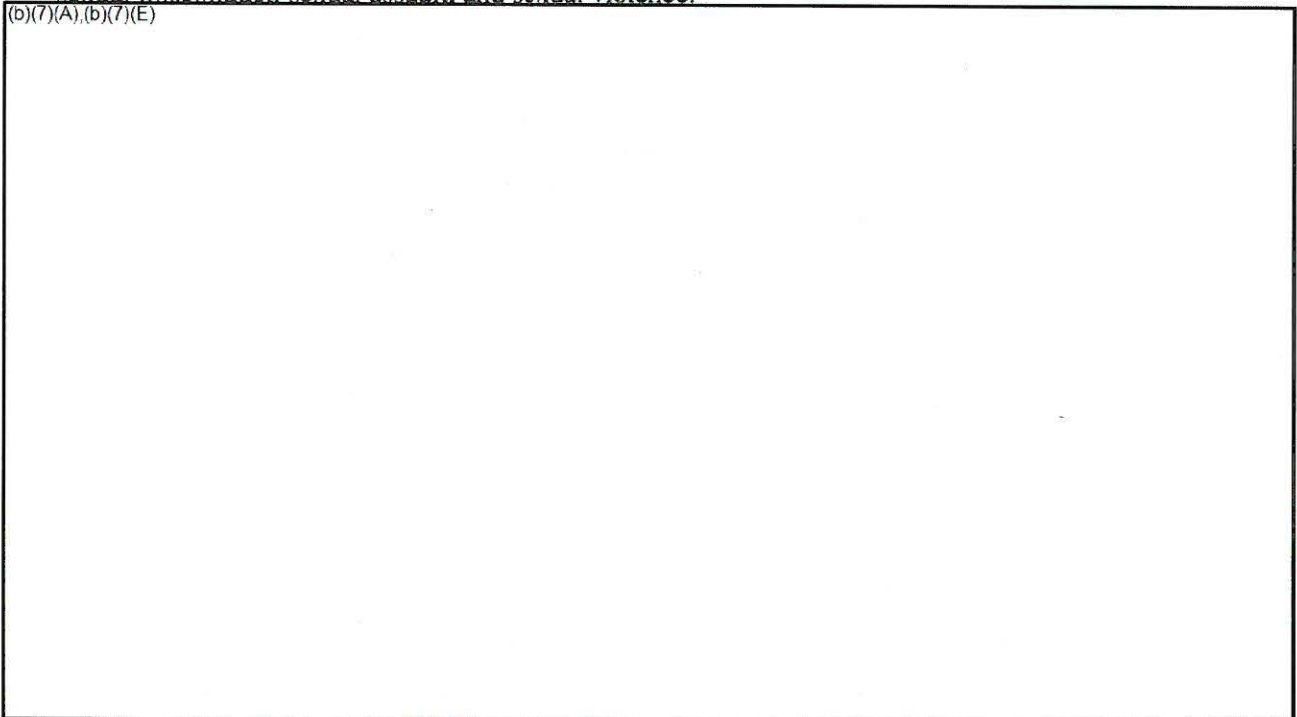
**American University
OCR Complaint No. 11-16-2295**

Data Request

Please provide the following data by April 27, 2017. The Department's regulation implementing Title VI of the Civil Rights Act of 1964, at 34 C.F.R. § 100.6(c), which is incorporated by reference in the Title IX regulation at 34 C.F.R. § 106.71, gives OCR the authority to request this information.¹ OCR hereby notifies the University that OCR will consider the University's response to this data request to be its full and complete response pursuant to OCR's right of access to information under the regulations cited above, unless the University notifies OCR otherwise. If the University obtains any additional information or documents responsive to this data request or otherwise relevant to the allegation in this case, the University must promptly inform OCR of its existence and supplement the data response within 15 days of its discovery. OCR reminds the University that a failure to provide requested information may be considered a denial of access in violation of the regulations cited above.

Unless otherwise noted, please provide the following information for the 2014-2015, 2015-2016, and 2016-2017 academic years.² In this data request, sexual harassment is defined to include sexual misconduct, sexual assault, and sexual violence.

(b)(7)(A),(b)(7)(E)



¹ Please note that OCR has the right of access to records that are necessary for OCR's investigation, even if those records contain names or other personally identifiable information. See 20 U.S.C. §§ 1232g(b)(1) and 1232g(b)(3) regarding the applicable provisions of the Family Educational Rights and Privacy Act; see also 34 C.F.R. § 100.6(c) and 34 C.F.R. § 99.31(a)(3)(iii).

² Please indicate in writing if any of the requested materials do not exist. If available, please provide the information in electronic format.

(b)(7)(A),(b)(7)(E)

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Withheld pursuant to exemption

(b)(7)(A), (b)(7)(E)

of the Freedom of Information and Privacy Act

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Withheld pursuant to exemption

(b)(7)(A), (b)(7)(E)

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