



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION XV

600 SUPERIOR AVENUE EAST, SUITE 750
CLEVELAND, OH 44114-2611

REGION XV
MICHIGAN
OHIO

DEC 08 2011

Mr. Michael J. Graham, S.J.
President
Xavier University
3800 Victory Parkway
Cincinnati, Ohio 45207-4511

Re: OCR Docket #15-12-2018

Dear Mr. Graham:

On November 15, 2011, the U.S. Department of Education (the Department), Office for Civil Rights (OCR), received the above-referenced complaint filed against Xavier University (the University), alleging that the University discriminated against a student (the Student) on the basis of sex. Specifically, the complaint alleges that the University failed to respond appropriately when the Student reported that she was sexually assaulted and then stalked by a male student during the (b)(6),(b)(7)(C) school year and (b)(6),(b)(7)(C). In addition, the complaint alleges that the University, as a practice, does not follow its own written procedures or the procedural requirements of Title IX in addressing allegations of sexual harassment or sexual assault.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.*, and its implementing regulation, 34 C.F.R. Part 106. Title IX prohibits discrimination on the basis of sex in education programs and activities that receive Federal financial assistance from the Department. As a recipient of such financial assistance, the University is subject to the requirements of Title IX.

Because OCR has determined that it has jurisdiction and is waiving our timeliness requirement for filing based on good cause shown, it is opening this complaint for investigation. Based on the complaint allegations, we will investigate the following issues:

- whether the University failed to promptly and appropriately respond to alleged sexual harassment, resulting in a student, on the basis of sex, being excluded from participation in, being denied the benefits of, or being subjected to discrimination in University education programs or activities in violation of the Title IX implementing regulation at 34 C.F.R. § 106.31; and
- whether the University's Title IX practices, policies, and procedures for investigating sexual harassment complaints fail to provide for the prompt and equitable resolution of student complaints under Title IX in violation of the Title IX implementing regulation at 34 C.F.R. § 106.8(b).

Please note that opening an allegation for investigation in no way implies that OCR has made a determination with regard to its merit. 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 allegations in accordance with the provisions of Article III of OCR's *Case Processing Manual*.

For your reference, the document enclosed entitled "OCR *Complaint Processing Procedures*" includes information about:

- OCR's complaint evaluation and resolution procedures, including the availability of Early Complaint Resolution (ECR);
- regulatory prohibitions against retaliation, intimidation and harassment of persons who file complaints with OCR or participate in an OCR investigation; and
- the application of the Freedom of Information Act and the Privacy Act to OCR investigations.

Additional information about the laws OCR enforces is available on our website at: <http://www.ed.gov/ocr>.

We intend to conduct a prompt investigation of this complaint. The Title IX regulation, at 34 C.F.R. § 106.71, incorporates by reference the procedural requirements of the regulation implementing Title VI of the Civil Rights Act of 1964, at 34 C.F.R. § 100.6, which requires that a recipient of Federal financial assistance make available to OCR information that may be pertinent to reaching a compliance determination. In addition, in accordance with the regulation implementing the Family Educational Rights and Privacy

Act (FERPA), 20 U.S.C. § 1232g, at 34 C.F.R. § 99.31(a)(3)(iii), and the Title VI regulation at 34 C.F.R. § 100.6(c), OCP may review personally identifiable records without regard to considerations of privacy or confidentiality.

Accordingly, we are requesting that you forward the following information to us within fifteen calendar days of the date stamped at the top of this letter. Wherever possible, please provide the requested information on a CD (and bates-labeled if you have that capability); otherwise please provide the information via hard copy:

1. the name and title of the employee responsible for coordinating the University's compliance with Title IX and documentation of where this employee's contact information is published;
2. copies of all University policies and procedures regarding sex discrimination, sexual harassment, and sexual assault, including, but not limited to, grievance procedures, disciplinary policies, investigative procedures, and campus police policies and procedures;
3. a copy of the University's student conduct code and any other document(s) that contain the University's policies and procedures regarding student discipline;
4. the names and titles of all University employees who are responsible for investigating complaints of sexual harassment and sexual assault made by students;
5. a copy of any documents or records that discuss or relate to a complaint of sexual assault, sexual harassment, harassment, and stalking filed with the University (including complaints filed with University police) by the Student (b)(6),(b)(7)(C) or on her behalf, including, but not limited to, correspondence, e-mails, memoranda, meeting minutes, notes, videos or voice recordings, student records, investigative files and reports, police reports, interview memos, transcripts, hearing transcripts or notes, discipline records, or any other documents or records that discuss or relate to the complaint, the University's investigation of the complaint, the disposition of that complaint, and any action the University took, including interim and disciplinary measures, to address the complaint;
6. the name and title of each individual, including University police, administrators, and members of any adjudicative body or hearing committee, involved in investigating or otherwise addressing the above-referenced complaint(s). To the extent that any of these individuals are not University employees, please also provide phone numbers, addresses, and e-mail addresses for these individuals;

7. a list of any meetings or telephone calls held with the Student to discuss her sexual assault, sexual harassment, harassment, or stalking allegations; for each such meeting, please provide:
 - i. the date the meeting or call occurred;
 - ii. the purpose of the meeting or call;
 - iii. the names and titles of the individuals participating in the meeting or call; and
 - iv. any documentation related to the meeting or call, including e-mails, notes, memoranda, meeting minutes, correspondence, phone logs, or other related documents;
8. a copy of any other written complaints and a detailed description of any verbal complaints of sexual assault, sexual harassment, harassment, or stalking made to the University (including complaints filed with University police), by or against a University student during the (b)(6),(b)(7)(C) and (b)(6),(b)(7)(C) academic years, including a copy of the disposition of each;
9. for each complaint referenced in #8 above that was filed against or otherwise involved the alleged harasser of the Student (b)(6),(b)(7)(C) please provide copies of any documents regarding the University's handling of each complaint, including but not limited to, correspondence, e-mails, notes, meeting minutes, memoranda, investigative summaries, witness interviews, disciplinary records, phone logs, and other related documents;
10. a listing of the dates of any training regarding Title IX as it applies to sexual harassment, including sexual assault and violence, the University provided or offered to: a) University personnel; and b) University students during the (b)(6),(b)(7)(C) and (b)(6),(b)(7)(C) academic years, including copies of any related materials distributed at the trainings; and
11. any additional information that the University believes will assist OCR in investigating this complaint.

In addition to the information requested above, OCR may need to request other documentation and we may also need to interview persons at the University. If we determine that an on-site visit is necessary, we will contact you to schedule a mutually convenient time for the visit.

Please note that this complaint may be appropriate for Early Complaint Resolution (ECR), a voluntary process similar to mediation during which an OCR staff person facilitates communication between the parties in an attempt to resolve complaint allegations. If we believe that this complaint is appropriate for ECR, we will contact you to discuss this option.

Upon receipt of this letter, please notify OCR of the name, address, and telephone number of the person who will serve as the University's contact person during OCR's investigation. When contacting this office about the above-referenced complaint, please refer to OCR Docket # 15-12-2018. If you have any questions, please contact Mr. Vincent Cheverine, one of the attorneys assigned to investigate this complaint, by telephone at (216) 522-2676 or by e-mail at Vincent.Cheverine@ed.gov.

Sincerely,

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

Karla K. Ussery
Team Leader

Enclosure