



OCR requires policy to be followed for respondent in Title IX process

October 31, 2016

The U.S. Department of Education [recently announced](#) that its Office for Civil Rights (OCR) reached a landmark agreement with Wesley College in Delaware. Based on an investigation and hearing in the spring of 2015, the college expelled a student for his alleged role in what the college perceived as sexual misconduct. The responding student then filed a complaint with OCR, alleging that the college's process was flawed. In a first-of-its-kind result, OCR found Title IX violations in response to a complaint by a disciplined student. (Previously, OCR had only addressed complaints raised by the student who filed the Title IX report with the college.)

Below is a summary of the background, OCR's key findings and the subsequent resolution agreement.

Background

In the spring of 2015, an employee of Wesley College received a tip that a member of one of the college's fraternities had, as OCR puts it, "live streamed himself engaged in a sex act with a female student...without her knowledge, and that other students had seen the live stream." The students who reported the incident identified four individuals involved: Student 1 (the member of the fraternity accused of setting up the live stream); the Accused Student, Student 2 and Student 3 (all of whom allegedly watched the live stream); and Student 4 (the female student). After getting the tip, the college spoke with the female student, who confirmed that she had engaged in consensual sex with Student 1, who stated that she was not aware of the live stream and told the college that she did not believe the Accused Student was involved in the planning or execution of the live streaming. Shortly thereafter, and within seven days of the initial tip, the college suspended the Accused Student, Student 1, Student 2 and Student 3 without, contrary to the college's Title IX policy, giving them an opportunity to show why such a suspension should not be implemented.

Less than a week later, and without interviewing the Accused Student, the college held a hearing, which the Accused Student thought was an informal pre-determination step in the process. Following the hearing, the Accused Student was expelled from the college a few weeks before graduation.

OCR's key findings

OCR summarized its findings in a [letter to the college](#) on October 12, 2016. According to the letter, the college's handling of the Accused Student violated Title IX and/or the college's own policies and procedures in several respects.

First, contrary to the college's policy and Title IX's requirement of an impartial investigation, the Accused Student was not given an opportunity to share his version of events and to benefit from an investigation of the accuracy of that version of events. Second, the Accused Student was not provided with the opportunity to challenge evidence that the college relied upon in imposing his interim suspension, which violated the college's duty to conduct a sufficient level of inquiry prior to imposing an interim suspension. Third, again in contradiction to the college's policy, the Accused Student was given no choice but to accept a hearing process. Fourth, given that the college failed to provide notice of its preliminary findings and that the Accused Student was not aware of his opportunity to present witnesses, the Accused Student was not provided an adequate opportunity to defend himself at the hearing. Fifth, based on the quick timeline preceding the suspension, OCR found that the college likely failed to provide the Accused Student sufficient time to participate in the investigation process. For all of these reasons, OCR concluded that the college violated Title IX by failing to provide an equitable investigation and resolution of the complaint.

The resolution agreement

Based upon OCR's investigation and findings, Wesley College voluntarily entered into a [resolution agreement](#) with OCR. The agreement requires the college to take specific steps to address the identified violations and concerns. Among other requirements, the agreement stated that the college would complete its investigation of the Accused Student's involvement, conduct an internal review of that investigation and several other investigations from 2013 to 2015, and work with OCR regarding alleged sexual harassment or assault for the 2017-2018 and 2018-19 academic years.

Conclusion

Given OCR's repeated statements that the process must be equitable, it comes as no surprise that in the circumstances described here, OCR found flaws in the process from the perspective of the respondent. Educational entities should be careful to follow their own policies and give all students — complainants and respondents alike — the rights that those policies afford.

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