UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
32 OLD SLIP, 26TH FLOOR
NEW YORK, NEW YORK 10005

TIMOTHY C. J. BLANCHARD
DIRECTOR
NEW YORK OFFICE

May 12, 2016

Nonresponsive
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Nonresponsive New York Nonresponsive

Re: Case No. 02-16-2178
State University of New York at Buffalo

Dear Nonresponsive

On March 31, 2016, the U.S. Department of Education, New York Office for Civil Rights (OCR) received the above-referenced complaint you filed against the State University of New York at Buffalo (the University). You alleged that the University discriminated against you, on the basis of your sex, by failing to respond appropriately to a report of sexual assault you made to the University's Nonresponsive in or around Nonresponsive and as a result, you were subjected to a sexually hostile environment (Allegation 1). You also alleged that University administrators retaliated against you for filing a report of sexual assault with Nonresponsive and with an Nonresponsive by notifying you that it could bring disciplinary action against you for (b)(7)(A),Nonresponsive in or around Nonresponsive (Allegation 2); and "possibly" not thoroughly investigating concerns you raised about retaliation by the accused and his friends (Allegation 3). Based on information provided in your complaint, in correspondence you sent to OCR, and during a telephone interview with OCR staff on April 13, 2016, OCR determined that Allegations 1 and 2 are appropriate for investigation. However, OCR determined that Allegation 3 is not appropriate for investigation for the reasons set forth below.

In analyzing whether retaliation occurred, OCR must first determine: (1) whether the complainant engaged in a protected activity; (2) whether the recipient was aware of the complainant's protected activity; (3) whether the complainant/injured party suffered an adverse action contemporaneous with, or subsequent to, the recipient's learning of the complainant's involvement in the protected activity; and (4) whether there is a causal connection between the protected activity and the adverse action from which a retaliatory motivation reasonably may be inferred. When there is evidence of all four elements, OCR then determines whether the recipient has a legitimate, non-retaliatory reason for the challenged action or whether the reason adduced by the recipient is a pretext to hide its retaliatory motivation.

With respect to Allegation 3, you alleged that University administrators retaliated against you for filing a report of sexual assault with UPD and with an ADA, by "possibly" not thoroughly investigating concerns you raised about retaliation by the accused and his friends. Specifically, you alleged that you fear that the University may not thoroughly investigate the concerns you raised regarding retaliation because you reported the sexual assault to UPD and the ADA.

You alleged that you engaged in protected activity when you reported the alleged sexual assault to UPD in or around Nonresponsive and to the ADA. You further alleged that the University was aware of this protected activity. However, you provided no information from which OCR could infer that you suffered any adverse action with respect to Allegation 3. OCR defines an adverse action as an action that adversely affects a person's education, work or well-being in an unwarranted, serious, lasting, and usually tangible manner, i.e., something that is more than a transient, unpleasant incident. You provided no information to indicate that your fear that the University may not thoroughly investigate concerns you raised about retaliation affected you in any unwarranted, serious, lasting or tangible manner; and you provided no information to indicate that the University has not or will not investigate the concerns you raised regarding the alleged retaliation.[1] In the absence of any adverse action, OCR will not proceed further with the retaliation analysis. Accordingly, OCR will take no further action with respect to Allegation 3, and has dismissed it as of the date of this letter.

As stated above, OCR will investigate Allegations 1 and 2.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), as amended, 20 U.S.C.§1681 et seq., and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in programs and activities receiving financial assistance from the U.S. Department of Education (the Department). The University is a recipient of financial assistance from the Department. Therefore, OCR has jurisdictional authority to investigate this complaint under Title IX.

The regulation implementing Title IX, at 34 C.F.R.§106.71, incorporates by reference 34 C.F.R.§ 100.7(e) of the regulation implementing Title VI of the Civil Rights Act of 1964, 42 U.S.C.§ 2000d et seq., which provides that:

> No recipient or other person shall intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege secured by regulations enforced by OCR or because one has made a complaint, testified, assisted or participated in any manner in an investigation, proceeding or hearing held in connection with a complaint.

Because OCR has determined that it has jurisdiction and that the complaint was filed in a timely manner, it is opening Allegations 1 and 2 for investigation. Please note that opening these 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

[1] Any assertion that the University may fail to thoroughly investigate your concerns regarding possible retaliation for complaining of the alleged sexual assault is speculative. Additionally, OCR's investigation of Allegation 1 will address the University's response to any alleged retaliation against you for complaining of the alleged sexual assault.

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.

OCR's goal is the prompt and appropriate resolution of the allegations contained in a complaint. OCR offers, when appropriate, an Early Complaint Resolution (ECR) process, similar to mediation, to facilitate the voluntary resolution of complaints by providing an early opportunity for the parties involved to resolve the allegation(s). Some information about the ECR process is contained in the publication, "OCR Complaint Processing Procedures," which was enclosed with OCR's previous letter to you acknowledging your complaint. This information is also on OCR's website at http://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.html#II.

Also, when appropriate, a complaint may be resolved before the conclusion of an investigation after the recipient expresses an interest to OCR to resolve the complaint. In such cases, OCR obtains a resolution agreement signed by the recipient. This agreement must be aligned with the complaint allegations or the information obtained during the investigation, and it must be consistent with applicable regulations. Additional information about this voluntary resolution process may be found in the publication, "OCR Complaint Processing Procedures," which was enclosed with OCR's previous letter to you acknowledging your complaint. This information is also on OCR's website at http://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.html#III.

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.

Please be advised that the University may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, you may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personally identifiable information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

OCR will communicate with you periodically regarding the status of your complaint. In the interim, if you have any questions, please contact Lauren Numeroff, Compliance Team Attorney, at (646) 428-3895 or lauren.numeroff; or Anna Moretto Cramer, Compliance Team Attorney, at (646) 428-3826 or anna.moretto.cramer@ed.gov.

Sincerely,

Emily Frangos
Compliance Team Leader

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
32 OLD SLIP, 26TH FLOOR
NEW YORK, NEW YORK 10005

TIMOTHY C. J. BLANCHARD
DIRECTOR
NEW YORK OFFICE

May 12, 2016

Satish K. Tripathi, Ph.D.
President
State University of New York at Buffalo
Office of the President
501 Capen Hall
Buffalo, New York 14260

Re: Case No. 02-16-2178
State University of New York at Buffalo

Dear Dr. Tripathi:

On March 31, 2016, the U.S. Department of Education, New York Office for Civil Rights (OCR) received the above-referenced complaint filed against the State University of New York at Buffalo (the University). The complainant alleged that the University discriminated against her, on the basis of her sex, by failing to respond appropriately to a report of sexual assault she made to the University's Nonresponsive in or around Nonresponsive and as a result, she was subjected to a sexually hostile environment (Allegation 1). The complainant also alleged that University administrators retaliated against her for filing a report of sexual assault with Nonresponsive and with Nonresponsive, by notifying her that it could bring disciplinary action against her for (b)(7)(A),Nonresponsive in or around Nonresponsive (Allegation 2). OCR determined that these allegations are appropriate for investigation.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), as amended, 20 U.S.C. § 1681 et seq., and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in programs and activities receiving financial assistance from the U.S. Department of Education (the Department). The University is a recipient of financial assistance from the Department. Therefore, OCR has jurisdictional authority to investigate this complaint under Title IX.

The regulation implementing Title IX, at 34 C.F.R. § 106.71, incorporates by reference 34 C.F.R. § 100.7(e) of the regulation implementing Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d et seq., which provides that:

> No recipient or other person shall intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege

> secured by regulations enforced by OCR or because one has made a complaint, testified, assisted or participated in any manner in an investigation, proceeding or hearing held in connection with a complaint.

Because OCR has determined that it has jurisdiction and that the complaint was filed in a timely manner, it is opening the allegations for investigation. Please note that opening the allegations for investigation in no way implies that OCR has made a determination with regard to their 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.

Enclosed is a document entitled "OCR Complaint Processing Procedures." This document will provide you with an overview of OCR's complaint evaluation, investigation, and resolution process. OCR will collect only material needed to investigate this complaint and will take all proper precautions to protect the identity of any individuals named in documents.

To facilitate OCR's efforts to investigate this complaint, OCR requests that, within twenty (20) days of the date of this letter, you provide to OCR the information listed on the enclosed data request. If OCR does not receive the data in a timely manner, OCR may conduct a site visit to obtain the data. The regulation implementing Title VI, at 34 C.F.R. § 100.6(b) and (c), requires that a recipient of federal financial assistance make available to OCR information that may be necessary for it to determine whether a recipient is in compliance with the regulations it enforces. This requirement is incorporated by reference in the regulation implementing Title IX, at 34 C.F.R. § 106.71. This information also is being requested pursuant to 34 C.F.R. § 99.31(a)(3)(iii).

OCR's goal is the prompt and appropriate resolution of the allegations contained in a complaint. OCR offers, when appropriate, an Early Complaint Resolution (ECR) process, similar to mediation, to facilitate the voluntary resolution of complaints by providing an early opportunity for the parties involved to resolve the allegation(s). Some information about the ECR process is in the enclosure to this letter entitled, "OCR Complaint Processing Procedures," and on OCR's website at http://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.html#II.

Also, when appropriate, a complaint may be resolved before the conclusion of an investigation after the recipient expresses an interest to OCR to resolve the complaint. In such cases, OCR obtains a resolution agreement signed by the recipient. This agreement must be aligned with the complaint allegations or the information obtained during the investigation, and it must be consistent with applicable regulations. Additional information about this voluntary resolution process may be found in the enclosure entitled, "OCR Complaint Processing Procedures," and on OCR's website at http://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.html#III.

Please be advised that the University may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the complainant may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personally identifiable information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

OCR staff will contact you to discuss the allegations and the complaint resolution process. If you have any questions, please contact Lauren Numeroff, Compliance Team Attorney, at (646) 428-3895 or lauren.numeroff; or Anna Moretto Cramer, Compliance Team Attorney, at (646) 428-3826 or anna.moretto.cramer@ed.gov.

Sincerely,

Emily Frangos
Compliance Team Leader

Encl.

Data Request
OCR Case No. 02-16-2178
Nonresponsive (the complainant)

RESPONSE DUE: JUNE 1, 2016

Please provide the following information for academic year 2015-2016, unless otherwise indicated, or indicate in writing if any requested items do not exist.[1]

(b)(7)(A)

[1] If any of the requested items have been submitted to OCR in connection with another investigation, and have not changed since submitted, the University need not re-submit the items. Rather, please specify the exact information submitted, the date submitted, and the relevant OCR case number.

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