



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary
Office for Civil Rights
Washington, D.C. 20201

August 21, 2018

Dr. David J. Cole, M.D., President
Medical University of South Carolina
179 Ashley Avenue, MSC 001
Charleston, SC 29425

Dr. Willette S. Burnham-Williams, Title IX Coordinator
Medical University of South Carolina
173 Ashley Avenue, Basic Sciences Building (BSB), 104, MSC 502
Charleston, SC 29425

HHS OCR Transaction Number: 17-273211

Dear Dr. Cole and Dr. Burnham-Williams:

This letter is to inform you that the U.S. Department of Health and Human Services (HHS), Office for Civil Rights (OCR) has completed its compliance review of the Medical University of South Carolina (MUSC).

BACKGROUND AND LEGAL AUTHORITY

The MUSC is a recipient of federal financial assistance from the HHS National Institutes of Health (NIH). HHS OCR periodically reviews HHS grantees for compliance with Title IX of the Education Amendments of 1972 (Title IX). Title IX prohibits discrimination on the basis of sex in any educational program or activity that receives federal financial assistance.¹ HHS OCR, which enforces Title IX for HHS, ensures compliance by investigating complaints of discrimination filed against recipients of HHS funds and through a program of proactive and preventive activities, including periodic reviews of institutions which receive grants or other forms of financial assistance from HHS.² HHS' Title IX implementing regulation at 45 C.F.R. Part 86 requires each recipient of financial assistance to adopt and publish procedures for the prompt and equitable resolution of student

¹ Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. Section 1681, et seq., and its implementing regulation, 45 C.F.R. Part 86 (collectively Title IX).

² The Department's Title IX regulations provide that "the procedural provisions applicable to Title IV of the Civil Rights Act of 1964 are hereby adopted and incorporated herein by reference. These procedures may be found at 45 CFR 80-6 through 80-11 and 45 CFR Part 81." 45 C.F.R. § 86.71; *see also* 20 U.S.C. § 1682 (which tracks the enforcement language of Title VI.) Title VI of the Civil Rights Act of 1964 states that OCR will "from time to time review the practices of recipients to determine whether they are complying with this part." 45 C.F.R §80.7(a).

and employee Title IX complaints. The regulation, among other things, also requires a recipient to designate at least one employee to coordinate its Title IX compliance efforts and to carry out its Title IX responsibilities, including the investigation of complaints or allegations of noncompliance with Title IX.

FINDINGS

HHS OCR evaluated MUSC's nondiscrimination policies and procedures, which includes its Title IX grievance procedure and the extent to which MUSC's Title IX Coordinator is implementing the school's Title IX compliance program.³ The review also assessed whether MUSC complies with Title IX notification and dissemination requirements and examined MUSC's outreach and recruitment efforts.⁴

Designation and Responsibilities of MUSC's Title IX Coordinator

OCR found that MUSC has designated a Title IX Coordinator in compliance with 45 C.F.R. §86.8(a). According to §86.8(a), a recipient, like MUSC, shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to MUSC alleging noncompliance. Additionally, MUSC must notify all of its students and employees of the Title IX Coordinator's contact information including name, office address, and telephone number.⁵ MUSC provided the position description used to hire the Title IX Coordinator at MUSC. The position description lists Title IX related policies and procedures, a description of duties, and the requisite education and experience needed for a Title IX Coordinator. Therefore, MUSC has designated a Title IX Coordinator in compliance with §86.8(a).

Non-discrimination Policy and Grievance Procedure

OCR found that MUSC has adopted and published nondiscrimination policies and procedures including its Title IX grievance procedures. According to 45 C.F.R. § 86.8(b), a recipient, like MUSC, shall adopt and publish grievance procedures providing for *prompt and equitable* (emphasis added) resolution of student and employee complaints regarding Title IX. For example, MUSC's Department of Diversity, Equity, and Inclusion provides students and faculty with a Title IX web page that publishes its grievance procedures. Specifically, the grievance procedures state that any student who experiences sexual harassment or other forms of harassment or discrimination on the basis of sex is encouraged to contact MUSC's Title IX Coordinator or the Director of the Office of Gender Equity. Additionally, the Title IX page discusses the responsibility of any administrator or supervisor or any person in a position with

³ 45 C.F.R. § 86.8; 45 C.F.R. § 86.9

⁴ 45 C.F.R. § 86.23; 45 C.F.R. § 86.53; 45 C.F.R. § 86.9

⁵ MUSC stated that, since October 1, 2016, Assistant Professor Dr. Willette S. Burnham-Williams is the Title IX Coordinator. Furthermore, MUSC provided documentation to OCR showing that Dr. Burnham-Williams completed relevant Title IX trainings through Academic Impressions since assuming the role as Title IX Coordinator, and also received certification through the Association of Title IX Coordinators. Academic Impressions offers hands-on training, an online training module, and a library of books, assessments and whitepapers.

power over a student who receives notice of a student's Title IX complaint, to immediately contact the Title IX Coordinator. MUSC provides web links to its sexual harassment policy for its general faculty members and students, which further outlines MUSC's grievance procedures.

Grievance Enforcement

Along with its nondiscrimination and grievance policies and procedures, the Title IX web page provides a web link to MUSC's revised "Discrimination/Sexual Misconduct [Grievance] Form." The form provides students and faculty with the opportunity to provide the name of the accused party, details of the complaint, witnesses, supporting materials and documentation, and "ideal" resolution. Notably, MUSC states that completing its grievance form is one method of reporting any alleged misconduct and any individual filing a complaint may also file a complaint with the HHS OCR and the U.S. Department of Education, Office for Civil Rights (ED OCR). Prior to the revision of MUSC's grievance form, OCR received a form that was vague and difficult to access on MUSC's web page. In response to OCR's technical assistance, provided on March 23, 2018, MUSC revised its Title IX web page, created a more descriptive grievance form, and included additional contact information for its students to alternatively file a complaint with HHS OCR.

OCR also found that MUSC adequately adopts and publishes the steps in its grievance enforcement procedure to ensure the prompt and equitable resolution of its Title IX complaints. First, when a complaint is received, the office of the Title IX Coordinator takes action by notifying and interviewing the complainant within 24-48 hours. Next, the Title IX Coordinator reviews the complaint form and conducts an interview with the complainant and the accused ("Parties"). At this point, the Parties may come to an informal resolution.⁶ During this time, the Title IX Coordinator informs the accused that a complaint has been filed and shares the allegations made against the individual. If there is no resolution, the Coordinator selects three trained Title IX investigators from its faculty to serve on a grievance review panel (the "Panel") and conduct a hearing. According to MUSC's grievance policies, the Title IX Coordinator will convene the Panel within five working days. Once the Panel is convened, meetings are scheduled to interview the complainant and accused separately. The Panel interviews witnesses, references, and materials pertinent to the investigation. Accordingly, the Panel also prepares a report for the Title IX Coordinator of its findings. The reports contain a recommendation for resolution and next steps such as suspending or expelling the accused. Decisions are rendered within ten working days of the initial investigation unless there are justifiable delays. The Title IX Coordinator then reviews the reports, and makes a recommended determination. Thereafter, copies of the Panel's written report will be provided concurrently to the appropriate Dean and Coordinator. Within five working days of receiving the written report and the Coordinator's recommendation, the Dean makes a final decision and informs the Title IX Coordinator. In turn, the Title IX Coordinator will, within two working days, inform the Parties of the Panel's decision, the actions to be taken, and the appeals process. If an appeal is to be submitted by either the accused or the complainant, it must be received in its final and complete form in writing by the

⁶ MUSC states that it follows up with the parties regarding the effectiveness of the resolution.

Office of the Provost within ten working days. The Provost will render a decision on the appeal within ten working days. In all cases, copies of the investigative report will be given to the Parties and the Title IX Coordinator. The Parties are also given the opportunity to appeal to ED OCR and HHS OCR outside of the appeals process.

Additionally, in its Department of Diversity, Equity, and Inclusion newsletter, MUSC discusses its grievance procedures and investigations in more detail. MUSC states that the burden is on the school and not the Parties to gather sufficient evidence to reach a fair, impartial determination as to whether misconduct has occurred. Furthermore, the findings of fact and conclusions will be reached by applying a preponderance of evidence or a clear and convincing evidence standard. Thereafter, the Title IX Coordinator may impose sanctions keeping in mind the purpose of deciding how best to enforce the school's code of student conduct, while considering the impact of separating a student from his or her education.

Based on the above, OCR has found that MUSC has adopted and published nondiscrimination policies and procedures which include its Title IX grievance procedures. Additionally, OCR found no evidence of unfairness in MUSC's grievance or enforcement procedural mechanisms.

OCR found that MUSC provides notification to students and staff and disseminates its policies and procedures.⁷

First, MUSC provides notification of its non-discrimination policy in a document titled "Standards of Conduct for Treatment of Trainees for Students, Residents, and Fellows." Notice of MUSC's nondiscrimination policies are further discussed in the Bulletin, MUSC's online student handbook.

MUSC's notice of nondiscrimination can be found in its orientation materials for students, college student handbooks, and its Title IX page. In addition to providing notice of its nondiscrimination policies for students, MUSC also provides faculty and staff notice of nondiscrimination.

Second, OCR found that MUSC adequately disseminates its nondiscrimination policies and procedures. MUSC students are first introduced to Title IX policies as part of its new student orientation. During new student orientation, the Title IX Coordinator meets with students to explain her role and provide an overview of MUSC's Title IX policies and procedures. It is also during this time that the Bulletin, the student handbook that discusses Title IX, is made available

⁷ According to 45 C.F.R. § 86.9(a)(1), the recipient school shall implement steps to notify students and employees that it does not discriminate on the basis of sex in the educational programs or activities which it operates and that is required by Title IX and this part. . .” Moreover, the notification must contain this notice to not discriminate and that the notice extends to employment and admissions. Moreover, 45 C.F.R. § 86(a)(2), requires recipients to make the initial notification within 90 days of the effective date of this part or if the date this part first applies to the recipient, whichever comes later. Lastly, notification and dissemination may include publication in: (1) the local newspaper, (2) recipient, student or alumni operated newspapers and magazines, and (3) memoranda or other written communications distributed to every student and employee.

to students. The Title IX information disseminated during new student orientation is reinforced through MUSC's online learning system (MyQuest) that houses all mandated education for students, faculty, and staff with respect to Title IX, the Clery Act,⁸ and sexual harassment. MUSC provided OCR with its MyQuest PowerPoint Presentations on Title IX policies, sexual harassment,⁹ and the Clery Act.

In addition to presenting Title IX material during new student orientation, the Coordinator provides campus-wide voluntary educational opportunities through "lunch and learn" forums. In addition to Title IX policies and procedures published in the Bulletin, every college within MUSC publishes its own online handbook. Four of the six MUSC colleges¹⁰ currently incorporate the Title IX and sexual harassment policies in its student handbooks. In addition to the student handbooks, MUSC's Title IX policies and procedures are disseminated and made accessible through MUSC's Title IX and Office of Gender Equity's webpages. Also, MUSC's Department of Diversity, Equity and Inclusion publish newsletters that discuss Title IX topics such as: the responsibilities of the Title IX Coordinator, reporting and grievance procedures, the appeals process, and interim guidance from ED OCR. Lastly, MUSC states that it anticipates implementing and disseminating its new policies and procedures prior to the start of the 2018-2019 academic year. MUSC has satisfied the dissemination requirement of Title IX.

Based on the above, OCR has found that MUSC has provided notification and it disseminates its policies and procedures in compliance with §86.9(a).

Outreach and Recruitment

OCR found that MUSC's outreach and recruitment efforts comply with Title IX requirements.¹¹

Regarding admissions, MUSC stated that it has a collaborative approach to student outreach and recruitment and a joint committee of college recruiters meets monthly to share best practices and refer students across programs and colleges of interest.¹²

⁸ The Clery Act requires colleges and universities that receive federal funding to disseminate a public annual security report (ASR) to employees and students every October 1st. This ASR must include statistics of campus crime for the preceding three calendar years, plus details about efforts taken to improve campus safety. ASRs must also include policy statements regarding (but not limited to) crime reporting, campus facility security and access, law enforcement authority, incidence of alcohol and drug use, and the prevention of/response to sexual assault, domestic or dating violence, and stalking. See <https://clerycenter.org/policy-resources/the-clery-act>

⁹ Furthermore, MUSC provided OCR with the following documentation: "Sexual Harassment for MUSC Faculty", "Sexual Harassment for MUSC Students, Residents, and Trainees", and "MUSC's Human Resources Management Policy for Anti-Harassment."

¹⁰ The six colleges include: College of Dental Medicine; College of Graduate Studies, College of Health Professions, College of Nursing, College of Medicine, College of Pharmacy.

¹¹ Pursuant to 45 C.F.R. § 86.23, "[a] recipient ... shall not discriminate on the basis of sex in the recruitment and admission of students, and similarly § 86.53 states that "[a] recipient shall not discriminate on the basis of sex in the recruitment and hiring of employees." Moreover, the provisions of this subpart apply to (among others): recruitment, advertising, the process for application, hiring, promotion consideration for and award of tenure, termination, rehiring, rates of pay, granting and returning from leave, and financial support for training.

¹² A list of MUSC's outreach and recruitment efforts include: MUSC web and online resources, collaboration with

Additionally, MUSC provided OCR with materials evidencing its efforts to recruit and employ a more diverse faculty. For example, to increase the number of highly qualified faculty in STEM departments, MUSC applied for the National Science Foundation (NSF) Grant. MUSC provided OCR with documentation titled "Development and Implementation of ARROWS (Advancement, Recruitment, and Retention of Women in Science)," which is a program that began in 2014. This document discusses MUSC's participation in the NSF Advance Program. MUSC has applied and received a four year NSF Advance grant to promote the recruitment, retention and advancement of women in science. As a result, MUSC is developing and implementing ARROWS, which is a package of practices and policies benefiting women scientists that are portable to other colleges of medicine.¹³ Lastly, MUSC states that it has developed an Affirmative Action Program (AAP) with procedures to ensure equal employment opportunity at MUSC.

MUSC's outreach and recruitment efforts with regard to students and faculty do comply with Title IX requirements.

AREA OF CONCERN AND TECHNICAL ASSISTANCE

First, OCR found that it was difficult finding contact information for MUSC's Title IX Coordinator, and the Title IX information was not consolidated in one place, like other universities. Also, OCR communicated its concern that MUSC lacked contact information for HHS OCR as an alternative for students and employees to file Title IX complaints, and provided technical assistance regarding these matters. As a result, MUSC updated its Title IX webpage¹⁴ and now conspicuously posts its Title IX Coordinator contact information pursuant to §86.8(a). Furthermore, MUSC updated its grievance form and its website to include links to HHS OCR and the ED OCR's website so that complainants may alternatively or concurrently file Title IX complaints.

Second, MUSC's Title IX web page primarily addresses sex discrimination in the form of sexual misconduct which is not the only form of sex discrimination as it relates to STEM. Accordingly, OCR recommended that MUSC include other forms of sex discrimination on its Title IX web page. Consequently, the web page now states that sex discrimination is prohibited not only in the form of sexual misconduct, but also in the form of sexual harassment, sexual assault, and sexual violence. Furthermore, MUSC states that Title IX also prohibits retaliation against an individual who asserts his or her rights under Title IX prohibiting sex discrimination.

HBCU's across the nation, high school and undergraduate university outreach/pipeline programs, partnerships with school fairs and conferences, marketing through brochures and other print publications, MUSC campus visits, student ambassadors and affinity groups, Discover MUSC (2-day recruitment program), mentoring programs, and MUSC's College of Medicine Summer Institute.

¹³ The goals of this program are to: (1) increase the number of women scientists recruited into colleges of medicine (by e.g., using outreach to diversify the applicant pool); and (2) improve the retention and advancement of women scientists in colleges of medicine (holding high ranking and leadership positions). The documents provided to OCR lists a number of strategies to accomplish these goals. Moreover, as supporting evidence, MUSC provides (1) reporting tools such as Job templates and mentoring surveys, (2) press release and articles highlighting the program, (3) the dissemination of materials to faculty and staff in the form of PowerPoints, meeting posters, e-newsletters, and brochures, and an (4) External Advisory Board Report.

¹⁴ <https://education.musc.edu/leadership/diversity/title-ix>

Additionally, OCR found that only four of the six MUSC colleges¹⁵ currently incorporate the Title IX and sexual harassment policies in its student handbooks. As a result, MUSC provided assurances that the remaining two MUSC colleges will be required to incorporate the Title IX and sexual harassment policies in the upcoming academic year.

CONCLUSION

HHS OCR did not find evidence that the MUSC violated Title IX. As a result, HHS OCR has closed this compliance review as of the date of this letter. HHS OCR's determination applies only to the matters addressed in the review. It does not cover any issues or authorities not specifically addressed herein. Nor does the determination preclude future compliance determinations based on subsequent investigations.

ADVISEMENTS

Individuals may not be intimidated, threatened, coerced, discriminated or retaliated against because the individual has made a complaint, testified, assisted or participated in any manner in an investigation, proceeding, or hearing held in connection with the statutes or regulations enforced by HHS OCR. Individuals who believe that they are being subjected to such discriminatory or retaliatory conduct based on a complaint filing with HHS OCR or participation in an investigation may file a complaint with OCR.

Thank you and your staff for your cooperation throughout the compliance review process. Feel free to contact Jaime Koshy, Investigator, at 404-562-4755 (Voice) or (404) 562-7884 (TDD), or visit our website at www.hhs.gov/ocr if you have questions or need technical assistance.

Sincerely,

/s/

Timothy Noonan
Regional Manager
Office for Civil Rights

¹⁵ The six colleges include: College of Dental Medicine; College of Graduate Studies; College of Health Professions; College of Nursing; College of Medicine and College of Pharmacy.