



**U.S. Department of Justice**  
Civil Rights Division, Educational Opportunities Section  
U.S. Attorney's Office, Northern District of Ohio

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August 22, 2023

***By Electronic Mail***

Eric W. Kaler  
Office of the President  
Case Western Reserve University  
10900 Euclid Ave  
Cleveland, OH 44106  
president@case.edu

**Re: Title IX Investigation of Case Western Reserve University**

Dear Dr. Kaler:

The U.S. Department of Justice (the "Department") has completed its investigation of Case Western Reserve University's (the "University" or "CWRU") response to reports of sexual harassment. The Department, through its Civil Rights Division and the United States Attorney's Office for the Northern District of Ohio, conducted the investigation under Title IX of the Education Amendments of 1972 ("Title IX") as amended, 20 U.S.C. §§ 1681–1688, and the Department's implementing regulations, 28 C.F.R. pt. 54, which prohibit sex discrimination in education programs or activities of recipients of federal financial assistance. CWRU is a recipient of financial assistance from the Department. The Department's investigation principally focused on school years 2017-2018 through 2020-2021 (the "Relevant Period"). This letter summarizes the results of the Department's investigation.

On February 19, 2021, the Department notified the University that it was initiating a Title IX investigation and issued its first Request for Information. Since then, the University has produced, and the Department has reviewed, more than 40,000 pages of documents. The Department also spoke to a broad cross-section of CWRU constituents—conducting more than 40 interviews, including interviews with CWRU administrators and current and former students. In addition, the Department conducted three on-site visits, which included facilitating roundtables with the University's Women's Center, Panhellenic Council, and Interfraternity Council. Finally, the Department created a community email address and toll-free phone number, through which the public was able to provide the Department with relevant information. The Department appreciates the current and former students who shared their personal experiences.

Title IX and the Department’s implementing regulations prohibit discrimination on the basis of sex in education programs and activities operated by a recipient of federal financial assistance. The statute grants the Department, among other federal agencies, the authority to take administrative action to effectuate Title IX’s nondiscrimination mandate. *See* 20 U.S.C. § 1682. The regulations are aimed at preventing and addressing sex discrimination. Recipients of federal financial assistance agree to comply with these regulations as a condition of receiving funding.

Sexual harassment is a form of sex discrimination covered by Title IX. *See, e.g., Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 649–50 (1999); *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274 (1998). Sexual harassment can include unwelcome sexual touching, sexual assault, and other sexual misconduct. The Supreme Court has held in private litigation seeking damages that sexual harassment creates a hostile educational environment when it “is so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits provided by the school.” *See Davis*, 526 U.S. at 650. While no particular response to sexual harassment is required, a university violates Title IX if it does not respond reasonably in light of known circumstances. *See id.* at 648–49; *Kesterson v. Kent State Univ.*, 967 F.3d 519, 527 (6th Cir. 2020); *Doe v. Ohio Univ.*, 2022 WL 899687, \*6 (S.D. Ohio Mar. 28, 2022). A failure to investigate conduct that creates a hostile environment is an inadequate response under Title IX, particularly when the sexual harassment persists. *See Davis*, 526 U.S. at 654 (permitting a Title IX claim to move forward on allegations that the school district “made no effort whatsoever either to investigate or to put an end to the harassment”). Even if a school reasonably attempts to address the hostile environment, if it learns that its response has failed to do so, the school may be in violation of Title IX if “it continues to use those same methods to no avail.” *Vance v. Spencer Cnty. Pub. Sch. Dist.*, 231 F.3d 253, 260–61 (6th Cir. 2000). Overall, “the proportionality of the school’s response in light of available information lies at the heart of the indifference analysis.” *McCoy v. Bd. of Educ.*, 515 F. App’x 387, 391 (6th Cir. 2013).

In summary, the Department’s investigation concluded that CWRU did not comply with Title IX and its regulations in several respects, including the University’s response to known student-on-student and employee-on-student sexual harassment and to a well-known climate of sexual harassment in its Greek Life program. During the Relevant Period, CWRU’s policies required it to investigate all alleged violations of the University’s policies governing sexual harassment and to respond appropriately. Yet, the CWRU investigatory process did not comply with Title IX with respect to various sexual misconduct allegations, which ranged from sexual assault, to sex-based stalking, to retaliation for filing a complaint, to rape.

The University’s violence risk assessment procedures permit the University to take proactive action to identify serious threats, such as repeat harassers, including conducting an investigation even when there is a reluctant complainant. On multiple occasions, however, the University failed to follow its own policies and procedures for identifying serious threats such as repeat harassers. In one example, the University was on notice of five allegations of sexual harassment, including rape and sexual assault, against one student. Although the complainants were either reluctant to seek a formal resolution or wanted to remain anonymous, the University failed to perform a threat assessment “to assess any potential violence or danger,” as CWRU policy contemplates in such situations even absent a complainant. Further, the University did not contact

the police, made no attempt to speak with the student about four out of the five allegations, and failed to interview several known witnesses. In another example, the University was on notice of six complaints of sex-based stalking by a single respondent, but did not perform a threat assessment. If the University had performed a threat assessment after learning of the first three incidents, it may have been able to prevent three subsequent incidents by the same respondent, reported three months later.

Further, CWRU's documentation revealed instances where it had received allegations that groups of students—beyond just one complainant—were harassed, yet the University did not contact the members of the group to investigate the allegations or address any hostile environment created by the sexual harassment. In one example, a student reported that another student regularly (four to five times a week) fondled himself in the dorm common room, and one time exposed his penis while fondling himself in front of several students. The complainant-student identified five other students who were present, but the Office of Equity did not interview them either to corroborate the complaint or to determine whether those students had experienced a hostile environment as a result of the respondent's conduct.<sup>1</sup> Although the complainant indicated that she was willing to participate in the Title IX process, the Office of Equity decided not to go forward with the Title IX process, but instead have an “educational conversation” with the respondent, which is inconsistent with CWRU policy.

The Department's investigation also revealed repeated failures by employees to inform the Office of Equity of sexual harassment allegations, even though the University designated them as mandatory reporters. In some instances, the unaddressed sexual harassment continued. We found that even employees specifically tasked with promoting students' well-being, such as Resident Assistants to Navigators on the University CARE Team,<sup>2</sup> failed to meet their mandatory reporting obligations. Our review of files confirmed that not only was the Office of Equity on notice that mandatory reporters on a number of occasions were failing to report incidents of sexual harassment, but the Office was also aware that some mandatory reporters had actively obstructed complainants from reporting instances of sexual harassment. There is no record of the Office of Equity retraining any of these mandatory reporters on their obligations.

Further, the Department found a number of failures to ensure that students received the supportive measures purportedly offered by the University—measures these students needed to prevent substantial disruptions to their education. When the University did institute supportive measures, it did not always implement those measures in a timely fashion, despite students repeatedly voicing safety concerns, it did not always verify the effectiveness of those measures, and it continued to employ the same measures even after they proved ineffective. For example, the University sometimes failed to enforce No Contact Directives leaving students vulnerable to further harassment. As a consequence of these lapses, these students who experienced sexual harassment were impeded from accessing the University's education programs and activities. We

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<sup>1</sup> During the Relevant Period, the Title IX Office, and later the Office of Equity, was responsible for the University's Title IX compliance. For purposes of this letter, we refer to the office responsible for Title IX compliance by its current name.

<sup>2</sup> CWRU's CARE, or Campus Assessment, Referral, and Engagement, Team is designed to provide, among other things, “direct support and referral coordination for CWRU students who are exhibiting behaviors that indicate distress.” *Case Western Reserve University*, CARE Report, <https://perma.cc/CCC5-MPSG>.

spoke with students who reported enrolling in additional semesters to improve their GPAs, taking a gap year, or even withdrawing completely from the University.

In addition, the University also failed to address a climate of sexual misconduct within certain Greek Life organizations. In response to an Instagram account documenting hundreds of student posts alleging sexual harassment and a hostile environment in Greek Life, the University contracted with an external consulting group to investigate. The external consulting group found that, in several cases, specific allegations in Instagram posts corresponded to confirmed events and practices at Greek chapters. CWRU also conducted a survey of students involved in Greek Life. Several memoranda from the consulting group and the survey results clearly indicated a climate of sexual misconduct as a pervasive norm. Information available to the University was consistent with information the Department gathered from student interviews. Many of the students to whom we spoke expressed negative views of fraternities as hostile towards women, or engaging in or endorsing sexual misconduct. Multiple students interviewed also reported upper classmates warning them as early as first-year orientation not to go to particular fraternity events because they could be sexually assaulted there. For instance, in our interviews, as well as in those conducted by the external consultant group of actual chapter members, students confirmed a well-known shared understanding of which chapter had a reputation on campus as the “rapey” fraternity.

The memoranda also provided the University with concrete recommendations for addressing this climate within specific Greek chapters. Our student interviews affirmed the need for the Greek Life Office and the Office of Equity to collaborate to mitigate the harmful culture of sexual misconduct. However, in our interviews, neither office could point to any efforts to study or act on the recommendations in the memoranda. Nor could employees point to any meaningful collaboration around the reports. Quite the opposite, one key administrator reported that he did not review portions of the reports that were not specifically related to his office. We found that a piecemeal and siloed review of the memoranda findings and a lack of coordination between the two offices on any remedial recommendations contributed to an inadequate response to sexual harassment in Greek Life.

Finally, the Department wishes to bring to your attention concerns we heard about the student experience with the Office of Equity. In our interviews with students, many explained that they did not know where to go to report sexual harassment. This lack of awareness may have been due to the fact that CWRU’s notice of non-discrimination did not comply with the Department’s Title IX regulations. *See* 28 C.F.R. § 54.140. The regulation requires the University to provide contact information in its notice of non-discrimination that would allow students to file complaints or seek resources. Specifically, the Department’s investigation found that complete and accurate information was missing in, among other policy documents, the Student Code of Conduct, faculty handbook, and student employment handbook—key policy documents relied upon by students, student-employees, and faculty to inform them of their rights and responsibilities. Some students perceived the location of the Office of Equity as a barrier to reporting. This was consistent with the overall sentiment that the Office of Equity worked to protect institutional interests, rather than to prevent and address sexual harassment. This lack of confidence in the Office of Equity led to underreporting by both mandatory reporters and students alike, and hindered the University’s ability to appropriately respond to alleged sexual harassment on its campus.

On August 22, 2023, the Department and the University voluntarily entered into a Resolution Agreement designed to bring CWRU into compliance with its obligations under Title IX. Under the Resolution Agreement, CWRU will: maintain policies, procedures, and protocols for responding to sex discrimination; deliver comprehensive Title IX training to students and employees; reorganize the reporting structure for the Title IX Coordinator to prevent institutional bias in resolving reports of sex discrimination; create systemic change in the University's Greek Life programming; provide students who experience sex discrimination with resources to prevent disruptions to their education; and conduct outreach and trend analysis as part of CWRU's efforts to prevent and respond to sex discrimination on campus.

The Department appreciates the cooperation of the University and its counsel and CWRU's administrators and staff throughout the course of this investigation. The Department also recognizes the current and former students who came forward and shared their experiences. We look forward to continuing to engage with the CWRU community throughout the term of the Resolution Agreement. If you have any questions, please do not hesitate to contact Alyson Schwartz (alyson.schwartz@usdoj.gov) or Aziz Ahmad (aziz.ahmad@usdoj.gov) with the Civil Rights Division or Patricia Fitzgerald (patricia.fitzgerald2@usdoj.gov) with the U.S. Attorney's Office.

Sincerely,

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Chief



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