



OCR Title IX Resolution Letter: Wesley College Letter dated October 12, 2016

The following is a detailed summary of key information found in the 29-page Resolution letter OCR sent to Wesley College on October 12, 2016. This summary is extensive because the letter, more than almost any other to come from OCR, reflects ATIXA's long-held stance that institutions must treat the parties in a Title IX complaint with equal dignity.

“The College thereby denied the accused student procedural protections to which he was entitled under Title IX, and under the College’s own written procedures.”

1. Notice of Non-Discrimination

- Must include the Title IX Coordinator’s name and contact information
- Must be published in the Student Handbook and Employee Handbooks.
- Must state that complaints can also be referred to OCR

2. Title IX Coordinator and Training of Title IX Team

OCR applauded that names, titles and contact information for the members of the Title IX Team were in the Policies and procedures, the Student Handbook and online, but took issue with the webpage not being updated to reflect new members or changes in membership.

OCR cited significant concerns about the adequacy of training given the misapplication of policies and procedures, as well as the inability of investigators and Title IX team members to articulate the Preponderance of the Evidence Standard and the University’s role regarding notice. The Title IX Team members who investigated and resolved the complaint misapplied the College’s Title IX Policies and Procedures, resulting in an inequitable process that did not meet the requirements of Title IX. The failure to follow procedures was a theme threaded throughout the Resolution Letter.

3. Grievance Procedures

OCR reviewed in detail Wesley College’s Title IX Policies and Procedures as well as the Student Conduct Procedures and segmented their observations and concerns into sub-sections.

Title IX Information Page

OCR approved of most of Wesley College’s Title IX Policies and Procedures, noting that they:

- “Provide for an adequate, reliable, and impartial investigation, including an opportunity to present witnesses and evidence...”

- Provide for written notice the parties of the outcome and any appeal...
- Provide[] an assurance that the College will take steps to prevent further harassment and to correct its discriminatory effects on the complainant, if appropriate...
- Describe the various sources of remedial support for survivors as well.”¹

However, there were also a number of deficiencies, especially as to how the procedures were applied. “The college failed to follow this stated practice in the incident involving the accused Student, and with regard to many of the other incidents of sexual harassment and/or sexual violence investigated by the college during the 2013-2014 and 2014-2015 academic years.”²

a. Notice

- Contact Information provided online regarding Title IX Team Members was not updated when new members were added.

b. Designated and reasonably Prompt Timeframes

- Failing to provide designated and reasonably prompt timeframes for all stages of the grievance process.
- Failure to provide timeframes for appeal panel to make a determination
- Reaffirmed that 60 calendar days, not business days is the “appropriate guidepost to investigate and reach resolution for a Title IX matter.”³

c. Other Concerns

- Procedures did not explicitly bar use of Conflict Resolution in sexual violence matters
- Procedures should provide an institution sufficient time and flexibility as to how long a preliminary investigation will take.
- Possible conflict of interest of Title IX team members serving as non-voting members of the hearing board while also deciding whether to forward an appeal for processing.
- Wesley College’s Student Conduct Procedures did not specifically state that all Title IX issues were addressed using the Title IX procedures
 - In the case forming the basis of the OCR complaint, the accused student was provided a copy of the Student Conduct Procedures and was told those procedures would apply, when in fact, the Title IX procedures were used.

4. Responsible Employees

Wesley designated three categories of reporters: 1) Confidential; 2) Quasi-confidential; 3) Formal reporting. OCR did not have any issues with the first and the third, but OCR took issue with the over-broad nature of the second category.

¹ Department of Education: Office for Civil Rights – Philadelphia Office. Title IX Resolution Letter with Wesley College, dated October 12, 2016, pp. 11-12.

² *Ibid.*, p. 11.

³ *Ibid.*, p.12.

By Wesley policy, “quasi-confidential” reporters “are not required to tell anyone else your private, personally identifiable information unless there is cause for fear for your safety, or the safety of others.”⁴ Wesley identified a number of people as falling into this category including “[Resident Advisors], faculty members, advisors to student organizations, career services staff, admissions officers, student activities personnel, Student Life staff members and many others.”⁵ OCR took significant issue with the breadth and depth of the designated quasi confidential category, calling it “overly inclusive” and noting “this category should be limited and typically applies to individuals who work or volunteer in an on-campus sexual assault center, survivor advocacy office, health center or similar entity.”⁶ OCR also noted a training deficit given that few people understood the quasi-confidential category with many key Title IX Team Members being unaware of its existence.⁷

5. Confidentiality

Wesley’s website stated that the process could not proceed “without an actual survivor coming forward” and a Title IX Team Member indicated that “if a survivor wishes not to proceed with an investigation or adjudication, the College will cease its investigative activities.”⁸ OCR criticized both issues, noting a school must still “make reasonable efforts to investigate and address instances of sexual misconduct when it knows or should have known about such instances, even when a complainant chooses not to participate in an investigation.”⁹ OCR stressed that training was likely inadequate.

6. Handling of Criminal Complaints

OCR concluded that Wesley College’s procedures and practices are consistent with Title IX.

7. Training/Outreach

It is worthwhile to read this entire subsection and to compare your institution’s procedures against the elements OCR details.

OCR reiterated that a failure to appropriate apply the policies and procedures reflects a probable failure in training, “As noted above, OCR has concerns that the training of the Title IX Team members who handled various aspects of the complaint against the accused Student was insufficient as several Title IX Team members either did not follow or misapplied the College’s

⁴ Department of Education: Office for Civil Rights – Philadelphia Office. Title IX Resolution Letter with Wesley College, dated October 12, 2016, p. 14.

⁵ *Ibid.*

⁶ *Ibid.*, p. 15.

⁷ Also, the term “quasi-confidential” is not an OCR term and ATIXA does not feel it is a best practice to use this term. If you have a category of those “who work or volunteers in an on-campus sexual assault center, survivor advocacy office, health center or similar entity,” we prefer the term “designated confidential.”

⁸ OCR, Wesley Resolution Letter, p. 15.

⁹ *Ibid.*, p. 16.

Title IX Policies and Procedures, resulting in an inequitable process that did not meet the requirements of Title IX”¹⁰

OCR also criticized that Hearing Panel members were not trained since 2012 and that they did not understand the preponderance of the evidence standard. Also, OCR found that staff were not adequately trained on “requests for confidentiality and reporting obligations.”¹¹

8. Record Keeping Practices

Wesley College had a policy that it would destroy recordings of hearings ten days after the hearing is complete, which OCR said is improper. OCR said it does not require a recording to be made from a hearing, but “to the extent that such a recording is made, it constitutes a record and must be kept in order to be available to enable OCR to ascertain whether the college is carrying out its legal obligations under Title IX regulations....similarly, the document destruction prevents any external review, including pursuant to judicial proceedings, should a participating student wish to challenge the equity of the College’s administrative process in court.”¹²

Destroying the recording also prevents the Coordinator from fulfilling their role to determine relevant patterns, what remedial measures and safety measures are needed and whether the process is fair and appropriately applied.

OCR also noted that Wesley College’s policies were conflicting about which information will be retained and for how long.

9. Student Climate Information and Climate Assessment/Response

OCR applauded the College for performing a Climate Survey as it “afforded the College information through which it can assess its Title IX obligations,”¹³ but indicated a higher response rate was preferable (student response rate was very low – 7.5%).

10. Handling of Complaints and Incidents of Sexual Assault/Violence

The procedures used by Wesley College in the case that prompted the complaint with OCR were nothing short of disastrous. ATIXA has created a more comprehensive examination of this subsection of the letter (this subsection comprises over 1/3 of the letter) but has only summarized the key elements here:

“OCR determined that the accused Student was entitled to procedural protections that the College did not afford him. In processing the complaint against the accused Student, the College did not satisfy Title IX, the College did not comply with its own procedures and, in fact, the

¹⁰ *Ibid.*, p. 17.

¹¹ *Ibid.*

¹² *Ibid.*, p. 18.

¹³ *Ibid.*, p. 19.

College acted in direct contradiction of its procedures and as a result the resolution of the complaint was not equitable.”¹⁴

“It is critical, for purposes of satisfying the Title IX requirement that procedures be “equitable,” that the accused Student have a reasonable opportunity to present his version of the events, particularly in response to adverse “findings” which the College relied upon in imposing the substantial penalty meted out to the accused Student – expulsion. Thus, in conclusion, OCR determined that the College failed to provide an equitable investigation and resolution of the complaint involving the accused Student, including failures to follow many procedural elements set forth in its *Title IX Policies and Procedures*.”¹⁵

OCR found that:

- “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...
- The accused Student was not provided with the opportunity to challenge evidence that the College relied upon in imposing his interim suspension...
- The accused Student was never afforded his resolution options...
- The Student was not provided an adequate opportunity to defend himself at the Hearing...
- The accused Student may not have been provided sufficient time to participate in the process.”¹⁶

OCR also challenged the process Wesley used to interim suspend the other three accused students.

Incidents Involving Other Students

OCR generally addressed all (12) sexual harassment and sexual violence complaints from 2013-2015 and found procedural deficiencies in most cases. In 7 of the 12, OCR found “no evidence was provided to demonstrate that the complainant was provided with counseling and/or academic services.”¹⁷

OCR also expressed significant concerns as to Wesley’s use of interim suspension on the same day the complaint is filed, coupled with the institution’s poor record-keeping as to whether the interim suspension was warranted. OCR indicated that “the College may not be affording accused students their basic procedural protections by imposing immediate suspensions

¹⁴ *Ibid.*, pp. 23-24.

¹⁵ *Ibid.*, p. 25.

¹⁶ *Ibid.*, pp. 24-25.

¹⁷ *Ibid.*, p. 27.

without conducting a sufficient assessment of the risk to the community, while also considering the rights of the parties, including the accused student.”¹⁸

Conclusion

Among the more typical measures such as revising grievance procedures and improving training for the college community, especially the Title IX Team, OCR required something it has never done before – the institution must provide remedies to four accused students under Title IX. OCR instructed that Wesley College must:

Determine whether it engaged in a sufficient level of inquiry and consideration of the rights of students, including the accused Student and Students 1, 2 and 3, and Student 4, and the risk of the threat to the school community prior to imposing interim suspensions upon the accused Student and Students 1, 2 and 3, and provide specific remedial actions if warranted, including, but not limited to, removal of each expulsion from all relevant educational records, as well as an offer to allow the accused Student and/or Students 1, 2 and 3 to complete their degrees at the College and reimburse them for documented costs incurred for enrollment at a different educational institution, and any other appropriate measure.¹⁹

This is a revolutionary approach that changes the entire fabric of Title IX enforcement and fully reflects the idea that Title IX focuses on equity for both parties, not just the complainant.

¹⁸ *Ibid.*, p. 27.

¹⁹ *Ibid.*, p. 28.