

From: (b)(6); (b)(7) (b)(C)
Sent: 4 Apr 2014 17:15:32 +0000
To: OCR Seattle
Cc: (b)(6); (b)(7) (b)(C)
Subject: Title IX Sex Discrimination Complaint against George Fox University (Newberg, OR)
Attachments: (b)(6); (b) Discrimination Complaint.pdf

To Whom It Concerns:

Attached is a Title IX Discrimination Complaint I'm filing on behalf of a (b)(6); (b)(6); (b)(7(C)) He has signed the Complaint and the consent form. I am (b)(6); attorney.

(b)(C)

(b)(6) (b)(6); (b)(7(C)) | Davis Wright TremainLLP
1300 SW Fifth Avenue, Suite 2400 | Portland, OR 97201
Tel: (503) 778-5266 | Fax: (503) 276-5766
Email: (b)(6); (b)(7(C)) | Website: www.dwt.com

Anchorage | Bellevue | Los Angeles | New York | [Portland](#) | San Francisco | Seattle | Shanghai | Washington, D.C.



**United States Department of Education
Office for Civil Rights**

DISCRIMINATION COMPLAINT FORM

You do not have to use this form to file a complaint with the U.S. Department of Education's Office for Civil Rights (OCR). You may send OCR a letter or e-mail instead of this form, but the letter or e-mail must include the information in items one through nine and item fourteen of this form. If you decide to use this form, please type or print all information and use additional pages if more space is needed. An on-line version of this form, which can be submitted electronically, can be found at: <http://www.ed.gov/about/offices/list/ocr/complaintintro.html>.

Before completing this form please read all information contained in the enclosed packet including: Information About OCR's Complaint Resolution Procedures, Notice of Uses of Personal Information and the Consent Form.

1. Name of person filing this complaint:

Last Name: First Name: Middle Name: _____

Address: 1300 SW Fifth Ave., Suite 2400

City: Portland State: OR Zip Code: 97201

Home Telephone: _____ Work Telephone: 503-778-5266

E-mail Address:

2. Name of person discriminated against (if **other** than person filing). If the person discriminated against is age 18 or older, we will need that person's signature on this complaint form and the consent/release form before we can proceed with this complaint. If the person is a minor, and you do not have the legal authority to file a complaint on the student's behalf, the signature of the child's parent or legal guardian is required.

Last Name: First Name: Middle Name: _____

Address: George Fox University

City: Newberg State: OR Zip Code: 97132

Home Telephone: Work Telephone: _____

E-mail Address: _____

Our Mission is to ensure equal access to education and to promote educational excellence throughout the Nation.

Page 2 of 11 – U.S. Department of Education, Office for Civil Rights
Discrimination Complaint Form, Consent Form, and Complaint Processing Procedures

3. OCR investigates discrimination complaints against institutions and agencies which receive funds from the U.S. Department of Education and against public educational entities and libraries that are subject to the provisions of Title II of the Americans with Disabilities Act. Please identify the institution or agency that engaged in the alleged discrimination. If we cannot accept your complaint, we will attempt to refer it to the appropriate agency and will notify you of that fact.

Name of Institution: George Fox University

Address: 414 N. Meridian St.

City: Newberg State: Oregon Zip Code: 97132

Department/School: Student Life/Residence Life

4. The regulations OCR enforces prohibit discrimination on the basis of race, color, national origin, sex, disability, age or retaliation. Please indicate the basis of your complaint:

Discrimination based on race (specify)

Discrimination based on color (specify)

Discrimination based on national origin (specify)

Discrimination based on sex (specify)

Discrimination on the basis of sex, failure to conform to sex stereotypes, gender, gender identity and transgender status in violation of Title IX.

Page 3 of 11 – U.S. Department of Education, Office for Civil Rights
Discrimination Complaint Form, Consent Form, and Complaint Processing Procedures

Discrimination **based on disability (specify)**

Discrimination **based on age (specify)**

Retaliation because you filed a complaint or asserted your rights (specify)

Violation of the Boy Scouts of America Equal Access Act (specify)

5. Please describe each alleged discriminatory act. For each action, please include the date(s) the discriminatory act occurred, the name(s) of each person(s) involved and, why you believe the discrimination was because of race, disability, age, sex, etc. Also please provide the names of any person(s) who was present and witnessed the act(s) of discrimination.

See attached statement.

Page 4 of 11 – U.S. Department of Education, Office for Civil Rights
Discrimination Complaint Form, Consent Form, and Complaint Processing Procedures

6. What is the most recent date you were discriminated against?

Date: April 3, 2014

7. If this date is **more than 180 days ago**, you may request a waiver of the filing requirement.

I am requesting a waiver of the 180-day time frame for filing this complaint. Please explain why you waited until now to file your complaint.

8. Have you attempted to resolve these allegations with the institution through an internal grievance procedure, appeal or due process hearing?

YES NO

If you answered **yes**, please describe the allegations in your grievance or hearing, identify the date you filed it, and tell us the status. If possible, please provide us with a copy of your grievance or appeal or due process request and, if completed, the decision in the matter.

Housing discrimination in violation of Title IX. (b)(6) was denied request to live with other male students on campus. He had multiple meetings with university administrators. Final appeal to University President on March 27. Appeal denied on April 3.

9. If the allegations contained in this complaint have been filed with any other Federal, state or local civil rights agency, or any Federal or state court, please give details and dates. We will determine whether it is appropriate to investigate your complaint based upon the specific allegations of your complaint and the actions taken by the other agency or court.

Agency or Court: _____

Date Filed: _____

Case Number or Reference: _____

Results of Investigation/Findings by Agency or Court:

Page 5 of 11 – U.S. Department of Education, Office for Civil Rights
Discrimination Complaint Form, Consent Form, and Complaint Processing Procedures

10. If we cannot reach you at your home or work, we would like to have the name and telephone number of another person (relative or friend) who knows where and when we can reach you. This information is not required, but it will be helpful to us.

Last Name: _____ First Name: _____ Middle Name: _____

Home Telephone: _____ Work Telephone: _____

11. What would you like the institution to do as a result of your complaint — what remedy are you seeking?

Allow (b)(6) to live in an on-campus house, apartment or suite with other male students who have agreed to live with him.

12. We cannot accept your complaint if it has not been signed. Please sign and date your complaint below.

4/3/14
(Date)

(b)(6), (b)(7)(C)

(Signature)

04/3/14
(Date)

(b)(6), (b)(7)(C)

Please mail the completed and signed Discrimination Complaint Form, your signed consent form and copies of any written material or other documents you believe will help OCR understand your complaint to the OCR Enforcement Office responsible for the state where the institution or entity about which you are complaining is located. You can locate the mailing information for the correct enforcement office on OCR's website at <http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm>.

Page 6 of 11 – U.S. Department of Education, Office for Civil Rights
Discrimination Complaint Form, Consent Form, and Complaint Processing Procedures

CONSENT FORM- FOR USE OF PERSONAL INFORMATION

Complainant's Name (print or type): (b)(6); (b)(6); (b)(7(C))

Institution Against Which Complaint is Filed: George Fox University

Please sign and date section A, section B or section C and return to the address below:

I have read the section, "Investigatory Uses of Personal Information" in the OCR document "Information about OCR's Complaint Processing Procedures," which explains OCR's use of personal information. I understand that the Privacy Act of 1974, 5 U.S.C. § 552a, and the Freedom of Information Act (FOIA), 5 U.S.C. § 552, govern the use of personal information submitted to all Federal agencies and their individual components, including OCR. I will cooperate with OCR's investigation and complaint resolution activities undertaken on my behalf. I understand that my failure to cooperate with OCR's investigation may result in the closure of my complaint.

- A. I give OCR my consent to reveal my identity (and/or that of my minor child/ward on whose behalf the complaint is filed) to the institution alleged to have discriminated, as well as other persons and entities, if OCR, in the course of its investigation or for enforcement activities, finds it necessary to do so.

Signature

Date

OR

- B. I do not give OCR my consent to reveal my identity (and/or that of my minor child/ward on whose behalf the complaint is filed). I understand that OCR may have to close this complaint if OCR is unable to proceed with an investigation without releasing my identity (and/or that of my minor child/ward on whose behalf the complaint is filed).

Signature

Date

- C. Alternatively, if you are not filing this complaint on your own behalf or on behalf of your own minor child/ward, you are responsible for obtaining written consent from the person on whose behalf the complaint is filed or, if he or she is a minor, that person's parent/guardian.

I have read this document, and I agree with the person who filed this complaint. I wish you to proceed with OCR's investigation and resolution process. I give my consent for OCR to reveal my identity (and/or that of my minor child/ward on whose behalf the complaint is filed) to other persons to the extent necessary for the purpose of resolution or investigation of this complaint.

Name (print or type): (b)(6); (b)(7(C)) (b)(6); (b)(7(C))

(b)(6); (b)(7(C))

04/03/14
Date

(b)(6); (he goes by (b)(6); is currently a sophomore at George Fox University. He is a transgender male, or an FTM (Female to Male).

Transitioning can be an extensive process. In (b)(6); case, he has already taken many steps. To begin, he legally changed his name to (b)(6); through the court system. Additionally, he started gender therapy over a year ago. After being in therapy for several months, he received a letter from his doctor granting him the ability to start testosterone, which he has been taking for over a year. In addition, (b)(6); presents as a male and only goes by male pronouns such as he, his, him etc.

Moreover, on March 20, 2014, (b)(6); started the process necessary to complete his legal gender change. This included filling out the forms, obtaining a letter from his doctor, signing in front of a notary, and posting his legal gender change request in public at the Multnomah County Courthouse. In the next week, (b)(6); will appear before a judge, at which time the judge will issue a court order affirming his gender change. After this, he will quickly change his name and sex/gender marker on his Oregon Driver's license and with the Social Security Administration. All of these steps will be complete well before the start of the next school year.

On December 26, 2013, (b)(6); emailed (b)(6); (b)(7)(C) Associate Dean of Students, to tell him that he was going to live with other males for the next academic year. At the time, (b)(6); didn't think that the university would have a problem with him living on campus with other men. He asked (b)(6); (b)(7)(C) if he needed to start thinking about changing his gender markers on his documents before the housing selection process began or whether he could live with other men without needing to make those changes. On January 11, 2014, (b)(6); (b)(7)(C) responded that he had a number of thoughts but nothing coherent yet, remarking that keeping (b)(6); with his current roommates would work because he was physiologically female at the time.

On January 15, 2014, (b)(6); met with (b)(6); (b)(7)(C) and told him that he wanted to live with other males and asked what he would need to do to make that happen. (b)(6); (b)(7)(C) did not make a decision at this time. He mentioned that (b)(6); (b)(7)(C) Dean of Community Life, was in the process of putting together a policy related to GFU transgender students and housing and that he would get back to (b)(6); about his situation. However, (b)(6); (b)(7)(C) did not follow up with (b)(6); so (b)(6); took it upon himself to contact him again. On January 23, 2014, (b)(6); emailed (b)(6); (b)(7)(C) to inform him that he was going to move forward with his gender marker change so that it could be done by housing selection time. (b)(6); also told him that he spoke with his future roommates and that they were all comfortable living with him.

On February 4, 2014, (b)(6); (b)(7)(C) emailed (b)(6); to say that the GFU transgender housing policy was not complete and that he wanted to meet with (b)(6); and (b)(6); (b)(7)(C) to discuss his situation. The meeting, originally set for February 7, 2014, was cancelled due to weather, and was rescheduled for February 12, 2014. (b)(6); (b)(7)(C) was unable to make the new date, so (b)(6); only met with (b)(6); (b)(7)(C) at that time.

On February 12, 2014, (b)(6); with (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) told (b)(6); that his initial decision was that (b)(6); would have to live with female students next year. In response, (b)(6); told (b)(6); (b)(7)(C) his story and explained that he wanted to live with other males. (b)(6); (b)(7)(C) told him that he would present (b)(6); request to (b)(6); (b)(7) Vice President for Student Life, and four

members of the Board of Trustees. Then, on February 14, (b)(6); (b)(7(C)) met with (b)(6); and (b)(6); mother. They shared their stories and both asked that (b)(6); be able to live with his male friends during the next academic year.

On February 18, 2014, (b)(6); mother sent (b)(6); (b) an email stating in part, "I am a parent with serious concerns regarding the mental health and well being of my son... I understand that (b)(6); lives as a male and is asking Campus Housing to be allowed to live with other males.....Conditions such as transgender are not a choice...[A]s a concerned parent I am asking, on (b)(6); (b) behalf, that serious consideration be given, at this time, to addressing (b)(6); (b) situation on an individual, case by case, basis related to his overall mental health and well being needs."

On February 18, (b)(6); (b) acknowledged (b)(6); mother's email and indicated that he would communicate her concerns to the Board of Trustees committee that was considering a transgender housing policy for GFU.

According to (b)(6); (b)(7(C)), the GFU Board of Trustees met on February 20 and decided that more conversation was needed before they could implement a policy of housing students by their biological birth sex.

On February 24, 2014, (b)(6); (b)(7(C)) sent (b)(6); a letter informing him of the university's decision with respect to his housing. (b)(6); (b)(7(C)) informed (b)(6); that he decided to "conditionally approve" (b)(6); (b)(7(C)) request but only to live *off-campus* with male students for the 2014-2015 school year. He made clear, however, that this arrangement "may only be off-campus and is only a one-year exception; and it may change depending on the Board's development of a policy."

(b)(6); (b)(7(C)) also stated that (b)(6); could live on-campus in a single room, which he subsequently said he is holding for (b)(6); should he choose this "option." However, as even (b)(6); (b) acknowledged in his letter, (b)(6); and (b)(6); (b)(7(C)) "agreed that this was not a good option," because of (b)(6); mental health and related concerns. For (b)(6); it is actually not an option at all, as it would harm him psychologically and socially and make it impossible for him to receive a safe and quality educational experience at George Fox.

Additionally, even to live off-campus with other male students, (b)(6); (b)(7(C)) informed (b)(6); that he would need to take the following steps:

1. Legally change his name and gender, and provide copies of the following to (b)(6); (b)(7(C)) by June 1, 2014:
 - Driver's License
 - Birth Certificate
 - Social Security Card
2. The male students he would live with must meet the criteria and be approved to live off-campus in 2014-15.
3. (b)(6); (b)(7(C)) would need to meet with (b)(6); roommates and affirm that they understand his story, are willing to live with him and that they have informed their parents about this living arrangement.

4. They would need to abide by all GFU lifestyle standards and policies.

The only item that (b)(6); (b)(7)(C) indicated he would reconsider is whether June 1, 2014 was a realistic timeframe in which (b)(6); could accomplish everything required by #1 above. (b)(6); met with (b)(6); (b)(7)(C) regarding this letter on February 25, 2014.

After a couple weeks, (b)(6); (b)(7)(C) asked me to represent him in relation to his housing situation.

On March 18, I asked (b)(6); (b)(7)(C) if there was an internal grievance procedure, appeal or due process hearing (b)(6); (b)(7)(C) could utilize to contest the university's February 24, 2014 decision. On March 20, (b)(6); (b)(7)(C) responded to me discussing the history of the situation and informing me that (b)(6); would be able to appeal his decision but that he could only do so in writing by 5:00 p.m. on Thursday, March 27.

Through correspondence with me and meetings with (b)(6); (b)(7)(C) and (b)(6); mother, (b)(6); (b)(6); (b)(7)(C) eventually removed two requirements for the off-campus option, namely, the requirement that (b)(6); essentially "out" himself to his roommates' parents and the requirement that he change his birth certificate (since (b)(6); was born in one of the few states where this is currently impossible to do).

On March 27, (b)(6); (b)(7)(C) appealed the denial of his on-campus housing request to President Baker. On April 3, President Baker denied his appeal.



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

915 2ND AVE., SUITE 3310
SEATTLE, WA 98174-1099

July 1, 2014

REGION X
ALASKA
AMERICAN SAMOA
GUAM
HAWAII
IDAHO
MONTANA
NEVADA
NORTHERN MARIANA
ISLANDS
OREGON
WASHINGTON

Mr. (b) (b)(6); (b)(7)(C)
Davis, Wright, Tremaine, LLP
1300 SW Fifth Avenue, Suite 2400
Portland, Oregon 97201

Re: George Fox University
OCR Reference No. 10142152

Dear Mr. (b)(6); (b)(7)(C)

The U.S. Department of Education, Office for Civil Rights (OCR) has completed its evaluation of your discrimination complaint against George Fox University (university), which was received on April 4, 2014. In your complaint, you alleged that the university discriminated against a student based on sex, by denying the student’s request to live with other male students on campus.

OCR has the authority to enforce title IX of the Education Amendments of 1972. Title IX prohibits discrimination in programs and activities receiving federal financial assistance from the U.S. Department of Education. The university receives federal financial assistance from this Department. OCR’s case processing guidelines provide that OCR will close a complaint where the complaint allegations are foreclosed by previous decisions of the U.S. Secretary of Education, or the U.S. Department of Education's Civil Rights Reviewing Authority, or where the complaint allegations are foreclosed by OCR policy determinations.

Prior to the filing of your complaint, the university requested that the Assistant Secretary grant the university a religious exemption from Title IX, pursuant to the Title IX regulation at 34 CFR §106.12. The Assistant Secretary has granted that exemption as it applies to housing (34 CFR §106.32), comparable facilities such as restrooms and locker rooms (34 CFR §106.33), and athletics (34 CFR §106.41). A copy of the letter granting the exemption is enclosed.

Based on the issuance of the letter of exemption granted by the Assistant Secretary, OCR is administratively closing your complaint and will take no further action regarding the complaint.

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

The Department of Education’s mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

Page 2 – OCR Reference No. 10142152

such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

Thank you for bringing this matter to our attention. If you have any questions, please contact Timothy Sell, Senior Attorney, by telephone at (206) 607-1639, or by e-mail at timothy.sell@ed.gov.

Sincerely,

(b)(6); (b)(7)(C)

for

Monique M. Malson
Program Manager

Enclosure



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

May 23, 2014

Dr. Robin Baker
President
George Fox University
414 N. Meridian St.
Newberg, Oregon 97132

Dear Dr. Baker:

The purpose of this letter is to respond to your March 31, 2014, letter to the U.S. Department of Education, Office for Civil Rights (OCR), in which you requested a religious exemption for George Fox University (University) of Newberg, Oregon from Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681. Title IX prohibits discrimination on the basis of sex in any education program or activity operated by a recipient of Federal financial assistance.

The implementing regulation at 34 C.F.R. § 106.12 provides that Title IX does not apply to educational institutions controlled by religious organizations to the extent that application of Title IX would be inconsistent with the institution's religious tenets. Therefore, such educational institutions are allowed to request an exemption from Title IX by identifying the provisions of Title IX that conflict with a specific tenet of the religious organization. The request must identify the religious organization that controls the educational institution and specify the tenets of that organization and the provisions of the law and/or regulation that conflict with those tenets.

Your request explained that the University, which is owned by the Northwest Yearly Meeting of Friends (part of the Quaker movement), is "a Christ-centered community" that is "committed to providing a Christian education." You note that four of the University's seven Board of Trustees members must be Friends. You state that the University's biblical belief is that human beings are created male and female, and that the University "cannot in good conscience support or encourage an individual to live in conflict with biblical principles."

Your exemption request points to a recent OCR resolution agreement in which a school district agreed to allow a transgender male student to use the restroom, locker room, and living facilities consistent with the student's gender identity, and to play on boys' athletic teams. You explain that the University "would not be able to make similar accommodations consistent with [your] religious beliefs." You further state that, for these reasons, the University is requesting an exemption from Title IX and its

400 MARYLAND AVE. S.W., WASHINGTON, DC 20202-1100
www.ed.gov

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

Dr. Robin Baker, George Fox University
May 23, 2014
Page 2 of 2

implementing regulation to the extent that they prohibit discrimination based on gender identity. We interpret this statement as a request for exemption from provisions 34 C.F.R. §§ 106.32 (governing housing), 106.33 (governing comparable facilities such as restrooms and locker rooms), and 106.41 (governing athletics). The University is exempt from these provisions to the extent that they require a recipient to treat students consistent with their gender identity, but doing so would conflict with the controlling organization's religious tenets.

Please note that this letter should not be construed to grant exemption from the requirements of Title IX and the regulation other than as stated above. In the event that OCR receives a complaint against your institution, we are obligated to determine initially whether the allegations fall within the exemption here granted. Also, in the unlikely event that a complainant alleges that the practices followed by the institution are not based on the religious tenets of the controlling organization, OCR is obligated to contact the controlling organization to verify those tenets. If the organization provides an interpretation of tenets that has a different practical impact than that described by the institution, or if the organization denies that it controls the institution, this exemption will be rescinded.

I hope this letter responds fully to your request. If you have any questions, please do not hesitate to contact me.

Sincerely,

(b)(6); (b)(7)(C)

Catherine E. Lhamon
Assistant Secretary for Civil Rights
Office for Civil Rights
U.S. Department of Education

From: (b)(6); (b)(7) (b)(C)
Sent: 29 Aug 2014 23:39:54 +0000
To: OCR Seattle
Cc: Jackson, Gary; Sell, Timothy; (b)(6); (b)(7)(C)
Subject: Title IX Sex/Gender Identity Discrimination Complaint Against George Fox University (Newberg, OR)
Attachments: (b) OCR Complaint August 29, 2014.pdf

To Whom It Concerns:

Attached is a Title IX discrimination complaint I'm filing on behalf of (b)(6); (b)(6); (b) (b)(6); (b)(7)(C) He has signed the complaint and the consent form. I'm (b)(6); attorney and you can contact (b) through me. This complaint specifically alleges that George Fox University's denial of safe and appropriate on-campus housing is not based on the religious tenets of a controlling religious organization.

Thank you,

(b)(C)

(b)(6) (b)(6); (b)(7)(C) | Davis Wright Tremain LLP
1300 SW Fifth Avenue, Suite 2400 | Portland, OR 97201
Tel: (503) 778-5266 | Fax: (503) 276-5766
Email: (b)(6); (b)(7)(C) | Website: www.dwt.com

Anchorage | Bellevue | Los Angeles | New York | [Portland](#) | San Francisco | Seattle | Shanghai | Washington, D.C.



**United States Department of Education
Office for Civil Rights**

DISCRIMINATION COMPLAINT FORM

You do not have to use this form to file a complaint with the U.S. Department of Education's Office for Civil Rights (OCR). You may send OCR a letter or e-mail instead of this form, but the letter or e-mail must include the information in items one through nine and item fourteen of this form. If you decide to use this form, please type or print all information and use additional pages if more space is needed. An on-line version of this form, which can be submitted electronically, can be found at: <http://www.ed.gov/about/offices/list/ocr/complaintintro.html>.

Before completing this form please read all information contained in the enclosed packet including: information about OCR's Complaint Resolution Procedures, Notice of Uses of Personal Information and the Consent Form.

1. Name of person filing this complaint:

Last First Southwick Middle Name: _____

Address: 1300 SW Fifth Ave., Suite 2400

City: Portland State: OR Zip Code: 97201

Home Telephone: _____ Work Telephone: 503-778-5266

E-mail Address:

2. Name of person discriminated against (if **other** than person filing). If the person discriminated against is age 18 or older, we will need that person's signature on this complaint form and the consent/release form before we can proceed with this complaint. If the person is a minor, and you do not have the legal authority to file a complaint on the student's behalf, the signature of the child's parent or legal guardian is required.

Last First Middle Name: _____

Address: George Fox University

City: Newberg State: OR Zip Code: 97132

Home Telephone: Work Telephone: _____

E-mail Address: _____

Our Mission is to ensure equal access to education and to promote educational excellence throughout the Nation.

Page 2 of 12 – U.S. Department of Education, Office for Civil Rights Discrimination Complaint Form, Consent Form, and Complaint Processing Procedures

3. OCR investigates discrimination complaints against institutions and agencies which receive funds from the U.S. Department of Education and against public educational entities and libraries that are subject to the provisions of Title II of the Americans with Disabilities Act. Please identify the institution or agency that engaged in the alleged discrimination. If we cannot accept your complaint, we will attempt to refer it to the appropriate agency and will notify you of that fact.

Name of Institution: George Fox University

Address: 414 N. Meridian St.

City: Newberg State: OR Zip Code: 97132

Department/School: Student Life/Residence Life

4. The regulations OCR enforces prohibit discrimination on the basis of race, color, national origin, sex, disability, age or retaliation. Please indicate the basis of your complaint:

Discrimination based on race (specify)

Discrimination based on color (specify)

Discrimination based on national origin (specify)

Discrimination based on sex (specify)
Discrimination based on sex, gender, gender identity and transgender status in violation of Title IX. George Fox University's discriminatory practices are not based on the religious tenets of a controlling religious organization.

Page 3 of 12 – U.S. Department of Education, Office for Civil Rights Discrimination Complaint Form, Consent Form, and Complaint Processing Procedures

Discrimination based on disability (specify)

Discrimination based on age (specify)

Retaliation because you filed a complaint or asserted your rights (specify)

Violation of the Boy Scouts of America Equal Access Act (specify)

5. Please describe each alleged discriminatory act. For each action, please include the date(s) the discriminatory act occurred, the name(s) of each person(s) involved and, why you believe the discrimination was because of race, disability, age, sex, etc. Also please provide the names of any person(s) who was present and witnessed the act(s) of discrimination.

See attached statement.

Page 4 of 12 – U.S. Department of Education, Office for Civil Rights Discrimination Complaint Form, Consent Form, and Complaint Processing Procedures

6. What is the most recent date you were discriminated against?

Date: August 28, 2014.

7. If this date is more than 180 days ago, you may request a waiver of the filing requirement.

I am requesting a waiver of the 180-day time frame for filing this complaint. Please explain why you waited until now to file your complaint.

8. Have you attempted to resolve these allegations with the institution through an internal grievance procedure, appeal or due process hearing?

YES

NO

If you answered yes, please describe the allegations in your grievance or hearing, identify the date you filed it, and tell us the status. If possible, please provide us with a copy of your grievance or appeal or due process request and, if completed, the decision in the matter.

Housing discrimination in violation of Title IX. The university denied (b)(6) request to live with other male students on campus. He participated in multiple meetings with university administrators from January through March 2014. Final appeal to university president on March 27. Appeal denied on April 3.

9. If the allegations contained in this complaint have been filed with any other Federal, state or local civil rights agency, or any Federal or state court, please give details and dates. We will determine whether it is appropriate to investigate your complaint based upon the specific allegations of your complaint and the actions taken by the other agency or court.

Agency or Court: _____

Date Filed: _____

Case Number or Reference: _____

Results of Investigation/Findings by Agency or Court:

Page 5 of 12 – U.S. Department of Education, Office for Civil Rights Discrimination Complaint Form, Consent Form, and Complaint Processing Procedures

10. If we cannot reach you at your home or work, we would like to have the name and telephone number of another person (relative or friend) who knows where and when we can reach you. This information **is not required**, but it will be helpful to us.

Last Name: _____ First Name: _____ Middle Name: _____

Home Telephone: _____ Work Telephone: _____

11. What would you like the institution to do as a result of your complaint -- what remedy are you seeking?

Allow (b)(6) to live in an on-campus house, apartment or suite with other male students who have agreed to live with him.
Revise its housing policies for transgender students. Stop revealing private medical information about (b)(6);

12. We cannot accept your complaint if it has not been signed. Please sign and date your complaint below.

8/29/14

(Date)

8/29/14

(Date)

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

Please mail the completed and signed Discrimination Complaint Form, your signed consent form and copies of any written material or other documents you believe will help OCR understand your complaint to the OCR Enforcement Office responsible for the state where the institution or entity about which you are complaining is located. You can locate the mailing information for the correct enforcement office on OCR's website at <http://wdcrobofpe01.ed.gov/CFAPPS/OCR/contactus.cfm>.

CONSENT FORM - FOR REVEALING NAME AND PERSONAL INFORMATION TO OTHERS

(Please print or type except for signature line)

Your Name: (b)(6); (b)(7)(C) (b)(6); (b)(7)(C)

Name of School or Other Institution That You Have Filed This Complaint Against: George Fox University

- This form asks whether the Office for Civil Rights (OCR) may share your name and other personal information when OCR decides that doing so will assist in investigating and resolving your complaint.
- For example, to decide whether a school discriminated against a person, OCR often needs to reveal that person's name and other personal information to employees at that school to verify facts or get additional information. When OCR does that, OCR informs the employees that all forms of retaliation against that person and other individuals associated with the person are prohibited. OCR may also reveal the person's name and personal information during interviews with witnesses and consultations with experts.
- If OCR is not allowed to reveal your name or personal information as described above, OCR may decide to close your complaint if OCR determines it is necessary to disclose your name or personal information in order to resolve whether the school discriminated against you.

NOTE: If you file a complaint with OCR, OCR can release certain information about your complaint to the press or general public, including the name of the school or institution; the date your complaint was filed; the type of discrimination included in your complaint; the date your complaint was resolved, dismissed or closed; the basic reasons for OCR's decision; or other related information. Any information OCR releases to the press or general public will not include your name or the name of the person on whose behalf you filed the complaint.

NOTE: OCR requires you to respond to its requests for information. Failure to cooperate with OCR's investigation and resolution activities could result in the closure of your complaint.

Please sign section A or section B (but not both) and return to OCR:

- If you filed the complaint on behalf of yourself, you should sign this form.
- If you filed the complaint on behalf of another specific person, that other person should sign this form.
EXCEPTION: If the complaint was filed on behalf of a specific person who is younger than 18 years old or a legally incompetent adult, this form must be signed by the parent or legal guardian of that person.
- If you filed the complaint on behalf of a class of people, rather than any specific person, you should sign the form.

A. I give OCR my consent to reveal my identity (and that of my minor child/ward on whose behalf the complaint is filed) to others to further OCR's investigation and enforcement activities.

(b)(6); (b)(7)(C)

8/29/14
Date

OR

B. I do not give OCR my consent to reveal my identity (and that of my minor child/ward on whose behalf the complaint is filed) to others. I understand that OCR may have to close my complaint.

Signature

Date

I declare under penalty of perjury that it is true and correct that I am the person named above; and, if the complaint is filed on behalf of a minor child/ward, that I am that person's parent or legal guardian. This declaration only applies to the identity of the persons and does not extend to any of the claims filed in the complaint.

Updated April 2014

The Northwest Yearly Meeting of Friends Church (“NWYMFC”) Does Not Own or Control George Fox University

In George Fox University’s (“GFU”) March 31, 2014 request for a religious exemption from the requirements of Title IX as applied to (b)(6), (b) housing needs, President Baker stated that “the University is owned by the Northwest Yearly Meeting of Friends (in fact, 4/7 of the Board of Trustees must be Friends).” See Exhibit A. President Baker’s assertions appear to be inaccurate. To begin, NWYMFC does not appear to own GFU. NWYMFC describes GFU as a “related organization” that is “accountable to” NWYMFC but does not describe itself as the owner of GFU. Additionally, in GFU’s “Year Seven Self-Evaluation Report” prepared for the Northwest Commission on Colleges and Universities on March 3, 2014, and submitted by President Baker as part of GFU’s accreditation process, GFU states in a section regarding its governing board that “George Fox University is an independent university founded in 1891 by what has become Northwest Yearly Meeting of Friends Church. A 42-member board governs the university.” See Exhibit B (emphasis added). Moreover, GFU continues to file with the Oregon Secretary of State as a “Public Benefit” nonprofit corporation, rather than as a religious nonprofit. See Exhibit C. Additionally, GFU’s current bylaws do not mention the university having an owner, member, shareholder or other controlling entity. See Exhibit D (last accessed through the GFU website on 8/29/14). These statements and facts are inconsistent with President Baker’s claim that NWYMFC owns GFU.

Moreover, President Baker’s statement that “4/7 of the Board of Trustees must be Friends” is misleading. According to GFU’s current bylaws, “at least four-sevenths of the members of the Board shall be members in good standing of the Friends Church and of these, at least two-thirds shall be members of NWYMFC.” See Exhibit D, Art. IV, Section 1.a (emphasis added). Consequently, only a minority of the board, two-thirds of four-sevenths, are required to be members of the alleged controlling organization, NWYMFC. The other Friends required to be on the board can come from Friends churches outside of the denomination, meaning from churches operating under different theologies and governance structures and unaffiliated with NWYMFC. And a full 3/7 do not need to have an affiliation with any Friends church or denomination whatsoever. Consequently, only eight (8) of every twenty-one (21) GFU board members are required to be NWYMFC. This fraction constitutes a clear minority of the board.²

In light of the fact that GFU describes itself to its accrediting body as an “independent university,” files with the State of Oregon as a “public benefit” nonprofit, and operates under bylaws that do not mention ownership by any other entity and that merely require a minority of the board to be affiliated with NWYMFC, the Department of Education should investigate GFU’s claim of ownership and control by NWYMFC.

¹ (b)(6) is his legal name but he goes by (b)

² Additionally, while NWYMFC must approve all GFU board members, thirteen out of fourteen board members elected at the annual meeting are nominated by the GFU Board of Trustees and the GFU Alumni Association (the other board member is nominated by the George Fox Evangelical Seminary Board of Regents). See Exhibit D, Art. IV, Section 2.a. Through this nominations process, GFU maintains control over its board and can accurately describe itself as an independent, rather than sectarian, institution, and as a public benefit nonprofit, rather than a religious corporation.

GFU's Discriminatory Actions Toward (b)(6); (b)(7)(C) Are Not Based on the Religious Tenets of NWYMFC

NWYMFC has no religious tenet, position or policy regarding transgender people or transitioning one's sex or gender. Indeed, GFU's March 31, 2014 request for a religious exemption from Title IX does not reference a single religious tenet, policy or position of NWYMFC, let alone a religious tenet relating to transgender people. Indeed, as stated by two senior pastors in the NWYMFC denomination, (b)(6); (b)(7)(C) Pastor at Camas Friends Church, and (b)(6); (b)(7)(C) Pastor at West Hills Friends Church, there is no basis in NWYMFC's religious tenets for GFU's actions. As the pastors stated in a joint press release to numerous media outlets following (b)(6); (b)(7)(C) denial of safe and appropriate on-campus housing:

As pastors in NW Yearly Meeting, we urge George Fox University to provide safe housing for (b)(6); (b)(7)(C). It is our understanding that our 'Faith and Practice' provides no theological grounds whatsoever for excluding transgender students from housing consistent with their gender identity. As Quakers, the biblical teaching that men and women are created in the image of God convicts us that '... all persons have equal value and are created in the image of God' (Vision, Mission and Values: 1). The theological framework of our Faith & Practice affirms the inherent dignity of all people, regardless of their gender identity:

We witness to the dignity and worth of all persons before God. We repudiate and seek to remove discrimination based on gender, race, nationality, or class. We deplore the use of selfish ends to gain unfair advantage, and we urge political, economic, and social justice for all peoples. We consider civil order most just when conscience is free and religious faith uncoerced (Faith Expressed through Witness: 11).

The same Faith & Practice urges us to consider: *Do you speak out for justice and morality, and against oppression, exploitation, and public wrong? Do you recognize the equality of persons regardless of race, gender, or economic status (The Queries #18: 13)?*

Based upon these theological convictions, we ask George Fox University to honor the housing requests of its transgender students. Let us follow the example of Jesus Christ, and extend hospitality to those who might otherwise be unsafe and unwelcome in our communities.

In light of GFU's complete failure to point to any NWYMFC religious tenet regarding transgender people, and in light of these strong statements by NWYMFC senior pastors, and in light of the fact that nothing to the contrary has been reported or stated by NWYMFC itself, it is clear that GFU's decision to deny (b)(6); (b)(7)(C) safe and appropriate on-campus housing is not based on compliance with the religious tenets of NWYMFC. Consequently, the religious exemption

granted to GFU should be rescinded and GFU should be required to comply with Title IX regarding (b)(6) housing needs.³

Moreover, while GFU's justifications for its decision to deny safe and appropriate on-campus housing to (b)(6) have changed over time, they have never been based on explicit, or even implicit, references to the religious tenets of the NWYMFC. When GFU originally refused to allow (b)(6) to live with his male friends on campus in February 2014, (b)(6); (b)(7)(C) said that the university was considering adding a statement to the student housing policy that would house students based on "biological birth sex," but that "after a lengthy conversation with the Board of Trustees," *not with NWYMFC*, "it was decided that the housing policy needs more time to be developed[.]" (b)(6); (b)(7)(C) made no reference to any religious tenet of NWYMFC.

Now, rather than pursuing a policy based on "biological birth sex," the university has embraced a housing policy for students based on "anatomy." See <http://www.georgefox.edu/transgender/> The new policy based on anatomy allows a post-surgery transgender person to be housed in safe and appropriate on-campus housing, but does not allow a pre-surgery transgender person to be housed in safe and appropriate on-campus housing.⁴ GFU does not point to a religious tenet of NWYMFC justifying, let alone requiring, this position. Moreover, GFU's announcement of its new anatomy-based policy, accessed through the web link above, and the accompanying discussion of (b)(6) and his housing situation, does not make a single reference to NWYMFC or any religious tenet concerning gender identity or transgender people.

In fact, GFU's religious exemption request appears largely based on opposition to homosexuality. (b)(6) however, is not contesting GFU or NWYMFC's religious tenets or positions with respect to homosexuality, homosexual conduct or same-sex marriage. Sexuality and gender are separate aspects of a person's identity. (b)(6) gender is male, his sexuality is heterosexual. (b)(6) is attracted to women and is taking testosterone under the supervision of a medical doctor. (b)(6) is not trying to live with men for any sexual purpose whatsoever. GFU's opposition to *homosexuality* cannot serve as the basis for an exemption from Title IX's requirements as they relate to *gender identity*.

³ Moreover, GFU's request for a religious exemption appears inconsistent with its own statements to its students and to the institution that accredits the university. In GFU's "Year Seven Self-Evaluation Report" prepared for the Northwest Commission on Colleges and Universities on March 3, 2014, GFU states under its "Non-Discrimination" section that "We respect the dignity of each person and operate in a non-discriminatory way. Our student handbook includes an 'anti-discrimination policy. The policy states: Discrimination or harassment due to race, color, sex, sexual orientation, marital status, religion, creed, age, national origin, citizenship status, worker's compensation status, physical or mental disability, veteran status, or any other status protected under applicable local, state, or federal law; or any other distinguishing characteristic protected by non-discrimination law, is prohibited." Exhibit B (emphasis added). GFU's non-discrimination statement is not accompanied by any limiting clause stating, for example, "except to the extent required to comply with the religious tenets of NWYMFC." Consequently, there appears to be no basis, in NWYMFC's religious tenets or otherwise, for GFU's departure from its non-discrimination commitments.

⁴ GFU does not state what constitutes "surgery" and whether its policy requires both top and bottom surgery. Additionally, the policy appears to only apply to GFU's dorms, not to its on-campus apartments, houses and suites. (b)(6) however, was denied access to all on-campus housing with his male friends, including apartments, houses and suites. The only on-campus housing option GFU offered (b) was a single room where (b) would be required to live by himself.

In Catherine Lhamon's May 23, 2014 letter to President Baker granting GFU a limited religious exemption to Title IX, Ms. Lhamon states that if "a complainant alleges that the practices followed by the institution are not based on the religious tenets of the controlling organization, OCR is obligated to contact the controlling organization to verify those tenets. If the organization provides an interpretation of tenets that has a different practical impact than that described by the institution, or if the organization denies that it controls the institution, this exemption will be rescinded."

(b)(6) alleges that GFU's practices are not based on NWYMFC's religious tenets and requests that OCR contact NWYMFC, the alleged controlling organization, to determine whether it controls GFU, and if it does, whether it has religious tenets that require denying (b)(6) request to live with other male friends on campus in a house, apartment or suite.

The Facts Surrounding GFU's Denial of Safe and Appropriate On-Campus Housing to (b)(6) Demonstrate Discrimination Based on Sex, Gender Identity and Transgender Status in Violation of Title IX

(b)(6) is starting his junior year at George Fox University. He is a transgender male, or an FTM (Female to Male).

Transitioning can be an extensive process. In (b)(6) case, he has already taken many steps. To begin, he legally changed his name to (b)(6) through the court system. Additionally, he started gender therapy over a year ago. After being in therapy for several months, he received a letter from his doctor granting him the ability to start testosterone, which he has been taking for over a year. In addition, (b)(6) presents as a male and only goes by male pronouns such as he, his, him etc.

Moreover, on March 20, 2014, (b)(6) started the process necessary to complete his legal gender change. This included filling out the forms, obtaining a letter from his doctor, signing in front of a notary, and posting his legal gender change request in public at the Multnomah County Courthouse. (b)(6) then appeared before a judge, who, on April 11, 2014, issued a court order affirming his gender change. See Exhibit E. (b)(6) has also changed his name and sex/gender marker on his Oregon Driver's license and with the Social Security Administration.

On December 26, 2013, while (b)(6) was a sophomore, (b)(6) emailed (b)(6); (b)(7)(C) Associate Dean of Students, to tell him that he was going to live with other males for the next academic year. At the time, (b)(6) did not think that the university would have a problem with him living on campus with other men. He asked (b)(6); (b)(7)(C) if he needed to start thinking about changing his gender markers on his documents before the housing selection process began or whether he could live with other men without needing to make those changes. On January 11, 2014, (b)(6); (b)(7)(C) responded that he had a number of thoughts but nothing coherent yet, remarking that keeping (b)(6) with his current roommates would work because he was physiologically female at the time.

On January 15, 2014, (b)(6) met with (b)(6); (b)(7)(C) and told him that he wanted to live with other males and asked what he would need to do to make that happen. (b)(6); (b)(7)(C) did not make a decision at this time. He mentioned that (b)(6); (b)(7)(C) Dean of Community Life,

was in the process of putting together a policy related to GFU transgender students and housing and that he would get back to (b)(6) about his situation. However, (b)(6); (b)(7)(C) did not follow up with (b)(6) so (b)(6) took it upon himself to contact him again. On January 23, 2014, (b)(6) emailed (b)(6); (b)(7)(C) to inform him that he was going to move forward with his gender marker change so that it could be done by housing selection time. (b)(6) also told him that he spoke with his future roommates and that they were all comfortable living with him.

On February 4, 2014, (b)(6); (b)(7)(C) emailed (b)(6) to say that the GFU transgender housing policy was not complete and that he wanted to meet with (b)(6) and (b)(6); (b)(7)(C) to discuss his situation. The meeting, originally set for February 7, 2014, was cancelled due to weather, and was rescheduled for February 12, 2014. Mr. (b)(6); (b)(7)(C) was unable to make the new date, so (b)(6) only met with (b)(6); (b)(7)(C) at that time.

On February 12, 2014, (b)(6) met with (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) told (b)(6) that his initial decision was that (b)(6) would have to live with female students next year. In response, (b)(6) told (b)(6); (b)(7)(C) his story and explained why it was so important for him to live with other males. (b)(6); (b)(7)(C) told him that he would present (b)(6) request to (b)(6); (b)(7)(C) Vice President for Student Life, and four members of the Board of Trustees. Then, on February 14, (b)(6); (b)(7)(C) met with (b)(6) and (b)(6) mother. They shared their stories and both asked that (b)(6) be able to live with his male friends during the next academic year.

On February 18, 2014, (b)(6) mother sent (b)(6); (b)(7)(C) an email stating in part, "I am a parent with serious concerns regarding the mental health and well being of my son.... I understand that (b)(6) lives as a male and is asking Campus Housing to be allowed to live with other males.... Conditions such as transgender are not a choice... [A]s a concerned parent I am asking, on (b)(6); (b)(7)(C) behalf, that serious consideration be given, at this time, to addressing (b)(6); (b)(7)(C) situation on an individual, case by case, basis related to his overall mental health and well being needs."

On February 18, (b)(6); (b)(7)(C) acknowledged (b)(6) mother's email and indicated that he would communicate her concerns to the Board of Trustees committee that was considering a transgender housing policy for GFU.

According to (b)(6); (b)(7)(C) the GFU Board of Trustees met on February 20 and decided that more conversation was needed before they could implement a policy of housing students by their "biological birth sex." See Exhibit F.

On February 24, 2014, (b)(6); (b)(7)(C) sent (b)(6) a letter informing him of the university's decision with respect to his housing (Exhibit F). (b)(6); (b)(7)(C) informed (b)(6) that he decided to "conditionally approve" (b)(6) request but only to live *off-campus* with male students for the 2014-2015 school year. He made clear, however, that this arrangement "may only be off-campus and is only a one-year exception; and it may change depending on the Board's development of a policy."

(b)(6); (b)(7)(C) also stated that (b)(6) could live on-campus in a single room, which he subsequently said he is holding for (b)(6) should he choose this "option." However, as even (b)(6); (b)(7)(C) acknowledged in his letter, (b)(6) and (b)(6); (b)(7)(C) "agreed that this was not a good

option,” because of (b)(6); mental health and related concerns. For (b)(6); it is actually not an option at all, as it would harm him psychologically and socially and make it impossible for him to receive a safe and quality educational experience at George Fox.

Additionally, even to live off-campus with other male students, Mr. (b)(6); (b) informed (b)(6); that he would need to take the following steps:

1. Legally change his name and gender, and provide copies of the following to (b)(6); (b) by June 1, 2014:
 - Driver’s License
 - Birth Certificate
 - Social Security Card
2. The male students he would live with must meet the criteria and be approved to live off-campus in 2014-15.
3. (b)(6); (b)(7(C)) would need to meet with (b)(6); roommates and affirm that they understand his story, are willing to live with him and that they have informed their parents about this living arrangement.
4. They would need to abide by all GFU lifestyle standards and policies.

The only item that (b)(6); (b)(7(C)) indicated he would reconsider is whether June 1, 2014 was a realistic timeframe in which (b)(6); could accomplish everything required by #1 above. (b)(6); met with (b)(6); (b)(7(C)) regarding this letter on February 25, 2014. After a couple weeks, (b)(6); asked me to represent him in relation to his housing situation.

(b)(6); (b)(7(C)) had also asked (b)(6); for the names of his future roommates so that he could ask them what they knew about (b)(6); situation and to allow them “to freely tell (b)(6); (b)(7(C)) about their desire to live with (b)(6); (b) (b)(6); sent (b)(6); (b)(7(C)) their names the following day. One of the future roommates (b)(6); had indicated to (b)(6); (b)(7(C)) also contacted (b)(6); (b)(7(C)) on March 11 and asked when he could speak with him regarding their housing situation with (b)(6); next year. On March 17, without informing (b)(6); or me, (b)(6); (b)(7(C)) rather than allowing (b)(6); future roommates to have a meeting in which they could “freely tell him about their desire to live with (b)(6); (b) (b)(6); (b)(7(C))” told (b)(6); future roommate that he should sign up through on-campus housing without (b)(6);

On March 18, I asked (b)(6); (b)(7(C)) if there was an internal grievance procedure, appeal or due process hearing (b)(6); could utilize to contest the university’s February 24, 2014 decision. On March 20, (b)(6); (b)(7(C)) responded to me discussing the history of the situation and informing me that (b)(6); would be able to appeal his decision but that he could only do so in writing by 5:00 p.m. on Thursday, March 27.

Through correspondence with me and meetings with (b)(6); and (b)(6); mother, (b) (b)(6); (b) eventually removed two requirements for the off-campus option, namely, the requirement that (b)(6); essentially “out” himself to his roommates’ parents and the requirement that he change his birth certificate (since (b)(6); was born in one of the few states where this is currently impossible to do).

Prior to the March 20 GFU housing deposit deadline, (b)(6) paid his housing deposit. Prior to the March 21 housing deadline, (b)(6) secured the agreement of all his future roommates to live with him. One of these roommates made a request to (b)(6); (b)(7)(C) that (b)(6) be able to live on-campus with him and the other male students he had previously indicated. (b)(6); (b)(7)(C) denied this request.

On March 27, (b)(6) appealed the denial of his on-campus housing request to President Baker. On March 31, President Baker requested a religious exemption from the requirements of Title IX as applied to transgender students. On April 3, President Baker denied (b)(6) appeal. On May 23, 2014 the Department of Education granted GFU a limited religious exemption to Title IX as applied to transgender students. On July 1, 2014, OCR closed (b)(6) original complaint on the basis of the May 23, 2014 religious exemption.

I have been encouraged by OCR staff to re-file (b)(6) complaint as a new complaint rather than as an appeal to the July 1, 2014 closure of his complaint. Consequently, I am filing this as a new complaint with OCR. To the extent OCR needs to consider this an appeal to (b)(6) original complaint, it may do so. However, (b)(6) and I would prefer OCR to treat this as a new complaint. (b)(6) remains enrolled at George Fox University and continues to be excluded from the on-campus housing options available to other male students.

Exhibit A

Apr. 2. 2014 10:58AM

No. 2290 P. 1/3



GEORGE FOX
UNIVERSITY

414 N. Meridian St., Newberg, OR 97132
503.538.9383

March 31, 2014

Catherine Lhamon, Assistant Secretary
U.S. Department of Education, Office for Civil Rights
Lyndon Baines Johnson Department of Education Building
400 Maryland Avenue, SW
Washington, DC 20202-1100

Re: George Fox University's Request for Title IX Religious Exemption

Dear Ms. Lhamon:

I have become aware that the Departments of Education and Justice recently interpreted Title IX's ban on sex discrimination in education to include discrimination based on gender identity.¹ As President of George Fox University, a private, religious liberal arts college in Oregon, I hereby request, under 34 C.F.R. §106.12, an exemption for George Fox from this interpretation of Title IX, due to the religious beliefs of our institution.

George Fox University, a Christ-centered community, prepares students spiritually, academically, and professionally to think with clarity, act with integrity, and serve with passion. Since its founding more than a century ago, George Fox has been committed to providing a Christian education – from its early days as Friends Pacific Academy, established in 1885, to the present. Its name honors the founder of the Friends (Quaker) movement and the University is owned by the Northwest Yearly Meeting of Friends (in fact, 4/7 of the Board of Trustees must be Friends).

In its Statement of Faith, the University expresses its belief that, “[i]n love and joy, God creates and sustains the universe, including humanity, male and female, who are made in God’s image.”² The University believes “that God inspired the Bible and has given it to us as the uniquely authoritative, written guide for Christian living and thinking. As illumined by the Holy Spirit, the Scriptures are true and reliable.” These theological beliefs are also embedded in the doctrinal statements of the Northwest Yearly Meeting of Friends.

The University believes that human beings, fashioned by God in His own image, are created male and female (Genesis 1:27). In the New Testament, Jesus confirms the heterosexual creation of human beings: God made them male and female (Matthew 19:4). Like the rest of

¹ Resolution Agreement Between the Arcadia Unified School District, the U.S. Department of Education, Office for Civil Rights, and the U.S. Department of Justice, Civil Rights Division, *available at* <http://www.justice.gov/crt/about/edu/documents/arcadiaagree.pdf>

² George Fox University, *About George Fox- Statement of Faith*, http://www.georgefox.edu/about/mission_vision_values/faith_statement.html (last visited Mar. 17, 2014).

Apr. 2. 2014 10:58AM

No. 2290 P. 2/3

Letter to Ms. Catherine Lhamon
March 31, 2014
Page 2 of 3

God's creation, the sexual differences between man and woman are pronounced "very good" (Genesis 1:31).

This distinction between men and women is also assumed in our lifestyle statement with regard to issues of sexual morality. The statement says that "in regard to sexual morality, we believe that only marriage between a man and a woman is God's intention for the joyful fulfillment of sexual intimacy. This should always be in the context of mutual compassion, love, and fidelity. Sexual behaviors outside of this context are inconsistent with God's teaching. We recognize these principles may conflict with the practice or opinion of some within the larger culture. We are convinced that this is God's design for providing the most loving guidance and practice for individuals and our community."

We affirm the dignity of all human beings. We also separate the value of each person from the behavioral choices one makes. We believe that, as Christians, we are called to treat all people with compassion, and to extend the gospel of repentance, forgiveness, and transformation through Jesus Christ to such persons without reservation. However, in keeping with our biblical beliefs surrounding the morality of such actions, we cannot in good conscience support or encourage an individual to live in conflict with biblical principles.

Based on the resolution recently entered into by the Department and a California school district,³ it appears that the Department is now interpreting Title IX's ban on discrimination in education because of sex to also mean that educational institutions may not "discriminate" on the basis of "gender identity." Specifically, the school district in that dispute was ordered to allow a female student presenting herself as male to use the restroom, locker room, and living accommodations of her choice, and to participate in boys' athletic programs.

We would not be able to make similar accommodations consistent with our religious beliefs. Because of our biblical beliefs regarding gender and sexual morality, our practices might be deemed a violation of this interpretation of Title IX. However, under 20 U.S.C. §1681(a)(3) and 34 C.F.R. §106.12(a), this interpretation does not apply to George Fox: "This part does not apply to an educational institution which is controlled by a religious organization to the extent application of this part would not be consistent with the religious tenets of such organization."

Thus, on behalf of George Fox University, I hereby request an official exemption from compliance with that interpretation of Title IX. George Fox gladly complies with Title IX with respect to granting equal opportunities in educational programs or employment to members of both sexes; our request for exemption is limited to the recent interpretation that "sex" under Title IX also includes gender identity.

³ See *supra* note 1.

Apr 2, 2014 10:58AM

No. 2290 P. 3/3

Letter to Ms. Catherine Lhamon
March 31, 2014
Page 3 of 3

If you require anything further, please do not hesitate to contact me.

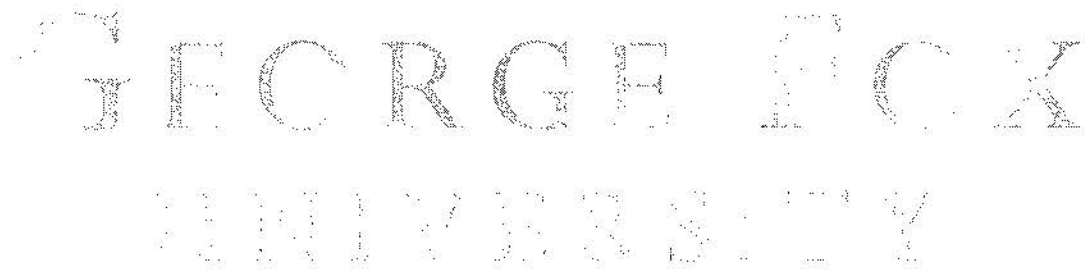
(b)(6); (b)(7)(C)

Dr. Robin Baker
President
George Fox University

cc:

(b)(6); (b)(7)(C)

Exhibit B



Year Seven Self-Evaluation Report

Prepared for:

Northwest Commission on
Colleges and Universities

March 3, 2014

Submitted by:

Kevin Aron, President

Madam M. C. Thompson

Academy of Health Sciences, Inc.

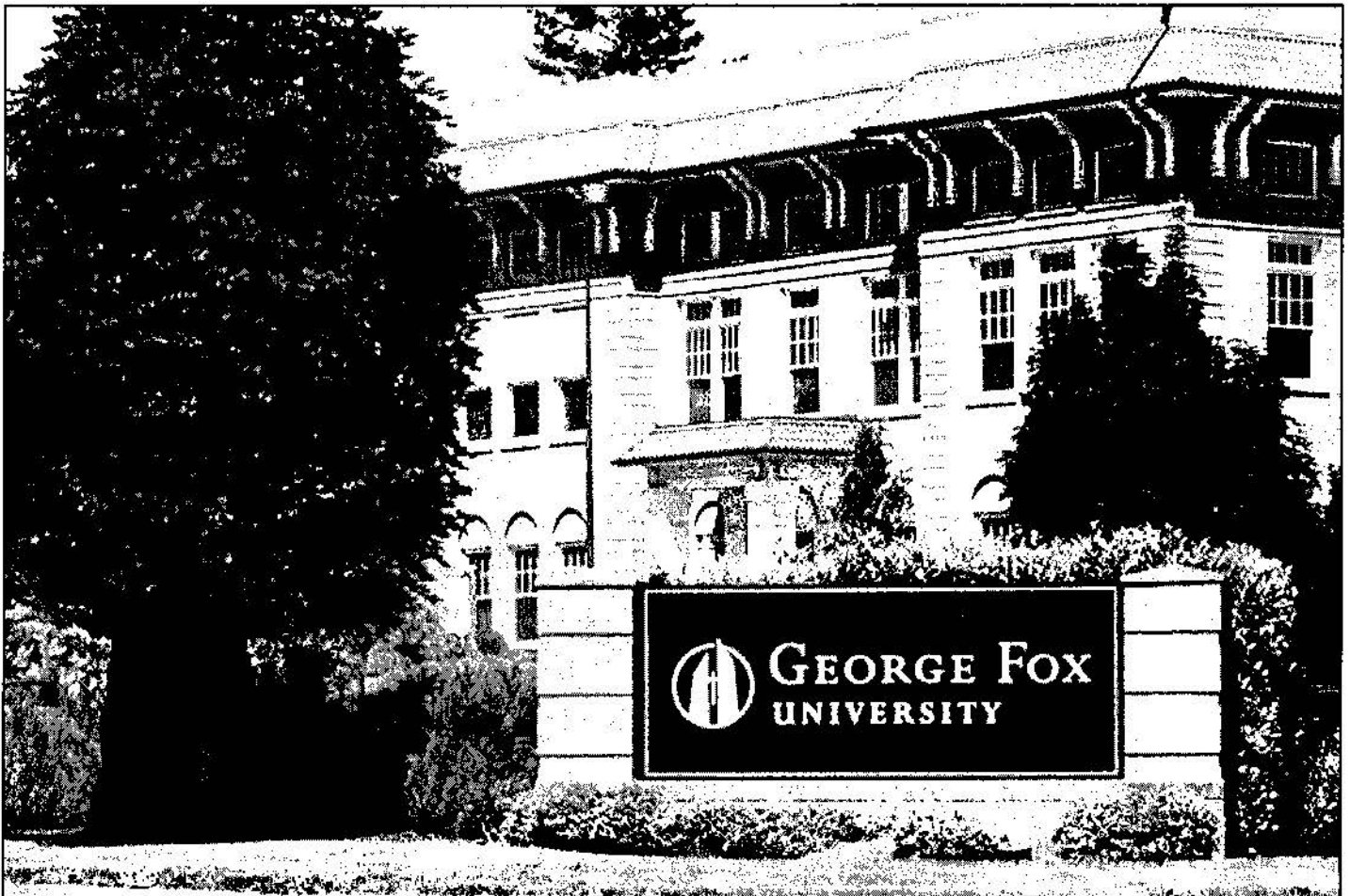


Table of Contents

Institutional Overview 4

 Our history 4

 George Fox University today 4

Preface 6

Institutional updates. 6

 Brief update on institutional changes since the Year Three report. 6

 Responses to Year Three recommendations 6

Standard 1.A: Mission 8

 Definition of mission components 8

 Interpretation of mission fulfillment 9

 Interpretation of an acceptable threshold 11

Standard 1.B Core Themes. 11

 Core theme #1: Excellence in liberal arts foundation 12

 Core theme #2: Excellence in professional preparation 15

 Core theme #3: Christ-centered community 18

 Core theme #4: Local and global engagement 22

Chapter Summary 26

Chapter Two: Resources and Capacity 27

Standard 2.A governance: 2.A.1 – 2.A.30 27

 Institutional governance: 2.A.1 – 2.A.3. 27

 Governing board: 2.A.4 – 2.A.8 28

 Leadership and management: 2.A.9 – 2.A.11 30

 Policies and procedures: 2.A.12 – 2.A.30. 32

Standard 2.B Human Resources 46

Standard 2.C Education resources: 2.C.1 – 2.C.19 51

 Education resources: 2.C.1 – 2.C.8. 51

 Undergraduate programs: 2.C.9 – 2.C.11. 59

 Graduate programs: 2.C.12 – 2.C.15 64

 Continuing education and non-credit programs: 2.C.16 – 2.C.19 69

Standard 2.D Student Support Resources: 2.D.1 – 2.D.14..... 72

Standard 2.E Library and Information Resources: 2.E.1 – 2.E.4..... 83

Standard 2.F Financial Resources: 2.F.1 – 2.F.8. 85

Standard 2.G Physical and Technological Infrastructure: 2.G.1 – 2.G.8. 89

 Physical infrastructure: 2.G.1 – 2.G.4. 89

 Technological infrastructure: 2.G.5 – 2.G.8..... 90

Conclusion..... 93

Chapter Three: Planning and Implementation..... 97

Standard 3.A Institutional Planning: 3.A.1-3.A.5 97

Standard 3.B Core Theme Planning: 3.B.1-3.A.3 101

Chapter Four: Effectiveness and Improvement..... 103

Standard 4.A Assessment: 4.A.1 – 4.A.6..... 103

Standard 4.B Improvement: 4.B.1 – 4.B.2 105

Chapter Five: Mission Fulfillment, Adaptation, and Sustainability 107

Standard 5.A Mission Fulfillment: 5.A.1 – 5.A.2 107

Standard 5.B Adaptation and Sustainability: 5.B.1 – 5.B.3..... 108

Appendices 110

Appendix A:..... 110

 Executive summary of eligibility requirements 4 through 21. 110

Appendix B..... 114

 2013-2014 Support Staff and Administrative FTE 114

List of Tables

Table 1 Primary alignment of mission outcomes..... 9

Table 2 Key core theme #1 objectives that serve as indicators of mission fulfillment..... 10

Table 3 Key core theme #2 objectives that serve as indicators of mission fulfillment..... 10

Table 4 Key core theme #3 objectives that serve as indicators of mission fulfillment..... 10

Table 5 Key core theme #4 objectives that serve as indicators of mission fulfillment..... 11

Table 6 Core theme #1: excellence liberal arts foundation..... 12

Table 7 Core theme #2: excellence in professional preparation 16

Table 8 Core theme #3: Christ-centered community 19

Table 9 Core theme #4: local and global engagement 22

Table 10 Student satisfaction levels with disability services 35

Table 11 GFU athletic team participation 2009-2012..... 37

Table 12 Faculty evaluation schedule..... 50

Table 13 Traditional undergraduate graduates by major: 2006-2011	52
Table 14 Graduate and adult degree program graduates: 2006-2011.....	53
Table 15 General education program goals and student learning outcomes	61
Table 16 Alignment of LEAP ELO with essential learning outcome elements & GFU outcomes.....	63
Table 17 Graduate program information.....	65
Table 18 Graduate program performance requirements.....	67
Table 19: ARC usage data.....	72
Table 20: ASP cohort persistence rates	73
Table 21 ACHA-NCHA survey Serve data	80

List of Figures

Figure 1 Student perceptions of the community accountability process.....	34
Figure 2 Attendance for first-year and senior students at campus events/activities	39
Figure 3 Curriculum approval flowchart	56
Figure 4 Student life programs and services.....	79
Figure 5 NSSE data: level to which GFU experience enhanced understanding of people of other racial and ethnic backgrounds.....	80
Figure 6 Number of students living on campus since 1995	81
Figure 7 Program status in TracDat (2/27/14).....	104
Figure 8 TracDat Example.....	107

Appendices

Appendix A:

Executive summary of eligibility requirements 4 through 21.

#4 Operational Focus and Independence: George Fox University's programs and services are solely concerned with providing students education that leads to post secondary degrees. We offer the following undergraduate and graduate degrees: BA, BS, BSW, BSAT, MA, MAT, MATS, MBA, MDiv, Med, EdS, EdD, DBA, DMin, DMGT and PsyD. The University is structured in ways that allow it to design and deliver undergraduate and graduate education that meet the Commission's standards and eligibility requirements. George Fox was founded as an educational institution and remains so, not operating any other sorts of businesses.

#5 Non-Discrimination: George Fox University is a Christ-centered university. Our Quaker heritage and Christian values and commitments are foremost in guiding our decisions and programs. We respect the dignity of each person and operate in a non-discriminatory way. Our student handbook includes an "anti-discrimination" policy. The policy states:

Discrimination or harassment due to race, color, sex, sexual orientation, marital status, religion, creed, age, national origin, citizenship status, workers' compensation status, physical or mental disability, veteran status, or any other status protected under applicable local, state, or federal law; or any other distinguishing characteristic protected by non-discrimination law, is prohibited.

#6 Institutional Integrity: George Fox University is a Christ-centered university, and its Christian mission and Quaker heritage guide its interaction with its constituents and with the public. The university operates in an ethical manner consistent with its Christian mission and has policies and procedures in place to protect individual rights.

#7 Governing Board: George Fox University is an independent university founded in 1891 by what has become Northwest Yearly Meeting of Friends Church. A 42-member board governs the university. The Board of Trustees is responsible for monitoring the quality and integrity of the institution to ensure that the university's mission and associated core themes are being achieved. The general superintendent of Northwest Yearly Meeting of Friends and the chair of the board of regents of George Fox Evangelical Seminary also serve on the board. The university employs no member of the board, nor has any financial interest.

#8 Chief Executive Officer: President Robin Baker serves as the Chief Executive Officer of the university and the official adviser to the Chair of the Board of Trustees and its Executive Committee. The president, as educational and administrative head of the university, exercises general superintendence over all the affairs of the institution. The president serves as an ex officio member of the Board without a vote.

#9 Administration: In addition to our Chief Executive Officer, our senior administrative leadership is comprised of the vice presidents team (VP Team). The VP Team provides counsel

Exhibit C



Secretary of State
Corporation Division
255 Capitol Street NE, Suite 151
Salem, OR 97310-1327
Phone: (503)986-2200
www.filinginoregon.com

2014 ANNUAL REPORT
Registry Number: 069130-16
Date of Incorporation: 06/28/1962
Fee: \$50.00
Due Date: 06/28/2014
Type: DOMESTIC NONPROFIT CORPORATION

18

0269
GEORGE FOX UNIVERSITY
FINANCE DEPT
414 N MERIDIAN ST
NEWBERG OR 97132

FILED

JUN 02 2014

Name of Domestic Nonprofit Corporation
GEORGE FOX UNIVERSITY

OREGON
SECRETARY OF STATE

Jurisdiction: OREGON

Nonprofit Type: Public Benefit

The following information is required by statute. Please complete the entire form. If any of the information is incorrect, you can make changes on this form. Failure to submit this Annual Report and fee by the due date may result in inactivation on our records.

Registered Agent

ROBIN E BAKER
414 N MERIDIAN
NEWBERG OR 97132

If the Registered Agent has changed, the new Agent has consented to the appointment. Oregon street address required.

1) Type of Business

2) Principal Place of Business (Str. address,city,state,zip)

414 N MERIDIAN ST
NEWBERG OR 97132

3) Mailing Address (Address,city,state,zip)

FINANCE DEPT
414 N MERIDIAN ST
NEWBERG OR 97132

4) President Name and Address

ROBIN E BAKER
414 N MERIDIAN ST
NEWBERG OR 97132

5) Secretary Name and Address

DAVID WOOLSEY
414 MERIDIAN ST
NEWBERG OR 97132

6) Signature

Cris Banta

8) Date

5-27-14



Make check payable to "Corporation Division" and mail completed form with payment to Corporation Division, 255 Capitol ST NE Suite 151, Salem, OR 97310-1327.

Note: You can also fax to (503) 378-4381. Filing fees may be paid with VISA or MasterCard. Submit the card number and expiration date on a separate page for your protection.

OREGON SECRETARY OF STATE
► Corporation Division

HOME



business information center **business name search** oregon business guide
 referral list business registry/renewal forms/fees notary public
 uniform commercial code uniform commercial code search documents & data services

Business Name Search

[New Search](#) [Printer Friendly](#) **Business Entity Data** 08-28-2014
18:00

Entity ID	Entity Type	Entity Status	Jurisdiction	Created	Expires	Entity Name
069130-16	DNP	ACT	OREGON	06-28-1962	06-28-2015	GEORGE FOX UNIVERSITY
PUBLIC BENEFIT						

[New Search](#) [Printer Friendly](#) **Associated Names**

PPB	PRINCIPAL PLACE OF BUSINESS			
414 N MERIDIAN ST				
NEWBERG	OR	97132		UNITED STATES OF AMERICA

Please click [here](#) for general information about registered agents and service of process.

AGT	REGISTERED AGENT			06-03-2008
ROBIN	E	BAKER		
414 N MERIDIAN				
NEWBERG	OR	97132		UNITED STATES OF AMERICA

MAL	MAILING ADDRESS			
FINANCE DEPT				
414 N MERIDIAN ST				
NEWBERG	OR	97132		UNITED STATES OF AMERICA

PRE	PRESIDENT			
ROBIN	E	BAKER		
414 N MERIDIAN ST				

NEWBERG	OR	97132		UNITED STATES OF AMERICA
SEC	SECRETARY			
DAVID		WOOLSEY		
414 MERIDIAN ST				
NEWBERG	OR	97132		UNITED STATES OF AMERICA

[New Search](#) [Printer Friendly](#) [Name History](#)

	Name Type	Name Status		
GEORGE FOX UNIVERSITY	EN	CUR	06-24-1996	
GEORGE FOX COLLEGE	EN	PRE	06-28-1962	06-24-1996

Please read before ordering Copies.

[New Search](#) [Printer Friendly](#) [Summary History](#)







				Status		
	AMENDED ANNUAL REPORT	06-02-2014		FI		
	AMENDED ANNUAL REPORT	06-26-2013		FI		
	AMENDED ANNUAL REPORT	06-06-2012		FI		
	AMENDED ANNUAL REPORT	06-02-2011		FI		
	AMENDED ANNUAL REPORT	06-03-2010		FI		
	AMENDED ANNUAL REPORT	06-01-2009		FI		
	AMENDED ANNUAL REPORT	06-03-2008		FI	Agent	
	AMNDMT TO ANNUAL RPT/INFO STATEMENT	07-10-2007		FI		
	ANNUAL REPORT	06-18-2007		FI		
	ANNUAL REPORT PAYMENT	05-22-2006	05-19-2006	SYS		
	AMNDMT TO ANNUAL RPT/INFO STATEMENT	05-25-2005		FI		
EXHIBIT T	ANNUAL REPORT	05-23-2005	05-20-	SYS		

Exhibit D

**BYLAWS OF GEORGE FOX UNIVERSITY
AS AMENDED BY BOARD OF TRUSTEES**

**ARTICLE I
IDENTIFICATION**

Section 1. Name

The name of this corporation is George Fox University (hereinafter referred to as the "University").

Hist: Amended 2/96

Section 2. Corporate Seal



The Corporate seal of the University shall be circular in form and mounted upon a paper. About the periphery of the seal shall appear the words, "GEORGE FOX UNIVERSITY."

Hist: Amended 2/96

Section 3. Fiscal Year

The fiscal year of the University shall begin on the first day of July in each year and end on the last day of June in the following year.

Hist: Adopted 12/80; amended 2/94; amended 2/96

**ARTICLE II
PURPOSES OF THE BOARD OF TRUSTEES**

The Board of Directors (hereinafter referred to as the "Board of Trustees" or the "Board") shall have the following purposes:

1. Assure that the University has a clear sense of its Christ-centered mission and a strategic plan to maintain it
 - a. Take responsibility to develop the mission and plan
 - b. Monitor implementation of the mission and plan.
2. Appoint, support, and monitor the President
 - a. Assure the financial integrity of the University
 - b. Assure enrollment goals
 - c. Assure the quality of all university programs
3. Be responsible for Board development
 - a. Board orientation
 - b. On-going Board education
 - c. Recruitment of new Board members
 - d. Train future Board leadership
 - e. Regularly evaluate the Board

Hist: Amended 3/04

ARTICLE III POWERS OF THE BOARD OF TRUSTEES

The Board shall have the power to manage the property and business of the University and shall have the power to carry out any other functions that are authorized under Oregon's Nonprofit Corporation Law or are permitted by the Articles of Incorporation, or these Bylaws, except insofar as such powers may be limited by law. These powers shall include, but not be limited to the following:

- a. Appoint or remove the Officers of the University, including the President of the University, the Vice President for Financial Affairs and Treasurer of the University, and the President's other immediate subordinates in accordance with these Bylaws. The power to appoint or remove the Vice President for Financial Affairs and Treasurer of the University and the President's other immediate subordinates may, in the discretion of the Board, be delegated to the President of the University;
- b. Award Academic Degrees upon recommendation of the faculty and of the Academic Affairs Committee of the Board; award honorary degrees upon recommendation of the Executive Committee of the Board;
- c. Establish and review the educational programs of the University and establish the academic standards to be observed by the University;
- d. Establish annually the budget of the University, which shall be submitted to it upon recommendation of the Property and Finance Committee;
- e. Establish the salaries of the President, professors and other administrators and employees of the University;

- f. Authorize the construction of new buildings and major renovations of existing buildings;
- g. Authorize the sale and purchase of land, buildings, or major equipment for the use of the University;
- h. Institute and promote major fund raising efforts of the University;
- i. Authorize any changes in tuition and fees within the University;
- j. Authorize Officers or agents of the University to accept gifts for the University;
- k. Authorize the incurring of debts by the University and securing thereof by mortgage and pledge of real and personal property, tangible and intangible;
- l. Retain custody of the books, records, buildings and other property of the University;
- m. Prescribe the discipline to be observed in the University and establish the spiritual and social standards to be observed by the entire University community.

Hist: Adopted 12/80; amended 12/83; amended 2/96; amended 3/04

ARTICLE IV MEMBERSHIP OF THE BOARD

Section 1. Composition of the Board

- a. The Board of Trustees shall consist of not more than forty-two members, and ex officio, the President of the University, the General Superintendent of Northwest Yearly Meeting of Friends Church (hereinafter also referred to as "NWYMFC"), and the Chair of the Board of Regents of George Fox Evangelical Seminary.
- b. At least four-sevenths of the members of the Board shall be members of good standing of the Friends Church and of these, at least two-thirds shall be members of NWYMFC.
- c. No person shall be eligible for election prior to attaining the age of 18 years, nor shall any Trustee be elected to serve a term commencing after the Trustee has attained the age of 75 years.
- d. A Trustee shall become an Honorary Trustee at the expiration of the term of office after reaching age 75, if at that time the Trustee has served for nine years or more. Honorary Trustees shall be entitled to receive notices of all meetings of the Board, to attend and speak at all such meetings, to receive minutes of all meetings of the Board and Executive Committee, and to be members of all committees except the Executive Committee. They shall have the power to vote in meetings of any committee on which they may serve, but

shall not have voting powers in meetings of the Board of Trustees. An Honorary Trustee shall not be counted as a member of the Board of Trustees for any purpose.

- e. The General Superintendent of NWYMFC and the Chair of the Board of Regents of George Fox Evangelical Seminary shall be voting members of the Board and any committees on which they serve. They shall be counted as the forty-third and forty-fourth members of the Board for purposes of voting, but shall not be counted among the forty-two members of the Board when computing the number of Friends on the Board. The President of the University shall be an ex officio member of the Board without power to vote and shall not be counted as a member of the Board or any committee for any purpose.
- f. No person directly employed by the University, with the exception of the President of the University, shall serve on the Board during such employment.

Hist: Amended 2/96; amended 3/04

Section 2. Election

- a. At each annual meeting of NWYMFC, not more than fourteen trustees shall be elected for a three-year term by NWYMFC. Of the not more than fourteen members of the board to be elected annually, not more than eleven shall be nominated by the Board of the University, not more than two by the Alumni Association of the University, and not more than one by the George Fox Evangelical Seminary Board of Regents, all after having been reviewed and approved by the Committee on Trustees. All nominations to fill vacancies shall be approved by the NWYMFC.
- b. Trustees shall serve for three-year terms commencing September 1 of the year of appointment and shall serve until their successors are elected and qualified and may succeed themselves in office.
- c. Any member of the Board of Trustees may be removed from office, for cause, by NWYMFC.

Hist: Adopted 12/80; amended 5/85; amended 2/94; amended 2/96; amended 3/04

ARTICLE V MEETINGS OF THE BOARD

Section 1. Regular and Special Meetings

- a. Regular meetings of the Board shall be held annually the third Saturday of October (sometimes referred to herein as the "annual Meeting"), and the second Saturday in March (sometimes referred to herein as the "Semiannual Meeting") or on such other date and at such other time as set forth in written notice given to each board member. The

Board may provide, by resolution, the time and place, either within or without the State of Oregon, for the holding of additional regular meetings without other notice than the resolution.

- b. Special meetings of the Board of Trustees may be called at any time by the chair, upon ten (10) days notice. Notice of any special meeting shall be in writing and may be personally delivered, sent by facsimile, or by electronic mail, or mailed by first class mail. The notice is deemed to be properly given on the date it is actually delivered or sent by facsimile or electronic mail, or if mailed, when deposited in the United States mail, addressed to the trustee. The notice shall specify the purpose of the meeting, and no business shall be transacted at such meeting that does not relate to the purposes stated.
- c. Whenever notice is required to be given under the provisions of statutes or of the Articles of Incorporation or of these Bylaws, a waiver thereof in writing signed by the persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto. Attendance at any meeting by a Trustee shall be conclusively deemed a waiver of notice of that meeting unless objection be made thereto at such meeting.
- d. A majority of the Trustees shall be necessary and sufficient to constitute a quorum for the transaction of business, and the act of a majority of the Trustees present and voting at a duly called meeting of the Board or any committee shall be the act of the Board of Trustees or that committee, except as may be provided by statute or by the Articles of Incorporation, or by these Bylaws.
- e. All regular and special meetings of the Board shall be held at the University unless otherwise indicated in the authorized notice.

Hist: Amended 2/96; amended 9/97; amended 2/01; amended 3/04

Section 2. Action Without a Meeting

Any action required or permitted to be taken by the Board of Trustees or a committee may be taken without a meeting if all the trustees or committee members take the action, each one signs a written consent describing the action taken, and the consents are filed with the records of the corporation. Action taken by consent is effective when the last trustee or committee member signs the consent, unless the consent specifies a different effective date. A signed consent has the effect of a meeting vote and may be so described in any document.

Hist: Adopted 12/80; amended 5/85; amended 4/87; amended 2/94; amended 2/01

ARTICLE VI STATEMENT OF FAITH

All nominees for Trustees shall be in harmony with the Constitution and Discipline of NWYMFC and its statement of faith, in essence as follows:

- a. The Trinity. We believe in one eternal God, the source and goal of life, who exists as three persons in the Trinity – the Father, the Son, and the Holy Spirit. In love and joy, God creates and sustains the universe, including humanity, male and female, who are made in God’s image.
- b. God the Father. We believe in God the Father Almighty, whose love is the foundation of salvation and righteous judgment, and who calls us into covenant relationship with God and with one another.
- c. God the Son. We believe in Jesus Christ, the Word, who is fully God and fully human. He came show us God and perfect humanity, and, through his life, death, and resurrection, to reconcile us to God. He is now actively present with us as Savior, Teacher, Lord, Healer, and Friend.
- d. God the Holy Spirit. We believe in the Holy Spirit, who breathed God’s message into the prophets and apostles, opens our eyes to God’s Truth in Jesus Christ, empowers us for holy living, and carries on in us the work of salvation.
- e. Salvation. We believe that salvation comes through Jesus Christ alone, to whom we must respond with repentance, faith, and obedience. Through Christ we come into a right relationship with God, our sins are forgiven, and we receive eternal life.
- f. The Bible. We believe that God inspired the Bible and has given it to us as the uniquely authoritative, written guide for Christian living and thinking. As illuminated by the Holy Spirit, the Scriptures are true and reliable. They point us to God, guide our lives, and nurture us toward spiritual maturity.
- g. The Christian Life. We believe that God has called us to be and to make disciples of Jesus Christ to be God’s agents of love and reconciliation in the world. In keeping with the teaching of Jesus, we work to oppose violence and war, and we seek peace and justice in human relationships and social structures.
- h. The Church. We believe in the Church as the people of God, composed of all who believe in Jesus Christ, who support and equip each other through worship, teaching, and accountability, who model God’s loving community, and who proclaim the gospel to the world.
- i. Christian Worship. We believe Christ is present as we gather in His name, seeking to worship in spirit and in truth. All believers are joined in the one Body of Christ, are baptized by the Spirit, and live in Christ’s abiding presence. Christian baptism and communion are spiritual realities, and, as Christians from many faith traditions, we celebrate these in different ways.
- j. The Future. We believe in the personal return of Jesus Christ, in the resurrection of the dead, in God’s judgment of all persons with perfect justice and mercy, and in eternal

reward and punishment. Ultimately, Christ's Kingdom will be victorious over all evil, and the faithful will reign with him in eternal life.

Hist: Adopted 12/80; amended 6/89; amended 9/00; amended 3/04

ARTICLE VII OFFICERS OF THE BOARD

Section 1. Officers of the Board of Trustees

The Officers shall be the Chair, Vice Chair, and Secretary of the Board of Trustees. The Board may appoint an Assistant Secretary who is not a member of the Board, to assist the Secretary. All Officers shall be appointed by the Trustees.

Hist: Amended 3/04

Section 2. Election of Officers

- a. At the Annual meeting, the Board shall elect by ballot from the Committee on Trustees' recommendations or from nominations from the floor, a Chair, Vice Chair, and Secretary to serve as officers of the Board for one year or until their successors shall have been elected.
- b. The Chair of the Board shall serve no more than five (5) consecutive years in office. Other officers shall serve such terms as may be determined by the Board of Trustees.
- c. In the event of a vacancy in the office of the President, the Board shall appoint a special Presidential Search Committee to submit nominations of candidates for that office.
- d. A vacancy in any of the offices of the Board may be filled at any meeting of the Board of Trustees.

Hist: Amended 3/04

Section 3. Powers and Duties of the Chair of the Board of Trustees

The Chair of the Board shall:

- a. Preside at all meetings of the Board of Trustees; have a right to vote on all questions; appoint to all committees the members who are not appointed by the Board of Trustees; and have such other powers and duties as the Board from time to time may prescribe.
- b. Act as agent of the University to sign on behalf of the University instruments authorized by the Board, if the signature of the Chair is required by the Board or outside regulatory authorities.

- c. Maintain cooperation between the President of the University and the Board.
- d. Serve as Chair of the Executive Committee and be ex officio member of all committees.

Hist: Amended 2/96; amended 3/04

Section 4. Powers and Duties of the Vice Chair

- a. In the absence of the Chair, the Vice Chair shall perform the duties of the Chair.
- b. The Vice Chair also shall perform such other duties as the Chair shall assign.

Section 5. Powers and Duties of the Secretary

The Secretary shall keep a full and complete record of all proceedings of the Board, shall send promptly to each Board member a copy of the minutes of each meeting of the Board, and shall give notice of meetings to be held or order the same to be done. The Assistant Secretary, if named, is empowered to sign any and all documents requiring the signature of the Secretary if the Secretary is not available to provide such signature.

Hist: Adopted 12/80; amended 2/94; amended 3/04

**ARTICLE VIII
COMMITTEES OF THE BOARD**

Section 1. Organization of Committees

- a. The Board shall establish the following standing committees:
 - 1. Program and Personnel Committee
 - 2. External Affairs Committee
 - 3. Property and Finance Committee
 - 4. Committee on Trustees
 - 5. Executive Committee
- b. The Chair and members of all standing committees shall be members of the Board (including Honorary Trustees) in order to be eligible.
- c. Each standing committee shall consist of a Chair, at least three elected members, and ex officio the President of the University and the Chair of the Board. A record of the actions of each committee shall be kept and reported to the Board for approval at its next regular meeting. Proposed action involving changes of policy shall receive approval by the Board prior to implementation. Each standing committee may establish one or more subcommittees.

- d. For all standing committees, a quorum shall consist of a majority of the members.
- e. The Board of Trustees may at any time establish or discontinue any standing committee for such time as may be determined; the duties of any committee so discontinued shall be performed during such discontinuance by the Executive Committee.
- f. The President of the University may appoint a member of the administrative staff to serve as a liaison between a committee and the office of the President. Such liaison person shall assist the committee in carrying out of its duties.
- g. All standing committees shall meet at least two times annually.
- h. There may be such special or ad hoc committees as the Board of Trustees may from time to time establish for the discharge of particular duties. The Chair of the Board shall appoint special or ad hoc committees and shall inform them of their charges and terms of service. When the Board deems it appropriate, non-trustees may be appointed as members of special or ad hoc committees.

Hist: Amended 2/96; amended 3/04

Section 2. Powers and Duties of the Program and Personnel Committee (“PPC”)

- a. The PPC shall have fifteen members. It will monitor and oversee all university programs and the personnel that provide these programs..
- b. The PPC will approve all new academic programs for recommendation to the Board of Trustees.
- c. PPC will approve all recommendations for faculty promotion and tenure.
 - 1. A sub-group of not less than 4 committee members will interview each candidate for faculty tenure for recommendation to PPC.
 - 2. Recommendations for faculty promotion in rank will be received with written documentation.
- d. The PPC will monitor the university’s lifestyle requirements and receive recommendations for change.
- e. All university programs (academic and student life) will be reviewed at least every 5 years for quality and “fit” with the university mission. Issues of program size, adequacy of financial support, program expenses, and effectiveness will be considered in the review.
- f. PPC will seek to advance the racial and ethnic diversity of the University community and will supervise the implementation of the Blueprint for Diversity.

- g. PPC will monitor the spiritual, social, health and athletic life of the student body.
- h. PPC will seek to advance the religious life of the University community, keeping in view the global integration of Christ-centered faith, learning and service.
- i. PPC will monitor the effectiveness of Institutional Technology (IT), intercollegiate athletics, and Tilikum.

Hist: Amended 2/96; amended 3/04

Section 3. Powers and Duties of the External Affairs Committee (“EAC”)

- a. The EAC shall have fifteen members, and will focus its attention on the external constituencies of the University, including marketing and positioning the University.
- b. The EAC will monitor and oversee enrollment, including
 1. Approving enrollment goals for traditional undergraduate, Department of Professional Studies, and graduate departments.
 2. Establishing and monitoring strategies for achieving enrollment goals.
- c. The EAC will consider and recommend to the Board requests for capital improvements, including new buildings, equipment and capital campaigns.
- d. EAC will monitor and oversee all advancement functions of the University, including fundraising, planned giving, deferred gifts and trust administration.
- e. The EAC will review and approve the University’s marketing plan annually.
- f. The EAC will review the effectiveness and assure quality of external relations efforts, including University publications, Alumni, church and community relations.

Hist: Amended 2/96; amended 3/04

Section 4. Powers and Duties of the Property and Finance Committee (“PFC”)

- a. The PFC shall consist of ten members. Its primary duty is to monitor and assure the financial integrity of the University.
- b. The PFC will propose to the board a preliminary budget for the following fiscal year at the spring (March) meeting of the Board of Trustees. The final budget will be recommended to the Board for approval at the fall (October) meeting.
- c. The PFC will provide for an annual audit of university finances by an external auditor. A written report of the financial condition of the university will be received and considered as soon as possible after the close of the fiscal year (June 30).

- d. The PFC will consider and recommend to the Board and/or Executive Committee annuities and life-income arrangements.
- e. Not less frequently than every three years the Committee will receive and review a report on the condition of all buildings owned and operated by the University and report to the Board the condition of the same. It shall recommend such changes and improvements as in its judgment should be made to keep the buildings in good condition.
- f. The PFC will establish a group of not less than 5 trustees to invest university funds within the guidelines of the investment policy established by the Board of Trustees.
 - 1. This group may employ investment council and may delegate authority to purchase and sell securities for the university to such investment council, to any university administrator, or to the GFES Board of Regents subject to such limitations as the committee may impose.
 - 2. This group will report to the PFC and the Board of Trustees at each meeting on the George Fox University investment status. It will provide investment information for PFC at PFC's request.
- g. The PFC will monitor and oversee the University's financial aid expense.

Hist: Amended 2/96; amended 3/04

Section 5. Powers and Duties of the Committee on Trustees ("COT")

- a. The COT shall have six members, including the Chair.
- b. The COT will be responsible for recruitment of new board members, board orientation, and evaluation of the board.
- c. COT will develop and maintain
 - 1. Criteria for board membership
 - 2. A board handbook
 - 3. A proper demographic, gender ratio, vocational and ethnic distribution of board members.
- d. Provide in-service board education.
- e. Anticipate future board leadership.
- f. Recommend board appointments and reappointments to the board and to the Northwest Yearly Meeting of Friends.
- g. Evaluate Board Structure every three years.

Hist: Amended 2/96; amended 3/04

Section 6. Powers and Duties of the Executive Committee

- a. The Executive Committee shall be composed of the Chair, Vice Chair, and Secretary of the Board, the Chair of each standing committee, not more than three subcommittee chairs, two members at large, and the Superintendent of the Northwest Yearly Meeting of Friends Church. The Chair of the Board shall be the Chair of the Executive Committee.
- b. The Executive Committee shall monitor the University's adherence to its Christ-centered mission and monitor the University's planning process and implementation of the strategic plan adopted by the Board. It shall develop, in consultation with the President, agendas for meetings of the Board. Between meetings of the Board of Trustees, the Executive Committee shall act on behalf of the Board on all matters, except that it may not take any action inconsistent with a prior act of the Board of Trustees, alter bylaws, locate permanent buildings on tax-exempt property held for university purposes, remove or appoint the President of the University, or take any action that has been reserved by the Board.
- c. The Executive Committee shall meet every other month, or at the call of the Chair of the Board. Special meetings also may be called by the Secretary on the written request of at least three members of the Executive Committee.
- d. The minutes of the meetings of the Executive Committee shall be distributed promptly after each meeting to each member of the Board of Trustees. At each meeting of the Board of Trustees, the proceedings and actions taken by the Executive Committee since the last meeting of the Board shall be reported to the Board.
- e. The Executive Committee shall recommend to the Board persons to receive honorary degrees and faculty members and others to be given emeritus positions. The Executive Committee also shall recommend to the Board persons to be recognized as Honorary Trustees but who do not meet the criteria of age and/or length of service stated in Article II, Section 1, of these Bylaws.

Hist: Adopted 12/80; amended 5/83; amended 5/85; amended 12/92; amended 2/94, amended 2/96; amended 2/98; amended 10/02; amended 3/04

Section 7. Powers and Duties of the George Fox Evangelical Seminary Board of Regents

- a. The George Fox Evangelical Seminary Board of Regents, consisting of not more than thirty-five members, will act in an advisory role to the Board of Trustees of George Fox University. The Board of Regents will advise on the administration of the George Fox Evangelical Seminary endowment fund and those programs and staff that are part of the George Fox Evangelical Seminary curriculum.
- b. The Board of Regents shall serve at the discretion and pleasure of the Board of Trustees of George Fox University. Replacement members and subsequent appointments to the

Board of Regents shall be made by the Board of Trustees of George Fox University upon recommendation by the Board of Regents, with the review and approval of the Committee on Trustees.

Hist: Adopted 2/96; amended 3/04

ARTICLE IX OFFICERS OF THE UNIVERSITY

Section 1. Powers and Duties of the President of the University

- a. The President of the University shall be the Chief Executive Officer of the University and the official adviser to the Chair of the Board of Trustees and its Executive Committee. The President, as educational and administrative head of the University, shall exercise a general superintendence over all the affairs of the institution, and bring such matters to the attention of the Board as are appropriate to keep the Board fully informed to meet its policy-making responsibilities.
- b. The President shall have power, on behalf of the Board, to perform all acts and execute all documents to make effective the actions of the Board or its Executive Committee.
- c. Except as otherwise provided in these bylaws, the President shall be ex officio a member of all committees of the Board, without power to vote.
- d. The President shall make an annual report of the condition of the University to the Board and to NWYMFC.
- e. The President shall issue all faculty contracts after selection has been made using procedures as set forth in the Manual of Operation.
- f. The President shall annually give to the Board a review of any research performed, any papers published, or postgraduate study completed by members of the faculty.
- g. In the event of absence from the campus, the President shall appoint an immediate subordinate to act on his or her behalf. Normally the Provost shall be so designated.

Hist: Amended 2/96; amended 3/04

Section 2. Powers and Duties of the Vice President for Financial Affairs and Treasurer of the University.

- a. The Vice President for Financial Affairs and Treasurer of the University shall be the Chief Financial Officer of the University and one of the President's immediate subordinates. The Vice President for Financial Affairs and Treasurer shall receive and have general charge of all the funds, securities, and valuables of the University, except

the endowment funds, which are held and managed by the Investment Committee of the Board.

- b. The Vice President for Financial Affairs and Treasurer shall payout money only upon the general or special authorization of the Board and/or Executive Committee, said authorization to be recorded in the minutes of the Board or Executive Committee. The Vice President for Financial Affairs and Treasurer shall keep full and complete annual accounting showing all of the assets of the University together with all receipts or disbursement of funds or properties received or paid out during the last preceding year and shall render a report thereof to the Board at each Annual meeting.
- c. The Vice President for Financial Affairs and Treasurer shall give bond or bonds as shall be required by the Board. Such bonds shall be executed in due form with sufficient and responsible securities, it being the intent of these bylaws to provide that the Vice President for Financial Affairs and Treasurer shall at all times give such bonds as shall be complete and unquestionable security for the money under his or her control.
- d. Additional duties and responsibilities of the Vice President for Financial Affairs and Treasurer shall be stated in the Faculty Handbook as specified in Section 4 of this article.

Hist: Amended 2/96; amended 3/04

Section 3. Powers and Duties of Other Officers of the University

The President's other immediate subordinates shall be considered Officers of the University in accordance with Article III(a) of these Bylaws. Duties and powers of these Officers, normally the Provost, the Vice President for Student Affairs and Dean of Students, and the Vice President for Marketing and Advancement but regardless of title, shall be stated in the Faculty Handbook as specified in Section 4 of this article.

Hist: Amended 2/96; amended 3/04

Section 4. Duties of University Personnel

The duties and privileges of the offices, administrators, faculty and employees of the University shall be given in handbooks or Faculty Handbook, edited by the Administration, and subject to the concurrence of the Board.

Hist: Adopted 12/80; amended 12/83; amended 2/94; amended 2/96; amended 3/04

ARTICLE X INDEMNIFICATION

Each Trustee and Officer of the University shall be indemnified by it against all expenses actually and necessarily incurred by such Trustee or Officer in connection with the defense of

any action, suit, or proceeding to which he or she has been made a party by reason of being or having been such Trustee or Officer, except in relation to matters as to which such Trustee or Officer shall be adjudicated in such action, suit, or proceeding to be liable for gross negligence or willful misconduct in the performance of duty.

Hist: Adopted 12/80; amended 2/96; amended 3/04

ARTICLE XI CONFLICTS OF INTEREST

A Trustee shall be considered to have a conflict of interest if: such Trustee has existing or potential financial or other interests which impair or might reasonably appear to impair such member's independent, unbiased judgment in the discharge of responsibilities to the University; or such Trustee is aware that a member of his or her family (which for purposes of this paragraph shall be spouse or child) or any organization in which such Trustee (or member of his or her family) is an officer, director, employee, member, partner, trustee, or controlling stockholder, has such existing or potential financial interests. All Trustees shall disclose to the Board any possible conflict of interest at the earliest practicable time. No Trustee shall vote on any matter, under consideration at a Board or committee meeting, in which such Trustee has a conflict of interest. The minutes of such meeting shall reflect that a disclosure was made and that the Trustee having a conflict of interest abstained from voting. Any Trustee who is uncertain whether he or she has a conflict of interest in any matter may request the Board or Executive Committee to determine whether a conflict of interest exists, and the Board or Executive committee shall resolve the question by majority vote.

Hist: Adopted 12/80; amended 2/96; amended 3/04

ARTICLE XII REVIEW AND AMENDMENT OF BYLAWS

Section 1.

These Bylaws may be changed or amended at any meeting of the Board of Trustees by a two-thirds vote of those present, provided notice of the substance of the proposed amendment is sent to all the Trustees at least ten days before the meeting.

Section 2.

Prior to each Annual meeting of the Board of Trustees, the Executive Committee shall review these Bylaws and suggest any necessary changes thereto.

Section 3.

No change shall be made in these Bylaws affecting the relationship with Northwest

Yearly Meeting of Friends Church without the consent of Northwest Yearly Meeting of Friends Church.

Hist: Adopted 12/80; amended 3/04

**ARTICLE XIII
REVIEW AND AMENDMENT OF BYLAWS**

All former bylaws are hereby repealed.

Hist: Adopted 12/80; amended 2/94; amended 2/96; amended 3/04

Exhibit E

ENTERED
APR 11 2014
IN REGISTER BY KH

FILED
14 APR 11 PM 12:18
4TH JUDICIAL DISTRICT

FORM 4

IN THE CIRCUIT COURT OF THE STATE OF OREGON
For Multnomah County

In the Matter of the Change of Sex of:

Case No. (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)
Your Name - Last, First, Middle

GENERAL JUDGMENT OF SEX CHANGE

Based on the Petition, and the court finding that proper notice to interested parties has been given; that the above-named person has undergone surgical, hormonal, or other treatment appropriate for this person for the purpose of gender transition; that sexual reassignment has been completed; and that no person has shown cause why the requested General Judgment should not be granted,

IT IS HEREBY ORDERED AND ADJUDGED:

The sex of (b)(6); (b)(7)(C) is hereby changed
Name - Last, First, Middle

from [] male to female female to male. Notice of this legal change shall be posted in a public place in Multnomah County as required by law.

[] This person was born in Oregon. The sex on the record of live birth maintained by the State Registrar for the Center for Health Statistics must be changed.

DATED this 11 day of April, 2014.

(b)(6); (b)(7)(C)

Circuit Court Judge

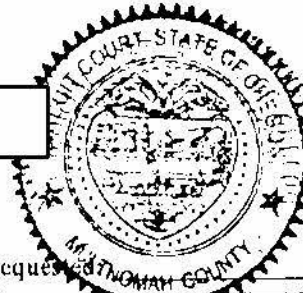
SUSAN M. SVETKEY

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

City, State, Zip

Telephone



CERTIFIED TO BE A TRUE COPY OF THE ORIGINAL.

DATED APR 11 2014

(b)(6); (b)(7)(C)

Clerk of the Court

Number of Certified Copies of the Sex Change Judgment requested

Exhibit F



414 N. Meridian St., Newberg, OR 97132
503.538.8181

February 24, 2014

(b) (b)(6), (b)(7)(C)
George Fox University
Box (b)(6);

Dear (b)(6);

Thanks for your conversations and requests regarding your housing placement as a transgender student. I appreciate the manner in which you approached the situation.

I shared with you that we are limited in our on-campus housing and don't have housing options for married students, families, students who are pregnant and in their third trimester, those who are 23 or older, for some medical aspects that we can't accommodate, and possibly others. In these situations, we allow students to live off-campus.

As we discussed, we were in the process of adding to our housing policy that we would house students by his/her biological birth sex. You said you wanted to live with males next year and I told you I would present this to (b)(6) (b)(7)(C) Vice President for Student Life, and four members of the Board of Trustees. I also reiterated that I was unsure about the outcome and that I could not guarantee any changes.

After a lengthy conversation with the Board of Trustees it was decided that the housing policy needs more time to be developed, and coincide with a theological and philosophical statement for the University. Although this was the case, I was given approval to make a decision on your behalf.

After considering all aspects of your proposal I've decided to conditionally approve your request to live off-campus with male students for the 2014-15 school year. This arrangement may only be off-campus and is only a one-year exception; and it may change depending on the Board's development of a policy.

If you desire to only live on-campus, we may be able to provide a single room for you, although we agreed this was not a good option (though we would certainly do our best to connect you with the larger community if you were in a single room).

Outlined below are the further steps that will need to be completed in order to receive full approval to live off-campus with male students:

1. Legally change your name and gender, and provide copies of the following to me by **June 1, 2014**:
 - Driver's License

- Birth Certificate
 - Social Security Card
2. The male students you will be living with must meet the criteria and be approved to live off-campus in 2014-15. Information can be found at the following link: <http://www.georgefox.edu/offices/student-life/residence-life/offcampus.html>.
 3. I will need to meet with your roommates and affirm they understand your story, are willing to live with you and that they have informed their parents about this living arrangement.
 4. As with all students living on or off-campus, you and your roommates need to abide by all GFU lifestyle standards and policies.

If all the above aspects are satisfactorily completed, then you will receive full approval to proceed with this living arrangement. Is June 1 a realistic due date to accomplish what I've asked above in #1? I'm open to discuss this timeframe, but want to make sure it doesn't get too far into the summer.

I recognize this decision may be controversial to some people in our community. However, I think you've provided good rationale that caused us to reconsider the initial decision. Please let me know if you have any questions or concerns. I'm glad to meet with you at any point if that's helpful. Thank you for the way you approached this request and for your patience in the process.

(b)(6). I'm glad you're at Fox and I want to continue to see you be successful here. Please let me know if there is any other way I can support or assist you in your journey.

Sincerely,

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

Dean of Community Life

CC: Student File

(b)(6) (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

915 2ND AVE., SUITE 3310
SEATTLE, WA 98174-1099

March 9, 2015

REGION X
ALASKA
AMERICAN SAMOA
GUAM
HAWAII
IDAHO
MONTANA
NEVADA
NORTHERN MARIANA
ISLANDS
OREGON
WASHINGTON

Mr. (b) (b)(6); (b)(7)(C)
Davis, Wright, Tremaine, LLP
1300 SW Fifth Avenue, Suite 2400
Portland, Oregon 97201

Re: George Fox University
OCR Reference No. 10142258

Dear Mr. (b)(6); (b)(7)(C)

The Office for Civil Rights (OCR) has completed its evaluation of your complaint No. 10142258 against George Fox University (University), which was received on August 29, 2014. In your complaint, you alleged that the university discriminated against a student, based on sex, by denying the student's request to live with other male students on campus.

Your complaint raises the same allegation of discrimination raised in your previous complaint (No. 10132152). By letter dated July 1, 2014, OCR Seattle administratively closed that complaint based on the granting by OCR's Assistant Secretary of a religious exemption under the Title IX regulations as applied to housing (34 C.F.R. §106.32), comparable facilities such as restrooms and locker rooms (34 C.F.R. §106.33), and athletics (34 C.F.R. §106.41). Accordingly, OCR is closing your new complaint No. 10142258 in accordance with its Case Processing Manual, Section 110(k).

However, in your new complaint No. 10142558, you assert that the University practices about which you complained are not based on the religious tenets of a controlling religious organization and thus are not appropriately exempt from Title IX. Accordingly, although your complaint has been closed, because you have challenged the religious exemption granted to the University, OCR Seattle has forwarded your complaint to the Assistant Secretary, who is responsible for addressing claims for religious exemption under Title IX.

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.

Page 2 - OCR Reference No. 10142258

Thank you for bringing this matter to our attention. If you have any questions, please contact Timothy Sell, senior attorney, by telephone at (206) 607-1639, or by e-mail at timothy.sell@ed.gov.

Sincerely,

(b)(6); (b)(7)(C)

Monique M. Malson
Program Manager

From: OCR
Sent: 8 Dec 2014 06:58:26 -0600
To: (b) (b)(6); (b)(7(C)) Seattle
Subject: RE: Complaint against NNU

Dear Mr. (b)(6); (b)(7)

I am writing in response to your November 12, 2014, email inquiry to the U.S. Department of Education (Department), Office for Civil Rights (OCR) regarding a complaint against Northwest Nazarene University in Nampa, Idaho for the religious exemption it seeks in relating to aspects of Title IX. Assistance was requested regarding this matter. I am pleased to respond.

OCR is responsible for enforcing several Federal civil rights laws that prohibit discrimination on the bases of race, color, national origin, sex, disability and age in programs or activities that receive Federal financial assistance from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II) that prohibits discrimination on the basis of disability by state and local government services whether or not they receive Federal financial assistance. Additionally, OCR enforces the Boy Scouts of America Equal Access Act, which addresses equal access to school facilities for the Boy Scouts and certain other youth groups.

The OCR Seattle Office (Office) is responsible for investigating complaints, conducting compliance reviews and providing technical assistance regarding educational institutions in Idaho. Therefore, I am forwarding your email to OCR's Seattle Office for further review and appropriate handling. If you wish, you may contact that Office regarding your concerns directly at the following:

Office for Civil Rights, Seattle Office
U.S. Department of Education
915 Second Avenue Room 3310
Seattle, WA 98174-1099
Telephone :206-607-1600
Facsimile :206-607-1601
TTY :800-877-8339
Email :OCR.Seattle@ed.gov

I hope the information provided is of assistance.

Sincerely,

Donna D. Spencer-Nelson
Customer Service Team
Office for Civil Rights

From: (b) (b)(6); (b) (b)(6); (b)(7)(C)
Sent: Wednesday, November 12, 2014 11:16 PM
To: OCR
Subject: Complaint against NNU

To whom it may concern-

I would like to formally file a complaint against Northwest Nazarene University in Nampa, Idaho for the religious exemption it seeks in relating to aspects of Title IX.

Northwest Nazarene cannot have an religious opposition to transgender students, staff or faculty, because the Church of the Nazarene, its parent organization, does not have a stance on matters of gender identity.

The statement on 'Human Sexuality' in the Church of the Nazarene Manual only refers to 'homosexuality' and does not mention 'transgender' or 'gender identity' issues. Furthermore, other documents released by the Church of the Nazarene in order clarify the Manual position again, only focus on sexual orientation, and never have addressed the issue of gender identity.

When I asked a General Superintendent, the highest official in the Nazarene Church, about Church policy on transgender members, he said "The grace of God is extended to every person, whoever they are. It is intrinsic in our understanding of the nature of God."

In the Church of the Nazarene policy is not set by the University, but by the denomination. It is not the University that gets to take the lead when issues are silent, but it is the parent denomination.

An exemption is contrary to NNU statement on 'Human Dignity' that it provided to you. Again it only refers to sexual orientation. Items pertaining to issues of being transgender fall under 'gender identity'. How does "adverse actions" on behalf on the University protect the human dignity of the student or staff?

Furthermore, NNU is a part of a sub-group of Nazarenes called Nazarene Youth International (NYI). NYI 's charter clearly states: "NYI is committed to understanding and celebrating differences and diversity in language, color, race, culture, socioeconomic class, and gender. Our differences do not diminish unity but enhance our potential and effectiveness..." An exemption would be contrary to an organization that NNU is party to within the Church of the Nazarene.

You have given the NNU the power to expel anyone who displays non-gender conforming actions, or based upon a mere rumor or suspicion that a student is transgender. You have offered no protection to anyone accused, or course of action for

a student to object and appeal the rulings of the NNU administration. Granting of such an exemption will only continue cause physiological and physical harm to the individuals who are transgender. What course of action does one have if they face "adverse actions" by NNU for being transgender?

Please contact me if you have any additional questions.

Thank you for your time,

(b)(6); (b)(7)(C)

Founder, Nazarene Ally

c. (b)(6); (b)(7)(C)

www.NazareneAlly.com



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

915 2ND AVE., SUITE 3310
SEATTLE, WA 98174-1099

January 22, 2015

REGION X
ALASKA
AMERICAN SAMOA
GUAM
HAWAII
IDAHO
MONTANA
NEVADA
NORTHERN MARIANA
ISLANDS
OREGON
WASHINGTON

VIA E-MAIL ONLY - (b)(6); (b)(7)(C)

Mr. (b)(6); (b)(7)(C)

Re: Northwest Nazarene University
OCR Reference No. 10152031

Dear Mr. (b)(6); (b)(7)(C)

On December 8, 2014, the U.S. Department of Education, Office for Civil Rights (OCR) received a copy of your e-mail, dated November 12, 2014, from OCR’s customer service office. In your e-mail, you stated that you would like to file a formal complaint against the Northwest Nazarene University (university) for seeking a religious exemption to aspects of title IX of the Education amendments of 1972 (Title IX). The purpose of this letter is to let you know that OCR has completed its evaluation of your complaint.

OCR has the authority to enforce Title IX. Title IX prohibits sex discrimination in programs and activities receiving federal financial assistance from the U.S. Department of Education. The university receives federal financial assistance from this Department.

Any religious exemption sought by an institution would necessarily be reviewed by the U.S. Department of Education’s Assistant Secretary for Civil Rights. Any such request would be required to contain a statement by the highest ranking official of the institution, identifying the specific provisions of Title IX that conflict with a specific tenet of the religious organization.

This office is not aware of any religious exemption that has been requested. However, the act of requesting a religious exemption from Title IX is not a potential violation of Title IX. Your complaint did not allege that the University has taken any discriminatory action on the basis of sex that would violate the laws enforced by OCR. Therefore, we are dismissing your complaint as of the date of this letter.

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.

The Department of Education’s mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

Page 2 – OCR Reference No. 10152031

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.

We regret that OCR is unable to assist you with your concerns. If you have any questions regarding this matter, please contact Timothy L. Sell, Senior Attorney, by telephone at (206) 607-1639, or by e-mail at timothy.sell@ed.gov.

Sincerely,

(b)(6); (b)(7)(C)

Monique Malson
Acting Director
Seattle Office



LIBERTY UNIVERSITY
OFFICE *of the* PRESIDENT

January 16, 2014

Via FedEx Delivery

Ms. Robin C. Murphy
Team Leader
Office for Civil Rights, District of Columbia Office
U.S. Department of Education
Lyndon Baines Johnson Building
Room 4E214
400 Maryland Avenue, SW
Washington, DC 20202-1475

Re: OCR Complaint No. 11-14-2014

Dear Ms. Murphy:

This letter continues our discussion that grew out of the November 8, 2013 letter Liberty University received from the District of Columbia Office of Civil Rights (OCR), within the U.S. Department of Education. In the November 8th letter, OCR informed Liberty that a complaint had been filed against the University alleging that Liberty's Student Honor Code discriminates against female students because the policy allows the University to discipline students who have abortions.

As we stated in our December 6th response letter, Liberty has no record of imposing any discipline under the abortion provision of its Honor Code. In addition, Liberty has never viewed the violation, identified in the Honor Code simply as "Abortion," to be applicable only to females, and since learning of the complaint, Liberty has elected to revise the code to clarify that it applies equally to both male and female students. Therefore, Liberty maintains that its Honor Code is nondiscriminatory, and does not treat students differently on the basis of gender.

Nevertheless, the Department has asked Liberty to formally claim a religious exemption under 34 C.F.R. § 106.12, by providing (1) the names the religious entity that oversees the University; (2) a description of the specific religious tenets that the University believes are inconsistent with Title IX; and (3) the provisions of the Title IX regulation from which the University claims an exemption.

Ms. Robin C. Murphy
January 16, 2014
Page 2

In the spirit of continuing the discussion, Liberty is pleased to submit the following information:

1. Liberty University, the largest Christian university in the world, was founded in 1971 as a ministry of the Thomas Road Baptist Church ("TRBC"). The University's Articles of Incorporation provide the TRBC Board of Directors with the power to remove any University trustee the Board finds to be "undermining the mission of the [University] as reflected in the Liberty University Doctrinal Position," with the trustee having notice and opportunity to appear before the TRBC board prior to such determination. (*See Arts. of Inc., art. v, § 7.*) The Doctrinal Position of the University may only be amended by the Board of Trustees with the consent of the Board of Directors of TRBC. This ongoing oversight ensures that TRBC's mission-oriented intentions in founding Liberty University continue to be implemented. Thus, the TRBC Board of Directors maintains this continuing oversight of the University's board of trustees and has the power to make its own interpretations on important issues related to the religious doctrine of the University.
2. Since 1971, the mission of the University has been to develop Christ-centered men and women with the values, knowledge, and skills essential for impacting tomorrow's world. Liberty University is synonymous with "Training Champions for Christ," a motto it continues to proudly proclaim. The teachings of the Christian faith are central to the University's purpose, mission, and the holistic development that it seeks to foster in its students. The University's purpose, as stated in its Articles of Incorporation, is to glorify God by "equipping men and women in higher education in fidelity to the Christian faith expressed through the Holy Scriptures, the orthodox religious and moral foundations of that education being a central and perpetual purpose and mission ..." (*See Arts. Of Inc., art. iii.*) The University's mission statement provides that "[e]ducation as the process of teaching and learning, involves the whole person, by developing the knowledge, values, and skills which enable each individual to change freely. Thus it occurs most effectively when both instructor and student are properly related to God and each other through Christ." (*See Liberty University, Mission Stmt., (Nov. 2, 2010).*)

Ms. Robin C. Murphy
January 16, 2014
Page 3

The University has sought to accomplish its purpose and mission in several ways. First, all subjects, both religious and non-religious, are taught from a biblical worldview. Second, the faculty members at the University must affirm the University's Doctrinal Position before instructing students. Third, undergraduate residential students are required to attend convocation services three times a week, and faculty and staff are required to attend services once a week. Collectively, these efforts ensure that the tenets and teachings of the Christian faith anchor each student's education and growth at Liberty.

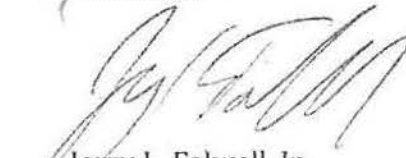
Liberty takes pride in its Christian form of education, and its unwavering commitment to the faith-based principles that it instills in each student that attends the University. Like many of Liberty's disciplinary policies, the policy regarding student abortions reflects a bona fide and sincerely-held religious conviction, maintained in accordance with the established religious tenets upon which Liberty University was founded. The genuine religious and historic Biblical basis for opposing abortion, as derived from Holy Scripture, is clear and widely recognized in the United States, and is held out unequivocally as TRBC doctrine. That doctrine is proclaimed in numerous books, sermons and public statements by the late Rev. Dr. Jerry Falwell, Sr., the founder of both TRBC and the University.

3. As we have repeatedly stated, Liberty believes that its disciplinary policy is nondiscriminatory. However, to the extent that the Department is concerned that Liberty's policy may run counter to the prohibitions on discrimination under Title IX, the University contends that its policy regarding abortion is founded on religious tenets that must be exempt under Title IX as a permissible exercise under the First Amendment. Specifically, in this context, Liberty claims exemption from the provisions of 34 C.F.R. 106.31(b) on the basis that Liberty's policy is founded on and consistent with its religious tenets and those of TRBC.

Ms. Robin C. Murphy
January 16, 2014
Page 4

Please do not hesitate to contact us if you require further information or clarification regarding Liberty's position on this matter.

Sincerely,



Jerry L. Falwell, Jr.
Chancellor and President

cc: Mark Hine, Senior Vice President for Student Affairs
Ronald S. Godwin, Senior Vice President for Academic Affairs and Provost
David Corry, Esq., General Counsel
Kay Bhagat, Esq., Kay.Bhagat@ed.gov
Jane Ehrenfeld, Esq., Jane.Ehrenfeld@ed.gov
Martha Russo, Esq., Martha.Russo@ed.gov



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

April 22, 2014

Jerry L. Falwell, Jr.
Chancellor and President
Liberty University
1971 University Boulevard
Lynchburg, VA 24515

Dear Mr. Falwell:

The purpose of this letter is to respond to your January 16, 2014, letter to the U.S. Department of Education, Office for Civil Rights (OCR), in which you requested a religious exemption for Liberty University (University) of Lynchburg, Virginia from Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681-1688, as it relates to imposing discipline on students who have abortions. Title IX prohibits discrimination on the basis of sex in any education program or activity operated by a recipient of Federal financial assistance. The implementing regulation at 34 C.F.R. § 106.40(b) prohibits a recipient from discriminating against any student on the basis of a student's pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom.

The implementing regulation at 34 C.F.R. § 106.12 provides that Title IX does not apply to educational institutions controlled by religious organizations to the extent that application of Title IX would be inconsistent with the institution's religious tenets. Therefore, such educational institutions are allowed to request an exemption from Title IX by identifying the provisions of Title IX that conflict with a specific tenet of the religious organization. The request must identify the religious organization that controls the educational institution and specify the tenets of that organization and the provisions of the law and/or regulation that conflict with those tenets.

Your request explained that the University was founded "as a ministry of the Thomas Road Baptist Church ('TRBC')" and that the University's Articles of Incorporation state that the University's purpose is "to glorify God by 'equipping men and women in higher education in fidelity to the Christian faith expressed through the Holy Scriptures, the orthodox religious and moral foundation of that education being a central and perpetual purpose and mission.'" You note that faculty members must affirm the University's Doctrinal Position before instructing students, and that faculty, staff, and undergraduate residential students are required to attend convocation services. Your request states that "the policy regarding student abortions reflects a bona fide and sincerely-held religious conviction, maintained in accordance with the established religious tenets upon which Liberty University was founded. The genuine religious and historic Biblical basis for opposing abortion, as derived from Holy Scripture is . . . held out unequivocally as TRBC doctrine."

400 MARYLAND AVE. S.W., WASHINGTON, DC 20202-1100
www.ed.gov

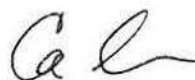
Jerry L. Falwell, Jr. – page 2

You further state that, for these reasons, the University is requesting an exemption from Title IX and its implementing regulation at 34 C.F.R. § 106.31(b) to allow the University to maintain a policy allowing for the discipline of students who have an abortion. Because 34 C.F.R. § 106.40(b) is the provision that would be most applicable to such a policy, we instead interpret your request as a request for a religious exemption from 34 C.F.R. § 106.40(b). Based on the foregoing considerations, the University is exempt from the requirements of 34 C.F.R. § 106.40(b) governing termination of pregnancy.

Please note that this letter should not be construed to grant exemption from the requirements of Title IX and the regulation other than as stated above. In the event that OCR receives a complaint against your institution, we are obligated to determine initially whether the allegations fall within the exemption here granted. Also, in the unlikely event that a complainant alleges that the practices followed by the institution are not based on the religious tenets of the controlling organization, OCR is obligated to contact the controlling organization to verify those tenets. If the organization provides an interpretation of tenets that has a different practical impact than that described by the institution, or if the organization denies that it controls the institution, this exemption will be rescinded.

I hope this letter responds fully to your request. If you have any questions, please do not hesitate to contact me.

Sincerely,



Catherine E. Lhamon
Assistant Secretary for Civil Rights
U.S. Department of Education



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION XV

1350 EUCLID AVENUE, SUITE 325
CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

DEC 06 2013

Dr. Brent Ellis
President
Spring Arbor University
106 E. Main Street
Spring Arbor, Michigan 49283

Re: OCR Docket #15-14-2006

Dear Dr. Ellis:

On November 4, 2013, the U.S. Department of Education (the Department), Office for Civil Rights (OCR), received a complaint filed against Spring Arbor University (the University) alleging sex-based discrimination against a student (the Student). The complaint alleges that the University is discriminating against the Student based on sex by denying him equal access to the University's education program and activities because

(b)(6); (b)(7)(C) Specifically, the Student alleges that the University is treating him differently from other students on the basis of sex (b)(6); (b)(7)(C)
(b)(6); (b)(7)(C)

OCR is responsible for enforcing Title IX, 20 U.S.C. §1681 *et seq.*, and its implementing regulation, 34 C.F.R. Part 106. Title IX prohibits discrimination on the basis of sex in education programs and activities operated by recipients of Federal financial assistance from the Department. As a recipient of such financial assistance, the University is subject to Title IX.

Because OCR has jurisdiction over this allegation and it was filed timely, OCR is opening this complaint for investigation. The complaint allegation raises the issue of whether the University, on the basis of sex, excluded the Student from participation in, denied him the benefits of, or otherwise subjected the Student to discrimination under any education program or activity in violation of the Title IX implementing regulation at 34 C.F.R. § 106.31.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.
www.ed.gov

Page 2 – Dr. Brent Ellis

Please note that opening this matter for investigation in no way implies that OCR has made a determination with regard to the merit of the allegation. 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 allegation in accordance with the provisions of Article III of OCR's *Case Processing Manual*.

Please read the enclosed document entitled *OCR Complaint Processing Procedures*, which includes information about:

- OCR's complaint evaluation and resolution procedures, including the availability of Early Complaint Resolution (ECR), a voluntary process similar to mediation whereby an OCR staff person facilitates communication between the parties in an attempt to resolve complaint allegations;
- regulatory prohibitions against retaliation, intimidation and harassment of persons who file complaints with OCR or participate in an OCR investigation; and
- application of the Freedom of Information Act and the Privacy Act to OCR investigations.

Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

OCR intends to conduct a prompt investigation of this complaint. 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 pertinent to reach a compliance determination. This requirement is incorporated by reference in the Title IX regulation at 34 C.F.R. § 106.71. In addition, pursuant to 34 C.F.R. § 100.6(c) and 34 C.F.R. § 99.31(a)(3)(iii) of the regulation implementing the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, OCR may review personally identifiable records without regard to considerations of privacy or confidentiality.

We are therefore requesting that you forward the following information to us within 15 calendar days of the date stamped at the top of this letter. Where possible, please provide the requested information in electronic format (and bates-labeled if you have that capability); otherwise, please provide the information via hard copy:

1. a copy of the University's ^{(b)(6);} _{(b)(7)(C)} policies, including any policies that relate to ^{(b)(6);} _{(b)(7)(C)};
2. a copy of any policies and procedures the University has adopted to address complaints alleging violations of Title IX;
3. the name(s) and title(s) of the University employee(s) responsible for investigating complaints of sex discrimination and for coordinating the University's compliance with Title IX, and the date this person(s) began

Page 3 – Dr. Brent Ellis

- ...serving in this position. Please include a copy of all notifications to students and employees of the name or title, office address and telephone number of the employee(s), and information about where these notices can be found;
4. a copy of the University's Student Handbook for the (b)(6); (b)(7) academic year;
 5. a copy of any documentation of communications between any University employee and the Student (b)(6); (b)(7)(C) or between University employees related to the Student's (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) including but not limited to all notes and memoranda, e-mails, student records, meeting minutes or notes, and telephone logs;
 6. a copy of the names and titles of all University staff and administrators involved in any decision to place restrictions on the Student's (b)(6); (b)(7)(C) (b)(6); (b)(7)(C);
 7. a copy of the names and titles of all University staff and administrators involved in any decision to limit the Student's (b)(6); (b)(7)(C) (b)(6); (b)(7)(C);
 8. the names of all students during the (b)(6); (b)(7) and (b)(6); (b)(7) academic years who have been (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) (b)(6); (b)(7) and
 9. any other information the University believes may be relevant to OCR's investigation of this complaint.

Thank you for your cooperation in this matter. In addition to the information requested above, we may need to request additional information and interview University staff. If we determine that an on-site visit is necessary, we will contact you to schedule a mutually convenient time for the visit.

Also, please note that this complaint may be appropriate for Early Complaint Resolution (ECR), a voluntary process similar to mediation during which an OCR staff person facilitates communication between the parties in an attempt to resolve complaint allegations. Because this process can save time and resources, allows both parties to decide the terms of their agreement, and can improve the parties' communication, this is often a positive method for quickly resolving issues raised in complaints. Please see the enclosed ECR brochure for additional information about this process. If OCR believes that this complaint is appropriate for ECR, an OCR staff person will contact you to discuss this option.

Page 4 – Dr. Brent Ellis

OCR works to resolve allegations of discrimination promptly and appropriately. Upon receipt of this letter, please notify OCR of the name, address, and telephone number of the person who will serve as the University's contact person during OCR's investigation of this complaint. If you have any questions, you may contact Mr. Ted Wammes, the OCR staff member assigned to investigate this complaint, by telephone at (216) 522-7022 or by e-mail at Ted.Wammes@ed.gov.

Sincerely,

(b)(6)

Brenda Redmond
Acting Team Leader

Enclosures

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION XV



1350 EUCLID AVENUE, SUITE 325
CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

August 6, 2014

Diane Y. Bower, Esq.
Marcoux Allen P.C.
145 South Jackson Street
P.O. Box 787
Jackson, Michigan 49204

Re: OCR Docket #15-14-2006

Dear Ms. Bower:

This letter is to notify you of the disposition of the above-referenced complaint filed with the U.S. Department of Education's Office for Civil Rights (OCR) on November 4, 2013, against Spring Arbor University (the University). The complaint alleged that the University discriminated against a student (the Student) based on sex by denying him equal access to the University's education program and activities because (b)(6); (b)(7)(C). Specifically, the Student alleged that the University treated him differently from other students on the basis of sex (b)(6); (b)(7)(C).

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §1681 *et seq.*, and its implementing regulation, 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in education programs and activities operated by recipients of Federal financial assistance from the U.S. Department of Education. As a recipient of such financial assistance, the University is subject to Title IX. Therefore, initially, OCR had jurisdiction to investigate this complaint.

OCR initiated an investigation into the issue of whether the University, on the basis of sex, excluded a student from participation in, denied him the benefits of, or otherwise subjected him to discrimination under any education programs or activity in violation of the Title IX implementing regulation, at 34 C.F.R. § 106.31. However, before OCR could complete its investigation, the University requested and was granted a religious exemption to 34 C.F.R. § 106.31 and other portions of the Title IX implementing regulation. As the University is now exempt from complying with the portion of the Title IX regulation relevant to this complaint, OCR is closing this complaint effective the date of this letter. The basis for OCR's decision is discussed in more detail below.

The University is a private, non-profit, evangelical Christian university located in Spring Arbor, Michigan. The University is affiliated with the Free Methodist Church (the church), and

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

www.ed.gov

according to the University, it adheres to the church's religious tenets, which include prohibiting premarital sex and homosexual behavior, and a belief that one cannot change his or her birth gender. Pursuant to the University's articles of incorporation, the University's president, as well as the majority of the University's trustees, must be members of the church.

During the winter (b)(6); (b)(7) semester, the Student notified the University that he (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) The Student informed OCR that, in October (b) the University responded by subjecting him to requirements that it did not impose on other students.

Specifically, he said the University (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

OCR spoke with University personnel regarding the Student's allegations. The University did not dispute that it imposed the above-referenced restrictions, and that it treated the Student differently based on (b)(6); (b)(7)(C) Nonresponsive However, it asserted that because it is a religious institution, and because compliance with the Title IX regulation would conflict with its religious tenets, it should be exempted from certain provisions of Title IX on religious grounds.

Pursuant to Title IX and its implementing regulation, at 34 C.F.R. § 106.31(a)-(b), a university may not treat individuals differently on the basis of sex in its programs or activities without a legitimate, nondiscriminatory, nonpretextual reason for doing so. All students, including transgender students and students who do not conform to gender stereotypes, are protected from sex-based discrimination under Title IX. However, the Title IX implementing regulation at 34 C.F.R. § 106.12, provides that Title IX does not apply to educational institutions controlled by religious organizations to the extent application of Title IX would be inconsistent with the institutions' religious tenets. Such educational institutions are allowed to request an exemption from Title IX by identifying the provisions of Title IX that conflict with a specific tenet of the religious organization. The request must identify the religious organization that controls the educational institution and specify the religious tenets of that controlling organization and the provisions of the law and/or regulation that conflict.

By letter dated June 3, 2014, the University requested that OCR's Assistant Secretary grant it religious exemption pursuant to 34 C.F.R. § 106.12, on the basis that compliance with certain provisions of Title IX would conflict with the religious tenets of the University and its controlling organization, the Free Methodist Church. Specifically, the University requested exemption from the following Title IX provisions:

- 34 C.F.R. § 106.31(b)(4) (governing different rules of behavior or sanctions);
- 34 C.F.R. § 106.32 (governing housing);
- 34 C.F.R. § 106.33 (governing comparable facilities such as restrooms and locker rooms);

- 34 C.F.R. § 106.40 (governing different rules based on marital or parental status)
- 34 C.F.R. § 106.41 (governing athletics);
- 34 C.F.R. § 106.51 (governing employment); and
- 34 C.F.R. § 106.57 (governing the consideration of marital or parental status in employment decisions).

In a letter dated June 27, 2014, OCR’s Assistant Secretary granted the University’s request and stated, in relevant part, that the University is exempt from the above provisions “to the extent that they prohibit discrimination based on gender identity or sexual orientation or require a recipient to treat students consistent with their gender identity, and compliance would conflict with the controlling organization’s religious tenets.”

As the Student’s allegations of different treatment based on (b)(6); (b)(7)(C) fall under the Title IX implementing regulation for which OCR granted the University a religious exemption, OCR no longer has jurisdiction over the allegation with respect to the University, and is administratively closing this complaint effective the date of this letter.

If you have any questions, please contact Mr. Ted Wammes, the OCR staff person assigned to this complaint, by telephone at (216) 522-7022, or by e-mail at Ted.Wammes@ed.gov.

Sincerely

(b)(6)

Lisa M. Lane
Supervisory Attorney/Team Leader

FEDERAL FUNDING BY INSTITUTION

College or University	Contracts	Grants	Student Aid	GI Bill	Yellow Bill	Total
Azusa Pacific University		2,758,341.000	162,538,675.000	2,978,281.230	365,233.920	168,640,531.15
Clark's Summit			3,603,427.000	93,221.520		3,696,648.52
Baylor University	817,121.000	9,936,019.000	128,065,014.000	10,522,346.790	1,857,864.990	151,198,365.78
Bob Jones University				521,407.820		521,407.82
Brigham Young University			133,419,439.000	535,482.300		133,954,921.30
Cedarville University			27,042,845.000	1,882,881.980	221,450.410	29,147,177.39
College of the Ozarks			3,394,258.000			3,394,258.00
Colorado Christian University				3,461,627.750	22,294.600	
Dordt University				67,307.690	7,500.000	74,807.69
Eastern University		599,798.000	25,094,012.000	101,031.550		
Fuller Theological Seminary	2,436.000	9,251,715.000		608.400		9,254,759.40
George Fox University	20,000.000	100,000.000	41,804,646.000	959,589.060	70,550.660	42,954,785.72
Indiana Wesleyan University		1,438,382.000	139,033,603.000	1,892,275.410	8,995.800	142,373,256.21
La Sierra University	524,813.000		23,001,213.000	281,670.270	29,343.020	23,837,039.29
Lee University		1,085,750.000	35,023,646.000	925,017.250		
Liberty University	486,165.000		723,210,706.000	43,488,983.380	1,104,302.200	768,290,156.58
Lipscomb University		1,422,315.000	49,028,435.000	2,921,595.610	364,850.580	53,737,196.19
Messiah University		17,838.000	24,679,870.000	703,881.440	112,329.450	25,513,918.89
Moody Bible Institute				284,670.740		
Nyack College						
Oklahoma Baptist University			13,330,470.000	562,667.950	54,774.130	13,947,912.08
Regent University	3,900.000		116,247,245.000	10,482,199.860	101,387.810	126,834,732.67
Seattle Pacific University		581,744.000	32,532,993.000	2,391,320.970	789,086.910	36,295,144.88
Toccoa Falls College			4,617,273.000	147,897.600		4,765,170.60
Union University	90,598.000	40,317,316.000		646,049.310	31,343.030	41,085,306.34
Westmont College			9,532,898.000	98,961.950		9,631,859.95
York College		450,000.000	3,743,158.000	20,830.920		4,213,988.92
					*FEDERAL FUNDING TOTAL:	1,793,363,345.37

Contracts, Grants (including Grants Research), and Student Aid figures were retrieved from datalab.usaspending.gov/colleges-and-universities (last visited August 4, 2021).

GI Bill and Yellow Ribbon figures were retrieved from www.va.gov/gi-bill-comparison-tool/ (last visited August 4, 2021).

* Significant amounts of data were not readily unavailable. Thus, the Federal Funding Total is likely gross underestimate.

U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS



CASE PROCESSING MANUAL
(CPM)

EFFECTIVE DATE: AUGUST 26, 2020

INTRODUCTION

The mission of the Office for Civil Rights (OCR) is to ensure equal access to education and to promote educational excellence throughout the nation through vigorous enforcement of civil rights. The Case Processing Manual (CPM) provides OCR staff and stakeholders with information regarding how OCR promptly and effectively investigates and resolves complaints, compliance reviews, and directed investigations, to ensure compliance with the civil rights laws and regulations enforced by OCR.

Table of Contents

INTRODUCTION	2
ARTICLE I: EVALUATION.....	5
SECTION 101 PRIVACY ACT AND FREEDOM OF INFORMATION ACT	5
SECTION 102 DETERMINE WHETHER THE INFORMATION PROVIDED IS SUBJECT TO FURTHER PROCESSING	5
SECTION 103 ASSIGN A CASE NUMBER AND ESTABLISH A FILE	8
SECTION 104 ACKNOWLEDGE THE COMPLAINT	8
SECTION 105 OBTAIN A CONSENT FORM.....	8
SECTION 106 DETERMINE WHETHER THE ALLEGATIONS ARE TIMELY.....	9
SECTION 107 DETERMINE WHETHER A WAIVER SHOULD BE GRANTED.....	9
SECTION 108 DISMISSAL OF ALLEGATIONS.....	10
SECTION 109 FIRST AMENDMENT PRINCIPLES.....	12
SECTION 110 EXPEDITED RESOLUTION WITH OCR’S RAPID RESOLUTION PROCESS	12
SECTION 111 OPENING THE COMPLAINT ALLEGATION(S) FOR INVESTIGATION	13
ARTICLE II: FACILITATED RESOLUTION BETWEEN THE PARTIES PROCESS	14
SECTION 201 ROLES	14
(a) OCR’s Role.....	14
(b) Role of the Participants	14
SECTION 202 INITIATION AND TERMINATION OF THE FRBP PROCESS.....	14
SECTION 203 CONFIDENTIALITY OF THE FRBP PROCESS	14
SECTION 204 SUCCESSFUL CONCLUSION OF THE FRBP PROCESS.....	15
SECTION 205 BREACH OF FRBP AGREEMENTS.....	15
SECTION 206 INVESTIGATIVE DETERMINATION WHEN FRBP IS NOT ACHIEVED.....	15
ARTICLE III: CASE PLANNING, INVESTIGATION AND RESOLUTION.....	15
SECTION 301 CASE PLANNING.....	15
SECTION 302 RESOLUTION AGREEMENT REACHED DURING AN INVESTIGATION	16
(a) Statement of the Case.....	16
(b) Timeframes and Procedures for Negotiations.....	17
(c) Resolution Letters	17
SECTION 303 INVESTIGATIVE DETERMINATIONS	18
(a) Insufficient Evidence Determination.....	18
(b) Non-Compliance Determination.....	18
(c) Mixed Determination	18
(d) Statement of the Case.....	19
(e) Letter of Finding(s)	19
(f) Timeframes and Procedures for Negotiations.....	19
(g) Negotiation Impasse.....	19
(h) Negotiations On-Going at the End of the 90-day Period	20
SECTION 304 CONTENTS OF RESOLUTION AGREEMENTS	20
SECTION 305 LETTER OF IMPENDING ENFORCEMENT ACTION.....	21
SECTION 306 REFERRALS FROM THE DEPARTMENT OF JUSTICE (DOJ) AND THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC).....	22
SECTION 307 APPEALS.....	22
ARTICLE IV: COMPLIANCE REVIEWS AND DIRECTED INVESTIGATIONS.....	23
SECTION 401 COMPLIANCE REVIEWS	23
SECTION 402 DIRECTED INVESTIGATIONS	23
ARTICLE V: MONITORING RESOLUTION AGREEMENTS	23
SECTION 501 RESPOND TO MONITORING REPORTS AND VERIFY RECIPIENT’S IMPLEMENTATION	23
SECTION 502 IMPLEMENTATION PROBLEMS.....	24
SECTION 503 MODIFICATIONS OF AGREEMENTS	24
(a) Changed Circumstances Affecting Agreements	24
(b) New Compliance Issues	24
(c) Approval of Modifications	24
SECTION 504 CONCLUSION OF MONITORING	24
ARTICLE VI: INITIATION OF ENFORCEMENT ACTION	24
SECTION 601 INITIATE ADMINISTRATIVE PROCEEDINGS WHERE APPROPRIATE	25
SECTION 602 REFER TO DOJ WHERE APPROPRIATE.....	25
SECTION 603 ENFORCEMENT FOR DENIAL OF ACCESS FOR OCR.....	25
SECTION 604 ENFORCEMENT FOR FAILURE TO COMPLY WITH OCR AGREEMENT.....	25
ARTICLE VII: APPENDICES	26
SECTION 701 SPECIAL INTAKE PROCEDURES.....	26
(a) Age Discrimination Complaints	26
(b) Title VI Complaints against Proprietary Schools.....	27
(c) Title VI and Title IX Employment Complaints (see 29 C.F.R. §§ 1691.1 – 1691.13 and 28 C.F.R. §§ 42.601 – 42.613)	27
(d) Title II ADA Complaints (Other than Employment) (see 28 C.F.R. § 35.171(a)(2)(i)).....	28

(e)	Title II ADA Complaints (Other than Employment) (see 28 C.F.R. § 35.171(a)(2)(i))	28
SECTION 702	DATA COLLECTION AND INFORMATION GATHERING	29
(a)	Generally.....	29
(b)	OCR’s Authority to Obtain Information.....	30
(c)	Requests for Records.....	30
(d)	Interviews.....	31
SECTION 703	FREEDOM OF INFORMATION ACT AND PRIVACY ACT	32
SECTION 704	RECIPIENTS OPERATING UNDER FEDERAL COURT ORDER.....	33
(a)	United States a Party	33

ARTICLE I: EVALUATION

Upon receipt of information, OCR will determine whether the information provided to OCR is subject to further processing pursuant to applicable statutes and regulations and OCR's CPM. As appropriate, OCR will provide complainants¹ with assistance regarding the nature of their rights and of the OCR investigation process. Also, as appropriate, OCR will provide assistance to complainants who are individuals with disabilities,² individuals of limited English proficiency, and individuals whose communication skills are otherwise limited. All written information provided to OCR should include the sender's contact information.³ Written information may be filed online, as well as by mail, electronic mail, or fax.

SECTION 101 PRIVACY ACT AND FREEDOM OF INFORMATION ACT

To investigate a complaint, OCR may collect and analyze personal information. The Privacy Act of 1974, as amended 5 U.S.C. § 552a (Privacy Act) and the Department's Privacy Act regulations at 34 C.F.R. Part 5b, Section 444 of the General Education Provisions Act (commonly referred to as the Family Educational Rights and Privacy Act (FERPA)), 20 U.S.C. § 1232g and FERPA's implementing regulations at 34 C.F.R. Part 99, and the Freedom of Information Act (FOIA), 5 U.S.C. § 552 and FOIA's implementing regulations at 34 C.F.R. Part 5, may apply to the personal information collected by OCR and, where applicable, govern its disclosure. OCR does not reveal the name or other personal information about an individual unless: (1) such information is necessary for the completion of an investigation or in enforcement activities against an institution that violates the laws and regulations enforced by OCR; (2) such information is required to be disclosed by law; or (3) such information is permitted to be disclosed under the Privacy Act and FERPA, as applicable. Disclosure will only be made as consistent with the Privacy Act, FERPA, and FOIA.

Subject to the restrictions imposed by the Privacy Act, OCR may release certain information about a complaint to the press or general public, including the name of the school or institution; the date a complaint was filed; the type of discrimination included in a complaint; the date a complaint was resolved, dismissed or closed; the basic reasons for OCR's decision; or other related information. Under these circumstances, any information OCR releases to the press or general public will not include the complainant's name, the name of the person on whose behalf the complaint was filed, or personal information about the complainant or the person on whose behalf the complaint was filed, except as noted in the paragraph above. See CPM Section 703.

SECTION 102 DETERMINE WHETHER THE INFORMATION PROVIDED IS SUBJECT TO FURTHER PROCESSING

OCR will determine whether the information provided to OCR is subject to further processing pursuant to OCR's CPM, as follows:

- (a) Not all information that OCR receives is sufficient to constitute a complaint subject to further processing pursuant to OCR's CPM. The following are generally not subject to further processing, but this determination will be made on an individualized basis, as appropriate:
 - i. Anonymous correspondence with OCR;
 - ii. Courtesy copies of correspondence or documentation filed with or otherwise submitted to another person or entity;
 - iii. Inquiries that solely seek advice or information from OCR; or

¹ This manual uses the term "complainant" throughout. The term "complainant" refers to (a) the person who files a complaint; or (b) the person or group injured by the alleged discriminations on whose behalf a complainant files a complaint.

² See 34 C.F.R. Part 105.

³ Contact information should include, for example, mailing address, phone number, or an electronic mail address.

- iv. Allegations that are communicated to OCR only orally and not in writing.
- (b) OCR must have jurisdiction over the subject matter of the allegations. An allegation over which OCR lacks subject matter jurisdiction is not subject to further processing and will be dismissed pursuant to CPM Section 108.

For OCR to establish subject matter jurisdiction, the written information must allege, or OCR must be able to infer from the facts given, an allegation of: (1) discrimination based on race, color, national origin, sex, disability, or age, (2) discrimination in violation of the Boy Scouts of America Equal Access Act of 2001, or (3) retaliation for the purpose of interfering with any right or privilege secured by the civil rights laws and regulations enforced by OCR, or as a result of making a complaint, testifying, or participating in any manner in an OCR proceeding. *See* 34 C.F.R. §§ 100.7(e), 104.61, 106.71, 108.9, 110.34; and 28 C.F.R. § 35.134.

OCR has jurisdiction pursuant to the following statutory and regulatory authorities:

- **Title VI of the Civil Rights Act of 1964**, 42 U.S.C. §§ 2000d et seq., 34 C.F.R. Part 100.

Under Title VI, OCR has jurisdiction to investigate complaints involving individuals who allege discrimination in a recipient's education program or activity, including applicants, students, and parents, as well as certain employment complaints, based on race, color, or national origin.⁴ With respect to employment, OCR has jurisdiction if: (1) the alleged discrimination could adversely affect program beneficiaries on the basis of race, color, or national origin, or (2) a primary objective of the federal financial assistance is to provide employment. *See* CPM subsection 701(b) for processing Title VI complaints with respect to proprietary vocational schools. For employment complaints, OCR follows procedures consistent with the employment coordinating regulations at 28 C.F.R. Part 42 and 29 C.F.R. Part 1691. *See* CPM subsection 701(c).

- **Title IX of the Education Amendments of 1972**, as amended, 20 U.S.C. §§ 1681 et seq., 34 C.F.R. Part 106.

Under Title IX, OCR has jurisdiction to investigate complaints involving individuals who allege discrimination in a recipient's education program or activity, including applicants, students, and parents, as well as employment complaints, based on sex. For employment complaints, OCR follows procedures consistent with the employment coordinating regulations at 28 C.F.R. Part 42 and 29 C.F.R. Part 1691. *See* CPM subsection 701(c).

- **Section 504 of the Rehabilitation Act of 1973**, as amended, 29 U.S.C. § 794, 34 C.F.R. Part 104.

Under Section 504, OCR has jurisdiction to investigate complaints involving individuals who allege discrimination in a recipient's education program or activity, including applicants, students, and parents, as well as employment complaints based on disability. For employment

⁴ This manual uses the term "recipient" throughout. With respect to Title VI, Title IX, Section 504 and the Age Discrimination Act, a recipient is an entity that receives federal financial assistance from the Department. With respect to the Boy Scouts of America Equal Access Act, a recipient is a public elementary or secondary school or local or State educational agency that receives funds made available through the Department. With respect to Title II, the term is intended to include public entities whether or not they receive federal financial assistance. Specifically, the Department of Justice has identified the Department of Education as the designated agency to carry out Title II compliance activities regarding public elementary and secondary education systems and institutions, public institutions of higher education and vocational education (other than schools of medicine, dentistry and nursing, and other health-related schools) and public libraries.

complaints, OCR follows procedures consistent with the employment coordination regulations at 28 C.F.R. Part 37 and 29 C.F.R. Part 1640. See CPM subsection 701(e).

- **Age Discrimination Act of 1975**, 42 U.S.C. §§ 6101 et seq., 34 C.F.R. Part 110.

Under the Age Discrimination Act, OCR has jurisdiction to investigate complaints involving individuals who allege discrimination in a recipient's program or activity, including applicants, students, and parents. For instructions regarding referral of complaints to the Federal Mediation and Conciliation Service (FMCS) before investigation, see CPM subsection 701(a). OCR does not have jurisdiction over employment under the Age Discrimination Act. See CPM subsection 701(a).

- **Title II of the Americans with Disabilities Act of 1990**, 42 U.S.C. §§ 12131 et seq., 28 C.F.R. Part 35.

Under Title II, OCR has jurisdiction to investigate complaints involving individuals alleging discrimination in a recipient's education program or activity, including applicants, students, and parents, as well as employment complaints based on disability. For employment complaints, OCR follows procedures consistent with the employment coordination regulations at 28 C.F.R. Part 37 and 29 C.F.R. Part 1640, which address coordinating disability employment complaints with the Department of Justice (DOJ) and the Equal Employment Opportunity Commission (EEOC). See CPM subsection 701(e).

- **Boy Scouts of America Equal Access Act of 2001**, 20 U.S.C. § 7905, 34 C.F.R. Part 108.

Under the Boy Scouts Act, OCR has jurisdiction to investigate complaints involving the denial of equal access or a fair opportunity to meet to, or discrimination against, any group officially affiliated with the Boy Scouts of America or officially affiliated with any other youth group listed in Title 36 of the United States Code.

- (c) OCR must have personal jurisdiction over the entity alleged to have discriminated. An allegation about an entity over which OCR lacks personal jurisdiction will not be processed further but will be dismissed pursuant to Section 108.

Under Title VI, Title IX, Section 504, and the Age Discrimination Act, OCR has personal jurisdiction over institutions that receive federal financial assistance from the Department and institutions for which OCR has been delegated authority from other federal agencies. Under Title II, OCR has personal jurisdiction over public elementary and secondary education systems and institutions, public institutions of higher education and vocational education (other than schools of medicine, dentistry and nursing, and other health-related schools), and public libraries – regardless of whether these institutions receive federal financial assistance. Under the Boy Scouts Act, OCR has personal jurisdiction over public elementary schools, public secondary schools, local educational agencies and State educational agencies that receive funds made available through the Department.

Where appropriate, OCR will refer the written information to the appropriate agency. See CPM Section 701.

- (d) Generally, statistical data alone are not sufficient to warrant opening an investigation but, as part of an individualized determination with regard to the complaint at issue, can serve to support the opening of an investigation when presented in conjunction with other facts and circumstances.

When OCR determines that the written information provided to the Department is not subject to further processing pursuant to CPM Section 102, OCR will notify the sender in writing of its determination.

SECTION 103 ASSIGN A CASE NUMBER AND ESTABLISH A FILE

Once OCR determines pursuant to CPM Section 102 that written information it has received is appropriate for further processing, the information is referred to as a complaint, and OCR will assign a case number to the complaint and establish a file. The case opening date for each complaint is the date on which OCR assigns a case number. The following guidelines will be applied in determining how many case numbers should be assigned:

- When OCR receives written information at or around the same time by the same complainant that raises identical allegations against the same recipient, OCR will assign one case number to the complaints.
- When OCR receives written information alleging discrimination against multiple recipients and OCR has determined, pursuant to CPM Section 102, that the written information is appropriate for further processing, OCR will assign a separate case number to each recipient named. If, during the course of the investigation, OCR determines that other recipients are involved in the alleged acts of discrimination, OCR will assign a separate case number for each such recipient.
- Written information from more than one person against the same recipient that contains different or distinct allegations will be assigned separate case numbers.
- Written information from one or more than one person that raises the same or a similar allegation based on the same operative facts against the same recipient may be assigned one case number when OCR makes this determination prior to the docketing.
- New allegations filed by the same person against the same recipient after OCR has begun to investigate the original complaint are reviewed on a case-by-case basis to determine whether to consolidate the allegations with the existing investigation and dismiss the subsequent complaint under CPM Section 108, or to proceed with a separate investigation of the new allegations.

SECTION 104 ACKNOWLEDGE THE COMPLAINT

OCR will promptly acknowledge, in writing, the receipt of the complaint. OCR will also inform the complainant that the complaint will be evaluated to determine whether OCR will proceed to investigate the allegations and that further communications about complaint processing will be forthcoming. A Consent Form, a Complaint Form, and *OCR Complaint Processing Procedures* are available online at: <https://www2.ed.gov/about/offices/list/ocr/docs/howto.html>.

SECTION 105 OBTAIN A CONSENT FORM

When it is necessary to disclose the identity of the complainant to the recipient and witnesses in order to resolve the complaint, OCR will require written consent before proceeding. The complainant will be informed that the complaint will be dismissed if written consent is necessary in order to resolve the complaint and is not received within 20 calendar days of the date that OCR requests the Consent Form from the complainant. The signed Consent Form may be submitted to OCR by mail, fax, electronic mail or in person. If OCR does not receive a signed written Consent Form, and it is necessary in order to resolve the complaint, the complaint will be dismissed and the complainant so informed in writing.

A complainant filing on behalf of or pertaining to another person is responsible for securing any necessary written consent from that individual, including when a parent files for a student over the age of 18 or one who

becomes 18 while the complaint is under investigation or in monitoring. Where the person is a minor (under the age of 18) or a legally incompetent adult, the Consent Form must be signed by that person's parent or legal guardian. Parental or legal guardian consent may not be required for persons under the age of 18 if they are emancipated under state law or in the context of Section 504, whose IDEA rights have transferred under 20 USC § 1415(m), and are therefore considered to have obtained majority. Proof of transfer for IDEA rights, emancipation, incompetence, and/or legal guardianship must be provided if requested by OCR.

SECTION 106 DETERMINE WHETHER THE ALLEGATIONS ARE TIMELY

OCR will take action only with respect to those allegations (except allegations of age discrimination and allegations relating to breach of Facilitated Resolution Between the Parties agreements) that have been filed within 180 calendar days of the date of the alleged discrimination, unless the complainant is granted a waiver under CPM Section 107. With respect to allegations of age discrimination, OCR will take action with respect to those complaint allegations that have been filed within 180 calendar days of the date the complainant first had knowledge of the alleged discrimination. OCR may extend this time limit for age discrimination complaints for good cause shown. See CPM subsection 701(a). With respect to the timeliness requirements for allegations relating to the breach of Facilitated Resolution Between the Parties agreements, see CPM Section 205.

The filing date of a complaint, for the purpose of determining timeliness, is the following:

- The filing date of complaints submitted online or by electronic mail or fax is the date the complaint was received by OCR. The filing date of complaints submitted by mail is the date the complaint is postmarked.
- For Title II complaints referred from DOJ, the filing date is the date the complaint was received by DOJ.

Timely allegations may include those where OCR determines that the complainant has alleged a continuing violation and/or a pattern or practice of discrimination.

SECTION 107 DETERMINE WHETHER A WAIVER SHOULD BE GRANTED

If a complaint allegation⁵ is not filed in a timely manner (see CPM Section 106), where appropriate, OCR will notify the complainant of the opportunity to request a waiver.⁶ OCR may grant a waiver of the 180 calendar day filing requirement for reasons such as:

- (a) The complainant could not reasonably be expected to have known the act was discriminatory within the 180 calendar day period and the complaint allegation was filed within 60 calendar days after the complainant could have become aware of the alleged discrimination (note that a lack of previous awareness of OCR or the civil rights laws and regulations enforced by OCR is not a basis for a waiver).
- (b) The complainant was unable to file a complaint because of incapacitating illness or other incapacitating circumstances during the 180 calendar day period that rendered the complainant physically or mentally incapable of filing a complaint or obtaining assistance so that a complaint could be filed on their behalf, the complainant provides to OCR documentation demonstrating such

⁵ Although the manual refers to "complaints" and "complaint allegations," OCR makes a determination as to each allegation in a complaint. For example, in a single complaint, OCR may decide that it is appropriate to investigate one or more allegations while dismissing another allegation or other allegations. The complainant will be informed of OCR's decision with respect to each allegation.

⁶ OCR's complaint form notifies the complainant of the opportunity to request a waiver of OCR's timeliness requirement.

lack of capacity, and the complaint allegation was filed within 60 calendar days after the incapacitation ended.

- (c) The complainant filed a complaint alleging the same or similar allegation based on the same operative facts within the 180 calendar day period with another federal, state or local civil rights enforcement agency, or federal or state court, and filed a complaint with OCR within 60 calendar days after the other agency completed its processing of the complaint or, in the case of a court, after there had been no decision on the merits or settlement of the complaint allegations. Dismissal with prejudice is considered a decision on the merits.
- (d) The complainant filed, within the 180 calendar day period, an internal grievance with the recipient, or a due process hearing, alleging the same discriminatory conduct that is the subject of the OCR complaint, and the complaint is filed no later than 60 calendar days after the internal grievance is concluded.
- (e) Unique circumstances generated by OCR's actions adversely affected the complainant.

SECTION 108 DISMISSAL OF ALLEGATIONS

Allegations can be dismissed during the evaluation stage of case processing or after the allegations have been opened for investigation.

As appropriate, in the evaluation stage, OCR will assist the complainant in understanding the information that OCR requires in order to proceed to the investigation of the complainant's allegations. This will include explaining OCR's investigation process and the rights of the complainant under the statutes and regulations enforced by OCR. OCR may also specifically identify the information necessary for OCR to proceed to investigation. OCR staff will provide assistance to complainants who are individuals with disabilities,⁷ individuals of limited English proficiency, or persons whose communication skills are otherwise limited.

As a threshold issue and throughout the processing of the complaint, OCR addresses First Amendment and other Constitutional considerations. See CPM Section 109.

When an allegation is dismissed during the evaluation stage, OCR will issue a letter to the complainant explaining the reason for the decision.⁸ When a complaint allegation is dismissed after the complaint allegation has been opened for investigation, OCR will issue a letter to the complainant and the recipient explaining the reason for the decision. Complainants may elect to refile complaints that were dismissed pursuant to CPM Sections 108(a), (b), (c), (e), (q), (r), or (s) if they have addressed the deficiencies stated by OCR in the dismissal; such refiled complaints will not be dismissed pursuant to CPM Section 108(m).

Where OCR has approved issuance of a final determination under CPM Section 303 with regard to any allegations, OCR will not dismiss the allegations, but will proceed in accordance with CPM Section 303.

OCR will dismiss an allegation, or, if appropriate, the complaint⁷ in its entirety, when:

- (a) The allegation, on its face or as clarified, fails to state a violation of one of the laws or regulations OCR enforces.

⁷ See 34 C.F.R. Part 105.

⁸ In circumstances where the complaint contains an allegation of age discrimination and therefore has been referred to the Federal Mediation and Conciliation Service, OCR will also notify the recipient of the dismissal.

- (b) The allegation, on its face or as clarified, lacks sufficient factual detail (e.g., who, what, where, when, how), or is so speculative, conclusory⁹ or incoherent that OCR cannot infer that discrimination or retaliation may have occurred or may be occurring.

Before dismissing an allegation under CPM subsection 108(b), OCR will contact the complainant either by telephone or in writing (by letter or via electronic mail) to: (i) explain the information necessary for OCR to open an investigation of the allegation; (ii) request that the information be received within 14 calendar days of the date of the telephone contact, letter, or electronic mail; and (iii) advise the complainant that the allegation will be dismissed if the information is not received by that date. OCR will dismiss the allegation if the requested information is not received within 14 calendar days of the date of the telephonic or written request, unless the complainant has requested additional time to provide the information.

- (c) Based on all of the facts/information provided by the complainant or publicly available information, OCR cannot reasonably conclude that the recipient has violated a law OCR enforces.
- (d) The allegation is not timely filed with OCR pursuant to CPM Section 106 and a waiver was not requested or was requested but not granted pursuant to CPM Section 107.
- (e) OCR determines that a signed Consent Form is required to proceed with an investigation, and the Consent Form has not been provided.
- (f) OCR determines that it lacks jurisdiction over the subject matter of the allegation.
- (g) OCR determines that it lacks personal jurisdiction over the entity alleged to have discriminated. When appropriate, OCR will refer the complaint to the appropriate agency. See CPM Section 701.
- (h) OCR transfers or refers the complaint to another agency for investigation. See CPM Section 701.
- (i) The same or a similar allegation based on the same operative facts has been filed either by the complainant or someone other than the complainant against the same recipient with another federal, state, or local civil rights enforcement agency⁹ or through a recipient's internal grievance procedures, including due process proceedings, and
 1. OCR anticipates that all allegations will be investigated and that there will be a comparable resolution process pursuant to legal standards that are acceptable to OCR. OCR will advise the complainant that she or he may re-file with OCR within 60 calendar days of the completion of the other entity's action. Generally, OCR will not conduct its own investigation. Instead, OCR reviews the results of the other entity's determination and decides whether the other entity provided a comparable resolution process pursuant to legal standards that are acceptable to OCR;or
 2. OCR determines that all allegations were investigated and there was a comparable resolution process pursuant to legal standards that are acceptable to OCR.
- (j) The same or a similar allegation based on the same operative facts has been filed either by the complainant or someone other than the complainant against the same recipient with a state or federal court. OCR will advise the complainant that she or he may re-file the complaint with OCR within 60 calendar days following the termination of the court proceeding if there has been no decision on the

⁹ This provision applies where the complaint allegation (including any additional information provided by the complainant) does not provide sufficient information to raise the allegation above the level of speculation. The complaint must provide more than bare conclusions of alleged violations of the laws and regulations enforced by OCR.

merits or settlement of the complaint allegations. A dismissal with prejudice is considered a decision on the merits.

- (k) OCR obtains credible information indicating that the allegations raised by the complainant are currently resolved.
- (l) A class action with the same or a similar allegation with the same operative facts has been filed against the same recipient with a state or federal court. OCR will advise the complainant that she or he may re-file with OCR within 60 calendar days following the termination of the court proceeding if there has been no decision on the merits or settlement of the state or federal complaint. A dismissal with prejudice is considered a decision on the merits.
- (m) The complaint filed by the complainant or someone other than the complainant against the same recipient raises the same or similar allegations based on the same operative facts that were previously dismissed or closed by OCR.
- (n) OCR has recently investigated or is currently investigating the same or similar allegations based on the same operative facts involving the same recipient in a compliance review, directed investigation or OCR complaint.
- (o) The complainant withdraws the allegation or complaint.
- (p) The death of the complainant makes it impossible to investigate the allegations fully.
- (q) OCR determines that its ability to complete its evaluation of the complaint or an investigation is substantially impaired by the complainant's refusal to provide information that is reasonably accessible to the complainant and is necessary for the investigation of the complaint. OCR will include documentation in the case file of its efforts to contact the complainant to request the necessary information and of the complainant's refusal to provide information.
- (r) OCR determines that its ability to complete its evaluation of the complaint or an investigation is substantially impaired by its inability to contact the complainant in order to obtain information that is necessary for investigation of the complaint. OCR will include documentation in the case file of its unsuccessful efforts to contact the complainant to request the necessary information.
- (s) OCR determines that the complaint is moot or unripe.

SECTION 109 FIRST AMENDMENT PRINCIPLES

Although OCR does not have jurisdiction to enforce the First Amendment to the U.S. Constitution, as a threshold issue and throughout the processing of the complaint, OCR interprets its statutes and regulations consistent with the requirements of the First Amendment, and all actions taken by OCR must comport with First Amendment principles. OCR will not interpret any statute or regulation to require impinging upon rights protected under the First Amendment or to require recipients to encroach upon the exercise of such rights.

SECTION 110 RAPID RESOLUTION PROCESS

The Rapid Resolution Process (RRP) is an expedited case processing approach that can be used to resolve cases in any of OCR's statutory areas either during the evaluation stage or after issuance of the letter of notification informing the complainant that OCR is opening an investigation. The outcomes in all RRP cases must meet OCR's standards for legal sufficiency and be consistent with applicable statutory and regulatory

authority. Any resolution agreement reached through RRP must be aligned with the allegations in the complaint deemed appropriate for resolution pursuant to RRP. See CPM Article III.

Once OCR has determined that the complaint is appropriate for RRP, OCR will promptly attempt to resolve the complaint and obtain information necessary to make a compliance determination. OCR will contact the recipient to determine if the recipient is interested in immediately resolving or has taken action to resolve the complaint allegations. Where such interest is expressed, RRP may be used to resolve complaints under the following circumstances:

- (a) Where a recipient has already taken action that will resolve the complaint allegations, the complaint may be resolved without an agreement where compliance is verified and does not require monitoring by OCR. Under this circumstance, OCR will issue a dismissal letter pursuant to CPM subsection 108(k).
- (b) Where a recipient has indicated that it is willing to take action in the future to resolve the complaint allegations, or the recipient has already taken action that requires monitoring, upon the recipient's request and OCR's agreement, the complaint may be resolved pursuant to CPM Section 302. Per CPM Section 302(b), the recipient will sign a resolution agreement, the implementation of which OCR will monitor. See CPM Section 304. Under this circumstance, OCR will issue a resolution letter pursuant to CPM subsection 302(c).
- (c) Where OCR obtains sufficient information from the recipient to make a compliance determination pursuant to CPM Section 303, OCR will issue a letter of finding pursuant to CPM subsection 303(a) or OCR will issue a letter of finding and obtain a resolution agreement pursuant to CPM subsection 303(b), the implementation of which OCR will monitor.

For cases in RRP, OCR must ensure expeditious completion in accordance with the applicable statutes, regulations, and case processing procedures

SECTION 111 OPENING THE COMPLAINT ALLEGATIONS FOR INVESTIGATION

When OCR opens a complaint for investigation, it will issue letters of notification to the complainant and the recipient that contain the following information:

- OCR's jurisdiction, with applicable statutory and regulatory citations;
- The allegations to be investigated;¹⁰
- A statement that OCR is a neutral fact-finder and citing the CPM;
- Information about OCR's Facilitated Resolution Between the Parties process, if appropriate;
- A statement that the complainant may have a right to file a private suit in federal court whether or not OCR finds a violation; and
- Contact information for the OCR staff person who will serve as the complainant's and the recipient's primary contact during the investigation and resolution of the complaint.

A copy of "*OCR Case Processing Procedures*" will be included with the letter to the recipient. A copy of the complaint will be provided to the recipient.

¹⁰ Complainants sometimes raise multiple or overlapping allegations that result in OCR investigating one or more issues. Use of the term "allegations" should be read to encompass the term "issues," as appropriate.

ARTICLE II: FACILITATED RESOLUTION BETWEEN THE PARTIES

SECTION 201 ROLES

The Facilitated Resolution Between the Parties (FRBP) process facilitates the resolution of complaints by providing an opportunity for the parties involved to voluntarily resolve the complaint allegations. When OCR determines, on an individualized basis with regard to the complaint at issue, that a complaint is appropriate for FRBP, it shall contact the parties to offer this resolution option.

(a) OCR's Role

- To serve as an impartial, confidential facilitator between the parties;
- To inform the parties of FRBP procedures;
- To establish a constructive tone, and encourage the parties to work expeditiously and in good faith toward a mutually acceptable resolution;
- To review the allegations with the parties and assist both parties in understanding the pertinent legal standards and possible remedies;
- To facilitate a discussion between the parties regarding possible actions that the parties may consider in working toward a resolution; and
- To offer assistance, as appropriate, with regard to reducing any resolution to writing. When an agreement is reached, the parties will be informed that OCR will issue a closure letter reflecting the resolution of the complaint by agreement of the parties.

(b) Role of the Participants

- Participate in the discussions in good faith;
- Consider offers or suggestions with an open mind and work constructively toward a mutually acceptable resolution; and
- Implement any agreement in good faith.

OCR does not sign, approve, endorse, or monitor any agreement reached between the parties.

SECTION 202 INITIATION AND TERMINATION OF THE FRBP PROCESS

If OCR determines that FRBP is appropriate and the complainant and the recipient are willing to proceed with this resolution option, OCR will designate staff to facilitate an agreement between the recipient and complainant. Staff assigned to conduct FRBP of a complaint shall not be staff assigned to the investigation of that complaint.

An Agreement to Participate in FRBP must be reviewed and signed, verbally agreed to, or agreed to by electronic mail by the complainant and recipient. In circumstances where verbal agreement is obtained, the FRBP facilitator shall send a confirmatory letter or electronic mail to the parties.

If a case has been opened for investigation, OCR has the discretion to suspend its investigation for up to 30 calendar days to facilitate an agreement between the parties. If an agreement is not reached, OCR will resume its investigation.

SECTION 203 CONFIDENTIALITY OF THE FRBP PROCESS

A Confidentiality Agreement must be reviewed and signed, verbally agreed to, or agreed to by electronic mail by the FRBP facilitator and the parties to the FRBP (the complainant or complainant's representative and the

recipient or recipient's representative). In circumstances where verbal agreement is obtained, the FRBP facilitator shall send a confirmatory letter or electronic mail to the parties.

In order to maintain the integrity of the FRBP process apart from OCR's investigation, any notes taken during FRBP by the facilitator and/or any records or other documents offered by either party to the facilitator during FRBP will be kept in a separate file and will not be shared with the staff members assigned to investigate the complaint.

SECTION 204 SUCCESSFUL CONCLUSION OF THE FRBP PROCESS

At the conclusion of a successful FRBP, OCR will obtain a copy of either: (1) a statement signed by the complainant that the allegations have been resolved; or (2) a copy of the agreement that was signed by the parties. After a successful FRBP, OCR will send the parties closure letters that specify the allegations that have been resolved, and that other outstanding allegations, if any, will be resolved through the investigation and resolution process. See CPM Article III. A copy of the signed statement from the complainant or the agreement between the parties will be attached to the closure letter.

SECTION 205 BREACH OF FRBP AGREEMENTS

OCR will not monitor or enforce the agreement, but will inform the parties that if a breach occurs, the complainant has the right to file a new complaint; such new complaint is not subject to dismissal pursuant to CPM section 108(m). If a new complaint is filed, OCR will not address the alleged breach of the agreement. To be considered timely, the new complaint must be filed either within 180 calendar days of the date of the original allegations of discrimination, or within 60 calendar days of the date that the complainant obtains notice that a breach occurred, whichever date is later.

SECTION 206 INVESTIGATIVE DETERMINATION WHEN FRBP IS NOT ACHIEVED

OCR will ensure that there will be adequate time for completion of the investigation if FRBP is unsuccessful. Where FRBP is unsuccessful, an investigation will proceed in accordance with applicable law and OCR's case processing procedures.

ARTICLE III: CASE PLANNING, INVESTIGATION AND RESOLUTION

OCR will ensure that the actions it takes in investigations are legally sufficient, supported by evidence, and dispositive of the allegations. OCR can resolve allegations at any point during the course of the investigation, if appropriate. OCR resolution agreements will be drafted to ensure compliance with the civil rights laws and regulations enforced by OCR.

When, during the course of the investigation of a complaint, OCR identifies compliance concerns and/or violations involving issues that were not raised in the complaint, OCR will address any compliance concerns and/or identified violations in the resolution letter or letter of findings and the resolution agreement, or, depending on the nature of the compliance concerns, provide technical assistance or consider the compliance concerns for a possible compliance review or directed investigation. See CPM Sections 401 and 402.

SECTION 301 CASE PLANNING

Case planning will begin as early as possible, will be thorough, and will be conducted throughout the processing of every case to ensure high quality decisions, prompt investigations and the efficient use of OCR resources. Planning decisions will reflect sound legal standards and will be adjusted as necessary to take into

account information obtained during case processing. See CPM Section 702. The scope of OCR's investigation and resolution activities is governed by applicable statutes and regulations.

OCR regional office management and investigative staff are accountable for effective planning and will participate in critical planning decisions commensurate with the nature and complexity of the case to ensure consistent high-quality casework.

The following essential elements of case planning will be addressed in every OCR file (unless inapplicable):

- The allegations;
- OCR's jurisdiction over the subject matter and entity;
- The legal standards, regulatory authority and elements of proof;
- Ensuring that OCR's actions comport with First Amendment principles;
- The scope of the investigation;
- Investigative methods (i.e., what data and/or information are necessary to resolve the case and the means and methods OCR will employ to obtain the relevant data and/or information); and
- The resolution strategy.

The case file will contain documentation that supports the decisions made. Planning documentation should be organized so that it can be readily located in the case file. Case planning should be documented in the Case Planning Document.

These planning activities will ensure accountability for high quality and consistency with OCR standards, and will address:

- Required actions to investigate compliance;
- Dates for completion of specific actions;
- Description of evidence required; and
- All settlement activities.

SECTION 302 RESOLUTION AGREEMENT REACHED DURING AN INVESTIGATION

Allegations under investigation may be resolved at any time when, prior to the point when OCR issues a draft letter of findings under CPM Section 303(b), the recipient expresses an interest in resolving the allegations *and* OCR determines that it is appropriate to resolve them because OCR's investigation has identified concerns that can be addressed through a resolution agreement. The provisions of the resolution agreement must be tied to the allegations, and the evidence obtained during the investigation and will be consistent with applicable regulations.

OCR will inform the recipient that this resolution process is voluntary before proceeding to resolution pursuant to this section. When OCR determines that it is appropriate to resolve the allegations pursuant to CPM Section 302, OCR will notify the complainant of the recipient's interest in resolution.

(a) Statement of the Case

For cases with allegations proposed for resolution under CPM Section 302, OCR will prepare a Statement of the Case. The Statement of the Case sets forth:

- A statement of OCR's jurisdictional authority, including recipient status and the statutory basis for the investigation;
- An explanation of the pertinent legal standards;
- The allegations investigated;

- Relevant background information; and
- A summary of the investigation and the evidence, and the identified concerns that support the need for the provisions of the agreement.

The Statement of the Case must address all of the allegations proposed for resolution under CPM Section 302.

(b) Timeframes and Procedures for Negotiations

From the date that the proposed resolution agreement is shared with the recipient, OCR and the recipient will have a period of up to 30 calendar days within which to reach final agreement.

During the negotiations period (which may be less than 30 calendar days, at the discretion of OCR), OCR may suspend its investigation of the case. Where a final agreement is not reached by the 30th calendar day, OCR will resume its investigation thereafter. However, negotiations may continue while the investigation resumes. This 30 calendar day period for suspension of the investigation in order to conduct negotiations cannot be restarted.

(c) Resolution Letters

The resolution letter will address all allegations in the case resolved pursuant to CPM Section 302. The letter must include, at a minimum:

- A statement of OCR's jurisdictional authority, including recipient status and the statutory basis for the investigation;
- A statement of the allegations investigated and a summary of the evidence obtained to date;
- A statement that, when fully implemented, the resolution agreement will address all of the allegations investigated and that OCR will monitor the implementation of the agreement (see CPM Section 304 and CPM Article V); and
- The following statement: "The complainant may have a right to file a private suit in federal court whether or not OCR finds a violation." For service complaints under the Age Discrimination Act, the complainants may file in federal court only after they have exhausted administrative remedies. See CPM subsection 701(a).

OCR will issue a draft resolution letter and a proposed resolution agreement to the recipient. The recipient shall have five calendar days from the date of the issuance of the draft resolution letter to inform OCR of any factual errors contained therein.

If, after due consideration of the recipient's concerns, OCR determines that the draft resolution letter contains factual errors, it will correct the errors, make any other revisions it deems appropriate, and promptly issue a revised final resolution letter. In addition, where appropriate, OCR will modify the proposed resolution agreement to reflect any corrections.

If the recipient does not inform OCR of factual errors within five calendar days from the date of the issuance of the draft resolution letter, OCR will issue a final resolution letter in due course.

Once the recipient signs the resolution agreement, OCR will monitor its implementation until the recipient has fulfilled the terms and obligations of the resolution agreement. Upon completion of the terms and obligations under the agreement, OCR will close the case. See CPM Article V.

SECTION 303 INVESTIGATIVE DETERMINATIONS

At the conclusion of an investigation, OCR will determine, using a preponderance of the evidence standard, whether:

- There is insufficient evidence to support a conclusion of noncompliance, or
- The evidence supports a conclusion of noncompliance.

(a) Insufficient Evidence Determination

When OCR determines that the preponderance of the evidence does not support a conclusion that the recipient failed to comply with applicable statutes and regulations, OCR will issue a letter of findings to the parties explaining the reasons for its decision. See CPM subsection 303(e).

(b) Non-Compliance Determination

When OCR determines that the preponderance of the evidence supports a conclusion that the recipient failed to comply with applicable statutes and regulations, OCR will issue a draft letter of findings and a proposed resolution agreement to the recipient. See CPM subsection 303(e) and Section 304.

The recipient shall have five calendar days from the date of the issuance of the draft letter of findings to inform OCR of any factual errors contained therein.

If, after due consideration of the recipient's concerns, OCR determines that the draft letter of findings contains factual errors, it will correct the errors, make any other revisions it deems appropriate, and promptly issue a revised final letter of findings. In addition, where appropriate, OCR will modify the proposed resolution agreement to reflect any corrections.

If the recipient does not inform OCR of factual errors within five calendar days from the date of the issuance of the draft letter of findings, OCR will issue a final letter of findings in due course.

When OCR determines that it will resolve the allegations pursuant to CPM subsection 303(b) and initiates negotiation of the resolution agreement with the recipient, OCR will notify the complainant that OCR has initiated negotiation of the resolution agreement pursuant to this subsection.

(c) Mixed Determination

A "mixed determination" is appropriate for complaints with multiple allegations, where the allegations will be resolved in different ways (e.g., the investigation has found a violation with regard to some allegations and insufficient evidence with regard to other allegations; the investigation has found a violation with regard to some allegations and there are other allegations that are appropriate to resolve prior to the conclusion of the investigation pursuant to CPM Section 302; or OCR has found insufficient evidence with regard to some allegations and determined that other allegations are appropriate to resolve prior to the conclusion of the investigation pursuant to CPM Section 302). In a "mixed determination" case, where OCR is making a determination pursuant to subsection 303(b), OCR will negotiate a resolution agreement and issue a letter of findings. See CPM subsections 303(e) and 304. In a "mixed determination" case where OCR is not making a determination pursuant to 303(b), but is resolving allegations pursuant to Section 302, OCR will issue a resolution letter pursuant to Section 302(c).

(d) Statement of the Case

OCR will prepare a Statement of the Case for investigative determinations under CPM Section 303. The Statement of the Case sets forth:

- The allegations raised in the complaint;
- A statement of OCR’s jurisdictional authority, including recipient status and the statutory basis for the investigation;
- An explanation of the pertinent legal standards;
- Relevant background information;
- A statement of each allegation investigated and the findings of fact for each, including analysis of the evidence on which the findings are based; and
- Conclusions for each allegation that reference the relevant facts, the applicable regulations, and the appropriate legal standards.

(e) Letter of Findings

For insufficient evidence determinations, OCR will issue a letter of findings that explains the reasons for OCR’s decision to both the recipient and the complainant.¹¹ For non-compliance and mixed determinations that include a non-compliance determination, OCR will issue a letter of findings explaining the reasons for its decision to the recipient after engaging in the process set forth in Section 303(b).

Letters of findings will address all allegations opened for investigation. The letter includes, as appropriate:

- A statement of the allegations opened for investigation;
- A statement of OCR’s jurisdictional authority, including recipient status and the statutory basis for the investigation;
- A statement of the findings of fact for each allegation investigated, supported by any necessary explanation and/or analysis of the evidence on which the findings are based;
- Conclusions for each allegation that reference the relevant facts, the applicable regulations and the appropriate legal standards; and
- A statement that: “The complainant may have a right to file a private suit in federal court whether or not OCR finds a violation.” For service complaints under the Age Discrimination Act, the complainant may file in federal court only after they have exhausted administrative remedies. See CPM subsection 701(a).

(f) Timeframes and Procedures for Negotiations

From the date that the proposed resolution agreement is shared with the recipient, OCR and the recipient will have a period of up to 90 calendar days within which to reach final agreement.

(g) Negotiation Impasse

OCR may end the 90-calendar day negotiations period if no agreement has been reached by the 90th day. OCR may end the negotiations period at any time prior to the expiration of the 90 calendar day period when it is clear that agreement will not be reached (e.g., the recipient has refused to discuss any resolution; the recipient has indicated a refusal to agree to a key resolution term; the recipient has not responded to a proposed resolution agreement and at least 30 calendar days have passed). At such

¹¹ For recipients operating under federal court order, see CPM Section 704.

time, OCR shall issue an Impasse Letter that informs the recipient that OCR will issue a Letter of Impending Enforcement Action in 10 calendar days if a resolution agreement is not reached within that 10-day period. The letter will include a description of OCR's unsuccessful attempts to resolve the complaint. If the recipient does not enter into a resolution agreement within 10 calendar days of the date of the issuance of the Impasse Letter, OCR must follow the procedures in CPM Section 305 for the issuance of a Letter of Impending Enforcement Action regarding its non-compliance determinations.

In the case of a mixed determination, when the negotiations included allegations that were appropriate to resolve prior to the conclusion of the investigation pursuant to CPM Section 302 and allegations for which OCR made determinations of non-compliance, OCR shall issue an Impasse Letter of Impending Enforcement Action. If the recipient does not enter into a resolution agreement within 10 calendar days of the date of the issuance of the Impasse Letter, OCR must follow the procedures in CPM Section 305 for the issuance of a Letter of Impending Enforcement Action regarding its non-compliance determinations.

(h) Negotiations Progressing at the End of the 90 Calendar Day Period

If OCR and the recipient negotiate for 90 calendar days and fail to reach final agreement by the 90th day, but negotiations are progressing, OCR shall inform the recipient that OCR will issue a Letter of Impending Enforcement Action in 30 calendar days if a resolution is not reached within that 30-day period. Negotiations will be considered progressing if the recipient has agreed in principle to the terms and obligations of the agreement, but needs a short period of time within which, for example, to obtain approval of the agreement (e.g., by a board of education or president of a college) and/or the appropriate signature on the agreement; or where the recipient has agreed to most of the terms and obligations of the agreement but requests a short period of additional time to negotiate other terms and obligations. If the recipient does not enter into a resolution agreement within 30 calendar days, OCR will issue a Letter of Impending Enforcement Action regarding its non-compliance determinations pursuant to CPM Section 305.

In the case of a mixed determination, when the negotiations included allegations that were appropriate to resolve prior to the conclusion of the investigation pursuant to CPM Section 302, and allegations for which OCR made determinations of non-compliance, OCR shall inform the recipient that OCR will issue a Letter of Impending Enforcement Action in 30 calendar days if a resolution is not reached within that 30-day period. If the recipient does not enter into a resolution agreement within 30 calendar days, OCR will issue a Letter of Impending Enforcement Action regarding non-compliance determinations pursuant to CPM Section 305.

SECTION 304 CONTENTS OF RESOLUTION AGREEMENTS

The complaint will be considered resolved and the recipient deemed compliant when the recipient, after negotiating with OCR and reaching agreement on its terms and obligations, enters into and fulfills them.

Resolution Agreements:

- Must be signed by a person with authority to bind the recipient; and
- Must include, in the agreement itself or through an exchange of letters or other written communications:
 - Specific acts or steps the recipient will take to resolve compliance concerns and/or violations;
 - Dates for implementing each act or step;
 - Dates for the submission of reports and documentation;

- Where appropriate, language requiring submission of documents and/or other information or actions for OCR’s review and approval, and timeframes for their submission;
- Timeframes requiring the recipient to implement what OCR has approved, and language requiring documentation verifying implementation; and
- The following statements of principle:
 - The recipient understands that by signing the resolution agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of the resolution agreement. Further, the recipient understands that during the monitoring of the resolution agreement, if necessary, OCR may visit the recipient, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the recipient has fulfilled the terms and obligations of the resolution agreement;
 - Upon the recipient’s satisfaction of the terms and obligations of the resolution agreement, OCR will close the case; and
 - The recipient understands and acknowledges that OCR may initiate proceedings to enforce the specific terms and obligations of the resolution agreement and/or the applicable statutes and regulations. Before initiating such proceedings, OCR will give the recipient written notice of the alleged breach and 60 calendar days to cure the alleged breach.

SECTION 305 LETTER OF IMPENDING ENFORCEMENT ACTION

When, following the expiration of the 10 calendar day period referenced in CPM subsection 303(g) or the 30 calendar day period referenced in CPM subsection 303(h), the recipient does not enter into a resolution agreement to resolve the identified areas of non-compliance, OCR will prepare a Letter of Impending Enforcement Action, which will include the following:

- A statement of the allegations opened for investigation;
- A statement of OCR’s jurisdictional authority, including recipient status and the statutory basis for the investigation;
- A statement of the findings of fact for each allegation investigated supported by any necessary explanation or analysis of the evidence on which the findings are based;
- Conclusions for each allegation that reference the relevant facts, the applicable regulations, and the appropriate legal standards;
- Notice that the Letter of Impending Enforcement Action is not intended and should not be construed to cover any other issue regarding the recipient’s compliance;
- Notice of the time limit on OCR’s resolution process and the consequence of failure to reach agreement;
- A description of OCR’s unsuccessful attempts to resolve the case;
- When a decision is made to defer final approval of any applications by the recipient for additional federal financial assistance or, with respect to the Boy Scouts Act, additional funds made available through the Department over what the recipient is presently receiving, the letter also will provide notice of such possible deferral. A separate deferral letter will be prepared; and
- Title II letters will include the following language: “The complainant may have a right to file a private suit pursuant to Section 203 of the Americans with Disabilities Act, whether or not OCR finds a violation of Title II.”

To resolve the case after issuance of the Letter of Impending Enforcement Action, any resolution agreement that the recipient proposes must be approved by OCR.

SECTION 306 REFERRALS FROM THE DEPARTMENT OF JUSTICE AND THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

When a Title II complaint is referred to OCR by DOJ, OCR will send a copy of the letter resolving the case to DOJ, if requested by DOJ. When a Title II/504 employment discrimination complaint has been dual-filed with the Equal Employment Opportunity Commission (EEOC) and OCR, or when a complaint has been referred to OCR by EEOC, OCR will notify EEOC once the complaint has been resolved. See 28 C.F.R. Part 37 and 29 C.F.R. Part 1640.

SECTION 307 APEALS

OCR affords an opportunity to complainants to appeal determinations based on CPM Section 303(a) and dismissals based on CPM subsection 108(a), (b), (c), (d), (i), or (j). Information about the appeal process is provided to complainants in *OCR Complaint Processing Procedures*, which is enclosed with OCR's letter acknowledging receipt of the complaint. Information is also published at <http://www.ed.gov/about/offices/list/ocr/complaints-how.html>.

OCR will provide notice of the right to appeal in letters setting forth determinations based on CPM Section 303(a) and dismissals based on CPM subsection 108(a), (b), (c), (d), (i), or (j).

An appeal can be filed electronically, by mail, or fax. The complainant must submit a completed online appeal form or written statement of no more than 10 pages (double-spaced, if typed). If submitted by mail, send to the Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue SW, Washington, D.C. 20202. If submitted via electronic mail, send to OCR@ed.gov. If submitted via fax, send to 202-453-6012. The filing date of an appeal is the date the appeal is postmarked, submitted electronically, or submitted via fax.

In the appeal, the complainant must explain why she or he believes the factual information was incomplete or incorrect, the legal analysis was incorrect or the appropriate legal standard was not applied, and how the correction of any errors would change the outcome of the case. Failure to provide this information may result in denial of the appeal.

OCR reviews appeals to determine whether there is a clear error of fact and/or an error in the legal conclusion that changes the outcome of the determination.

All information to support the appeal must be submitted in writing at the time the complainant files the appeal. The complainant may not submit new evidence for consideration on appeal. Instead, if a complainant has new evidence, the complainant should file a new complaint. (Note that complaints must be filed within 180 calendar days of the last act of alleged discrimination or retaliation in order to be considered timely filed with OCR. A waiver of this 180-day timeframe may be requested. See CPM Section 307.)

An appeal must be submitted within 60 calendar days of the date indicated on the letter of finding or the dismissal. A waiver of this 60-day timeframe may be granted where:

- (a) The complainant was unable to submit the appeal within the 60-day timeframe because of incapacitating illness or other incapacitating circumstances during the 60-day timeframe, and the appeal was submitted within 30 calendar days after the period of incapacitation ended; or
- (b) Unique circumstances generated by OCR's actions have adversely affected the complainant's ability to submit a timely appeal.

A request for a waiver may be submitted with the appeal, if the appeal is submitted beyond the 60 calendar day timeline. A request for a waiver can also be filed prior to the expiration of this 60-day timeframe, by electronic mail, fax, or mail. The waiver will be considered by the office reviewing and responding to the appeal.

For appeals of determinations under Section 303(a), OCR will forward a copy of the complainant's online appeal form or written statement to the recipient. The recipient has the option to submit to OCR a response to the complainant's appeal. Any response to the complainant's appeal must be submitted to OCR within 14 calendar days of the date that OCR forwarded a copy of the complainant's appeal to the recipient.

OCR will issue a written decision on the appeal to the complainant for appeals of determinations under Section 108 and to both parties for appeals of determinations under Section 303(a).

ARTICLE IV: COMPLIANCE REVIEWS AND DIRECTED INVESTIGATIONS

The investigation and resolution options and procedures identified in the CPM will be utilized for compliance reviews and directed investigations, as appropriate. See CPM Articles III, V, and VI. The initiation date for the compliance review or directed investigation is the date of the letter notifying the recipient of the compliance review or directed investigation.

SECTION 401 COMPLIANCE REVIEWS

In addition to the regulations implementing Title VI that govern OCR's investigations, the regulations require OCR to, "from time to time," initiate "periodic compliance reviews" to assess the practices of recipients to determine whether they comply with the Title VI regulations. See 34 C.F.R. § 100.7(a). This regulatory provision is incorporated by reference in the regulations implementing other statutes enforced by OCR. See Title IX (34 C.F.R. § 106.71), Section 504 (34 C.F.R. § 104.61), the Boy Scouts Act (34 C.F.R. § 108.9); the Age Discrimination Act, (34 C.F.R. § 110.30; and Title II (28 C.F.R. § 35.172).

The compliance review regulations afford OCR broad discretion to determine the substantive issues for investigation and the number and frequency of the investigations.

SECTION 402 DIRECTED INVESTIGATIONS

In appropriate circumstances, OCR may conduct a directed investigation when information indicates a possible failure to comply with the laws and regulations enforced by OCR; the matter warrants attention; and the compliance concern is not otherwise being addressed through OCR's complaint, compliance review, or technical assistance activities. See Title VI, 34 C.F.R. § 100.7(c). This regulatory provision is incorporated by reference in the regulations implementing the other statutes enforced by OCR. See Title IX (34 C.F.R. § 106.71), Section 504 (34 C.F.R. § 104.61), the Boy Scouts Act (34 C.F.R. § 108.9); the Age Discrimination Act (34 C.F.R. § 110.30), and Title II (28 C.F.R. § 35.172).

ARTICLE V: MONITORING RESOLUTION AGREEMENTS

SECTION 501 RESPONDING TO MONITORING REPORTS AND VERIFYING RECIPIENT'S IMPLEMENTATION

OCR will promptly acknowledge its receipt of interim and final monitoring reports. OCR will evaluate each report and issue an appropriate response (i.e., where OCR determines actions taken are sufficient or insufficient under the agreement). OCR must obtain sufficient information to determine whether the recipient complied with the terms and obligations of the resolution agreement. Depending on the nature of the agreement, verification of remedial actions may be accomplished by, for example, the review of reports,

documentation and other information submitted by recipients and knowledgeable persons; interviews of the recipients and knowledgeable persons; or site visits.

SECTION 502 IMPLEMENTATION PROBLEMS

OCR will promptly provide written notice to the recipient of any deficiencies with respect to implementation of the terms and obligations of the agreement and will request appropriate action to address such deficiencies. When OCR has determined that a recipient has failed to comply with the agreement or any of the terms and obligations thereof for reasons that do not justify the modification of the agreement pursuant to CPM subsection 503(a), OCR will take prompt action to enforce the agreement pursuant to CPM Section 305 and CPM Article VI.

SECTION 503 MODIFICATION OF AGREEMENTS

(a) Changed Circumstances Affecting Agreements

OCR may agree to modify (including with respect to deadlines for submitting a report or completing a required action) or terminate a resolution agreement when it learns that circumstances have arisen that substantially change, fully resolve, or render moot some or all of the compliance concerns that were addressed by the resolution agreement. OCR may also modify the agreement in response to changes in controlling case law, statutes, and regulations.

(b) New Compliance Issues

OCR may address new compliance issues identified for the first time during monitoring by providing technical assistance or considering the issues for a possible compliance review or directed investigation. See CPM Sections 401 and 402.

(c) Approval of Modifications

OCR must approve modifications to the agreement (e.g., requests to change the substance of any provision in the agreement, or requests for extension of time to submit a report or to complete a required action). Approved modifications must be set forth in writing and appended to the original agreement. Requests for modification must be documented in the case file. OCR will send the complainant written notification of approved modifications to the substance of the original agreement, where appropriate.

SECTION 504 CONCLUSION OF MONITORING

OCR will conclude the monitoring of a resolution agreement when it determines that the recipient has fully and effectively implemented the terms and obligations of the resolution agreement, including any subsequent approved modifications to the agreement. OCR will promptly send written notification to the recipient, and the complainant where appropriate, of its determination that the terms and obligations of the resolution agreement have been implemented and that OCR is closing the case.

ARTICLE VI: INITIATION OF ENFORCEMENT ACTION

When post-Letter of Impending Enforcement Action negotiations do not result in a resolution agreement, OCR will initiate enforcement action. OCR will either: (1) initiate administrative proceedings to suspend, terminate, or refuse to grant or continue financial assistance from, or, with respect to the Boy Scouts Act, funds made available through, the Department to the recipient; or (2) refer the case to DOJ for judicial proceedings to enforce any rights of the United States under any law of the United States.

SECTION 601 INITIATE ADMINISTRATIVE PROCEEDINGS, WHERE APPROPRIATE

When post-Letter of Impending Enforcement Action negotiations do not result in a resolution agreement and OCR decides, within its discretion, to initiate administrative proceedings, it will request that an administrative proceeding be initiated. In collaboration with other Department personnel as appropriate, OCR will establish a team to prosecute the case. If OCR decides to defer new funds, a Notice of Opportunity for Hearing will be issued within 30 calendar days of the notice of the deferral action. See Section 305.

SECTION 602 REFER TO DOJ, WHERE APPROPRIATE

When post-Letter of Impending Enforcement Action negotiations do not result in a resolution agreement and OCR decides, within its discretion, to refer the matter to DOJ, it will issue a letter to the recipient stating that the case will be referred to DOJ within 10 calendar days of the date of the letter.

SECTION 603 ENFORCEMENT FOR DENIAL OF ACCESS

A recipient denies access to OCR when it:

- Refuses to permit OCR access during the recipient's normal business hours to information maintained by the recipient that is necessary to determine the compliance status of the allegations under investigation or, during monitoring, the recipient's compliance with a resolution agreement. Generally, this includes access to books, records, and accounts, including electronic storage media; retrieval systems and photocopies; and other sources of information, including witnesses and the recipient's facilities;
- Refuses to permit OCR access to its employees during the recipient's regular business hours;
- Fails to provide information by virtue of the refusal of one of its employees to do so or to provide access to information maintained exclusively by an employee in his/her official capacity; or
- Refuses to complete applicable Office of Management and Budget-approved compliance and survey forms relevant to an investigation.

Where the recipient has refused to provide OCR with access orally, either in person, over the telephone or through use of other media, OCR must attempt to ascertain the basis for the recipient's refusal and explain OCR's authority to obtain the evidence. Where attempts to persuade the recipient to provide access have failed, OCR must send a letter to the recipient that sets forth in detail the evidence (e.g., documents, data, other information, or witnesses) to which the recipient denied OCR access and specifies the efforts that OCR has made to obtain the evidence. If the recipient does not voluntarily provide OCR with access to the requested evidence within 30 calendar days of OCR's issuance of the letter to recipient, OCR will issue a Letter of Impending Enforcement Action. If the recipient continues to deny OCR access to the requested evidence, OCR will issue a letter to the recipient stating OCR's intention to take enforcement action.

SECTION 604 ENFORCEMENT FOR FAILURE TO COMPLY WITH OCR AGREEMENT

Where the recipient has failed to comply with the terms and obligations of a resolution agreement, OCR will issue a Letter of Impending Enforcement Action pursuant to CPM Section 305. If the recipient does not come into compliance after issuance of the Letter of Impending Enforcement Action, OCR will initiate enforcement action pursuant to either CPM Section 601 or CPM Section 602.

ARTICLE VII: APPENDICES

SECTION 701 SPECIAL INTAKE PROCEDURES

(a) Age Discrimination Complaints

An age discrimination complaint is timely when it is filed within 180 calendar days of the date the complainant first had knowledge of the alleged discrimination. For good cause shown, OCR may extend this time limit.

For service complaints under the Age Discrimination Act, the complainant may file a civil action under the Age Discrimination Act in federal court but only after she or he has exhausted administrative remedies. Administrative remedies are exhausted when either of the following has occurred:

(1) 180 calendar days have elapsed since the filing of a complaint with OCR and OCR has made no finding, or (2) OCR issues a finding in favor of the recipient. If OCR fails to make a finding within 180 calendar days or issues a finding in favor of the recipient, OCR will promptly notify the complainant of this fact and of her or his right to bring a civil action for injunctive relief. OCR's notice must also contain the following information: (1) that a civil action can be brought only in a United States district court for the district in which the recipient is located or transacts business; (2) that a complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but that these costs must be demanded in the complaint filed with the court; (3) that before commencing the action, the complainant shall give 30 calendar days' notice by registered mail to the Secretary, the Secretary of Health and Human Services, the Attorney General of the United States, and the recipient; (4) that the notice shall state the alleged violation of the Age Discrimination Act, the relief requested, the court in which the action will be brought, and whether or not attorney's fees are demanded in the event the complainant prevails; and (5) that the complainant may not bring an action if the same alleged violation of the Age Discrimination Act by the same recipient is the subject of a pending action in any court of the United States.

1. Employment Complaints

OCR does not have jurisdiction over employment complaints under the Age Discrimination Act. Employment complaints filed by persons 40 and older are referred to the appropriate EEOC office, and the OCR complaint is dismissed. Employment complaints filed by persons under 40 are not within the jurisdiction of EEOC and may be closed with notice to the complainant that there is no jurisdiction under the Age Discrimination Act. If the complaint alleges age discrimination in employment that is within EEOC's jurisdiction and also contains allegations of discrimination in services within the jurisdiction of OCR, the complaint is split into two separate cases. Each is given its own case number, the age employment complaint is referred to EEOC with the OCR age employment case being dismissed, and OCR proceeds with the complaint based on allegations of discrimination in services.

2. Service Complaints

All complete and timely complaints (see 34 C.F.R. §§ 110.31 and 110.32) containing an allegation of age discrimination in services are promptly referred to the following address or the appropriate regional office by electronic mail or mail:

Federal Mediation and Conciliation Service
Attention: Alternative Dispute Resolution Department
250 E. Street SW
Washington, D.C. 20427

Where OCR receives a complaint containing both allegations of age discrimination in services and allegations under Title VI, Title IX, Title II, Section 504, and/or the Boy Scouts Act, and OCR determines that the non-age allegation is independent and separable from the age allegation, OCR will refer only the age portion of the complaint to FMCS. OCR will proceed to investigate the additional allegations over which OCR has jurisdiction. OCR will not wait for mediation of the age portion of the complaint to conclude before beginning investigation of the non-age portion of the complaint.

Copies of the complaint and letters to the complainant and recipient and a completed FMCS “Request for ADA Mediation Assistance” must be included.

If FMCS does not resolve the complaint within 60 calendar days from the date of filing with OCR, OCR will resume processing the age aspects of the complaint. The date that the complaint or any portion of a complaint is sent to FMCS shall be entered in CMS. The date that the complaint is referred back from FMCS shall also be entered in CMS. FMCS’s processing time will, therefore, not be included in OCR’s case processing time.

(b) Title VI Complaints against Proprietary Schools

Authority to process Title VI complaints against proprietary vocational schools (privately owned, profit-making enterprises that teach a trade or skill) has, with certain exceptions, been delegated to the U.S. Department of Veterans Affairs. Such complaints must be forwarded to:

U.S. Department of Veterans Affairs
Office of Resolution Management
810 Vermont Avenue, N.W.
Washington, D.C. 20420

OCR must refer to the U.S. Department of Health and Human Services Title VI complaints filed against a proprietary school operated by a hospital. The complaint is then dismissed. The complainant must be notified of the referral.

The following exceptions apply.

- OCR remains responsible for enforcement of Title VI where a proprietary vocational school is operated by a college or university. See 38 C.F.R. § 18a.1(a).
- OCR remains responsible for enforcement of Title VI where a proprietary vocational school offers non-degree courses for which credit is given and which, on transfer, would be accepted toward a baccalaureate or higher degree by a degree-granting institution. See 38 C.F.R. § 18a.1(b).

(c) Title VI and Title IX Employment Complaints (see 29 C.F.R. §§ 1691.1 – 1691.13 and 28 C.F.R. §§ 42.601 – 42.613)

Race, color, national origin, and sex discrimination in employment complaints will be processed in accordance with the government-wide regulations. OCR will:

1. Within 10 calendar days of receipt, notify the complainant and the recipient that OCR has received the complaint, including the date, place and circumstances of the alleged unlawful employment practice.

2. Within 30 calendar days of receipt:

- i. Determine whether OCR has jurisdiction over the complaint under Title VI and/or Title IX.
- ii. Determine whether EEOC may have jurisdiction over the complaint.
- iii. Transfer to EEOC all complaints over which OCR does not have jurisdiction but over which EEOC may have jurisdiction and notify the complainant and the recipient of the transfer, the reason for the transfer, the location of the EEOC office to which the complaint was transferred and that the date the agency received the complaint will be deemed the date it was received by EEOC.
- iv. Refer to EEOC certain complaints over which both OCR and EEOC appear to have jurisdiction (“joint complaints”), consistent with the following guidance:

Absent special circumstances, OCR will refer a joint complaint that solely alleges employment discrimination against an individual.

Absent special circumstances, OCR will not refer a joint complaint alleging a pattern or practice of employment discrimination.

Absent special circumstances, OCR will not refer a joint complaint that alleges discrimination in employment and includes allegations regarding other practices of a recipient. If, because of special circumstances, the employment allegations of such a complaint are referred to EEOC, OCR will assign a new case number to the allegations that are retained.

OCR will notify the complainant and recipient of the action taken on the joint complaint. In the case of a referral to EEOC, the notice will include the location of the EEOC office to which the complaint was referred, the civil rights provisions involved, the authority of EEOC under this regulation and that the date the agency received the complaint will be deemed the date it was received by EEOC.

For those joint complaints retained for OCR investigation, OCR will contact EEOC to ensure that, in the event EEOC has also received the complaint, EEOC defers its investigation.

(d) Title II ADA Complaints (Other than Employment) (see 28 C.F.R. § 35.171(a)(2)(i))

OCR has jurisdiction to investigate Title II complaints against public elementary and secondary education systems and institutions, public institutions of higher education and vocational education (other than schools of medicine, dentistry, nursing, and other health-related schools), and public libraries. When OCR receives an ADA-only complaint over which it does not have jurisdiction, it will be referred to DOJ and then dismissed. The complainant will be notified of the referral.

(e) Section 504 and Title II Disability Employment Complaints (see 28 C.F.R. Part 37 and 29 C.F.R. Part 1640)

1. Referral or Deferral

- i. Disability employment complaints shall be referred to the DOJ Civil Rights Division if OCR has no jurisdiction under either Title II of the ADA or Section 504 of the Rehabilitation Act of 1973, and EEOC does not have jurisdiction under Title I (*i.e.*, the recipient has fewer than 15 employees). If EEOC has jurisdiction under Title I

(i.e., the recipient has 15 or more employees), the complaint shall be referred to EEOC.

- ii. OCR shall defer individual complaints unless the complainant elects to have OCR process the charge. OCR must notify the complainant in writing that he or she may choose whether to have OCR or EEOC process the complaint and that if the complainant would like OCR to process the complaint, OCR must receive such written request within 20 calendar days of the date of the letter. See 28 C.F.R. § 37.8(a)(1). If special circumstances make deferral inappropriate, OCR and the appropriate agency may jointly determine to reallocate investigation responsibilities. See 28 C.F.R. § 37.8(e).

2. Retention

- i. When OCR has jurisdiction over a disability employment complaint under Section 504, OCR shall retain the complaint if:
 - EEOC does not have jurisdiction under Title I (i.e., if fewer than 15 employees);
 - EEOC has jurisdiction, but the complainant elects to have OCR process the complaint;
 - The complaint alleges discrimination in both employment and other practices or services covered by Section 504; or
 - The complaint alleges a pattern or practice of employment discrimination. See 28 C.F.R. § 37.6(d)(1).
- ii. When OCR has jurisdiction under Title II of the ADA but not under Section 504, OCR shall retain jurisdiction over a complaint when it determines that EEOC does not have jurisdiction under Title I. See 28 C.F.R. §§ 37.6(d)(2) and (3).

SECTION 702 DATA COLLECTION AND INFORMATION GATHERING

(a) Generally

OCR's data collection and information gathering activities will vary from case to case depending on applicable legal standards, investigative strategies, and the extent to which relevant data/information are in the control of the recipient or others. Some general investigative principles and practices include:

- Obtain independent written documentation to corroborate oral statements;
- Label all evidence, documents, electronic media, and written records of contact with information identifying the case being investigated and the circumstances under which the evidence was obtained (e.g., where and when an interview was conducted, and who provided a given document);
- Document efforts to obtain access to recipient data and witnesses;
- Undertake a robust outreach to the recipient community to increase access to relevant information in the conduct of an investigation (e.g., by publicizing OCR's presence and availability in onsite investigations for individual interviews and focus groups as well as OCR's availability for discussion with interested individuals before and subsequent to the onsite), as appropriate; and
- Collect data resulting from any methods that OCR or recipients use to track and evaluate compliance with their legal responsibilities (e.g., data from OCR's Civil Rights Data Collection, recipient public websites, climate surveys, and other self-assessment tools).

(b) OCR's Authority to Obtain Information

OCR has the right of access during a recipient's regular business hours to the recipient's facilities and to information maintained by the recipient that is necessary to determine compliance status on those issues under investigation. See 34 C.F.R. § 100.6(c), 34 C.F.R. § 99.31(a)(3)(iii) and 34 C.F.R. § 110.22. Generally, this includes access to such of the recipient's books, records, accounts, including electronic storage media, microfilming, retrieval systems and photocopies maintained by the recipient, and other sources of information, including witnesses, and its facilities, as may be relevant, in OCR's judgment, to ascertain compliance.

(c) Requests for Records**1. Data Requests**

A data request seeks information from the recipient relevant to the investigation. It can be used to initiate information collection or to request further information, as necessary.

2. Timeframes for Recipient's Response

The recipient will be given an appropriate amount of time to submit the information required, which shall be determined on the basis of the nature and extent of OCR's data request. This timeframe is established in OCR's discretion, considering factors such as the feasibility of complying with the request in the determined time period.

3. Data Provided by Recipient

A recipient must submit information as necessary for OCR's compliance activities. However, other federal regulations and policies may restrict OCR's information requests:

- i. For example, in the context of an ongoing complaint, compliance review, or directed investigation, OCR may require recipients to record information in such form and containing such information as OCR may determine is necessary to assess compliance, without obtaining prior approval for its use by the Office of Management and Budget.¹² See 34 C.F.R. § 100.6(b).
- ii. OCR must consider federal policies concerning paperwork burdens when requesting that a recipient do more than provide OCR access to normally maintained information. Requests that a recipient generate, aggregate, or compile information to meet an OCR need must be reasonable and may not be unduly burdensome.. Recipients that maintain data in an electronic format must provide the data in that format to OCR in a file type that can be accessed by OCR. Recipients that do not maintain data in an electronic format are encouraged to provide the requested information in an electronic format that can be accessed by OCR.

If a recipient invites OCR to come onsite and collect the requested information, including the interview of witnesses and provides OCR with sufficient access to files, records, logs, and appropriate indexes for OCR to obtain the needed information, then the recipient shall be deemed to have provided OCR with the requisite access necessary to satisfy this provision.

¹² The Paperwork Reduction Act only applies to collections directed at ten or more respondents, with one important exception. Any information requirement in a "rule of general applicability" is presumed to affect or potentially affect at least ten respondents.

4. Confidentiality

OCR has the right of access to a recipient's records, even if those records identify individuals by name. To protect the confidential nature of the records, OCR may, for example, permit the recipient to replace names with a code, and to retain a key to the code. However, OCR should inform the recipient that if at any time, such a procedure impedes the timely investigation of the case, OCR shall have access to the unmodified records. See 20 U.S.C. §§ 1232g(b)(1)(C)(i)(II) and (b)(3) and 34 C.F.R. §§ 99.31(a)(3)(iii) and 99.35 regarding the applicable provisions of the Family Educational Rights and Privacy Act.

(d) Interviews

1. Introduction

Interviews are an integral part of investigations. The objective of interviews is to gain an understanding of the records and data relevant to the issues in the case; to obtain information from and assess the credibility of witnesses; and to evaluate recipient defenses. OCR may conduct individual interviews and focus groups, as appropriate, as part of its investigations. OCR will make efforts to work with recipients to conduct interviews in a manner that minimizes disruptions to the recipient's educational environment.

2. Notice

Prior to initiating an interview, OCR will inform the witness of the following.

- i. The general purpose of the interview, including OCR's role, what law or laws may be pertinent to the investigation, and where appropriate, a brief explanation of what is under investigation.
- ii. The approximate maximum amount of time that the interview may take.
- iii. The potential uses of the information to be obtained from the witness and the Freedom of Information Act. A witness who wants a more thorough explanation should be given a copy of the "OCR Notice of Witness Rights." This Notice is available at: (<https://www2.ed.gov/about/offices/list/ocr/docs/witness-notice-mw.pdf>).
- iv. The witness's right to personal representation during the interview by a person of his or her choice.
- v. When the witness is an employee of a recipient, his or her right to refuse to have anyone else present during the interview and his or her right to refuse to reveal the content of an interview.
- vi. The regulatory provisions concerning prohibition of intimidating or retaliatory acts by a recipient.
- vii. In most cases, the recipient's counsel will be allowed to be present during upper level management interviews.

3. Privacy

The privacy interests of witnesses will be considered in selecting the conditions and means employed by OCR to conduct witness interviews. An interpreter may be used when safeguards are taken to ensure the competence of the interpreter and to protect the witness's privacy.

4. Interviews with Minors (Persons under 18) or Legally Incompetent Individuals

OCR shall obtain written consent from a parent or guardian prior to conducting an interview of any person under 18 years of age or otherwise adjudicated legally incompetent, for example, mentally impaired. Parental or legal guardian consent may not be required for persons under 18 if they are emancipated under state law or in the context of Section 504, whose IDEA rights have transferred under 20 U.S.C. § 1415(m), and are therefore considered to have obtained majority. For persons under 18 who state they are emancipated or whose IDEA rights have transferred, OCR should obtain proof of emancipation or proof of transfer of IDEA rights.

Parental or legal guardian consent may not be necessary where the questions asked are of a general nature, not related to any specific events in which the minor was involved, and there are no records kept to identify the student. Where a recipient refuses to allow minor students to be interviewed without consent where the questions asked are of a general nature, not related to any specific events in which the minor was involved, and there are no records kept to identify the student, written consent must be obtained.

Where parents or guardians refuse to provide consent for an interview, and OCR determines that the child's information is critical, OCR may attempt to secure parental or guardian consent by inviting the parent or guardian to be present during the interview. Where consent is denied, OCR will not interview the child.

5. Records of Interviews

A written record of interviews (i.e., in-person, telephonic, or through use of other electronic media) must be kept. Interviewers will notify interviewees when recording is used and recording will be done only with the consent of the interviewee. When interviewers record interviews, the recording becomes part of the case record along with the written record. Regardless of the technique used during the interview, a written record of the interview must be created.

The record of the interview to be placed in the case file must contain the following information.

- i. The case identification (name and case number).
- ii. The name and identification of the interviewee, interviewer, and any other person present (include an explanation for the presence of any other persons).
- iii. The date, time, and location of interview (including whether the interview was conducted in person or through use of media (e.g., telephone, videoconferencing)).
- iv. A record of whether the interviewee was informed of required notifications.
- v. A written record reflecting the questions and responses obtained during the interview (this need not be a verbatim transcript but must accurately reflect the responses of the witness).

SECTION 703 FREEDOM OF INFORMATION ACT AND PRIVACY ACT

The information OCR collects is analyzed by authorized personnel within the agency and is used only for authorized civil rights compliance and enforcement activities. In order to resolve a complaint OCR may need to reveal certain information to persons outside the agency to verify facts or gather additional information. Such information could include the name, the age or physical condition of a complainant. The Privacy Act of 1974 (Privacy Act), 5 U.S.C. § 552a, governs the maintenance of records contained in a system of records, and the Freedom of Information Act (FOIA), 5 U.S.C. § 552, establishes a public right of access (with certain exemptions) to OCR's records.

The Privacy Act regulates the collection, maintenance, use, and dissemination of certain personal information in records contained in a federal agency's system of records. OCR's investigation files have been exempted from certain provisions of the Privacy Act, including, but not limited to, provisions that provide individuals with notification of, access to, and correction or amendment of records maintained on them. See 34 C.F.R. § 5b.11(c)(2)(ii). The Department has published in the Federal Register a Privacy Act system of records notice entitled "Complaint Files and Log" (18-08-01). Third parties may not gain access to records about individuals within a system of records without the prior written consent of the subject individual except as required by FOIA or pursuant to other statutory exceptions contained in the Privacy Act. See 5 U.S.C. § 552a(b).

The FOIA gives the public a right of access to records of federal agencies. The FOIA is implemented by Department regulations. See 34 C.F.R. Part 5.

Although each FOIA request will be reviewed on a case-by-case basis, generally, OCR is not required to release documents, or portions thereof, during the case resolution and investigation process or enforcement proceedings if the release could reasonably be expected to interfere with OCR's law enforcement activities. See 5 U.S.C. § 552(b)(7)(A). Also, a federal agency is not required to release inter- or intra-agency records, or portions thereof, if they are pre-decisional, deliberative documents, or if the records would otherwise be subject to certain privileges in litigation. See 5 U.S.C. § 552(b)(5). Further, a federal agency may not release documents, or portions thereof, that constitute commercial or financial information, obtained from a submitter, that is privileged or confidential. See 5 U.S.C. § 552(b)(4). Finally, a federal agency may not release documents, or portions thereof, if their release would or could result in an unwarranted invasion of privacy of an individual. See 5 U.S.C. §§ 552(b)(6) and (7)(C). Disclosure will only be made as consistent with the Privacy Act and FERPA. OCR will only reveal the name or identifying information about an individual if such disclosure is consistent with the Privacy Act and FERPA.

In addition, OCR can release certain information about the complaint to the press or general public, including the name of the school or institution; the date the complaint was filed; the type of discrimination included in the complaint; the date the complaint was resolved, dismissed or closed; the basic reasons for OCR's decision; and other related information. Any information OCR releases to the press or general public will not include the complainant's name or the name of the person on whose behalf the complaint was filed, except as noted in the paragraph above.

SECTION 704 RECIPIENTS OPERATING UNDER FEDERAL COURT ORDER

(a) When the United States is a Party to the Court Order

When OCR receives a complaint alleging discrimination by a recipient against which the DOJ represents the United States as a party in pending litigation, the following procedures will apply:

1. **OCR notification to DOJ:** OCR will forward the complaint to DOJ by electronic mail immediately and ask whether DOJ wants OCR to refer the complaint to DOJ. This will occur before any OCR evaluation of the complaint begins and even if it is clear on the face of the complaint that OCR would not open it for investigation.
2. **DOJ response:** DOJ will have seven calendar days after the date of OCR's electronic mail notification to determine whether: (1) DOJ wants OCR to refer the complaint to DOJ; or (2) DOJ does not want OCR to refer the complaint to DOJ. There are no additional options. For example, a complaint cannot be conditionally referred or conditionally declined, nor may DOJ request referral of only a portion of a complaint.

3. **No referral to DOJ:** When DOJ indicates that it does not want OCR to refer the complaint, or DOJ does not respond within seven calendar days of the date of OCR's electronic mail notification, OCR, in its sole authority, will immediately process the complaint.
4. **Referral to DOJ:** When DOJ indicates that it wants OCR to refer the complaint, then:
 - i. OCR will refer the entire complaint to DOJ;
 - ii. OCR will dismiss the complaint and notify the complainant that the complaint has been referred to DOJ; and
 - iii. Once the complaint is referred to DOJ, DOJ will be responsible for investigating and resolving the entire complaint. OCR will forward all communications it receives from the complainant relating to the complaint to DOJ and DOJ will be responsible for addressing all such communications. OCR will not accept any type of return or re-referral of the complaint from DOJ.

(b) When the United States is Not a Party to the Court Order

As part of evaluation of the complaint, OCR will consult with parties about the current status of the court order.