Docket ID ED-2017-OS-0074

Document Number 2017-16876

Statement of Dominican University, River Forest Illinois on Title IX guidance

Dominican University is an institution of higher learning that awards undergraduate and master’s degrees through its academic units: the Rosary College of Arts and Sciences, the Brennan School of Business, the College of Applied Social Sciences, and the College of Health Sciences. We offer more than 50 undergraduate programs and more than 20 master’s degrees. Dominican also offers a doctoral degree in library and information science. Dominican is accredited by the Higher Learning Commission, as well as by a number of program and discipline-specific bodies. *U.S. News & World Report* consistently ranks Dominican among the top master’s-level universities in the Midwest. The university serves a student population of approximately 3,400 students, including some 2,200 undergraduates.

In preparing these comments, a team consisting of the Title IX Coordinator, the Senior Deputy Coordinator and a Deputy Coordinator/Training Liaison reviewed Ms. DeVos’ speech delivered on September 7, 2017, the ABA Task Force Report, and the White Paper on Campus Sexual Assault Investigations written by the American Council of Trial Lawyers. In addition, the Title IX Coordinator and the Clery Coordinator reviewed reported cases of sexual assault reported in 2016. Finally, a statement issued by the university in response to the Department of Education’s Intent to change OCR guidance for Title IX Enforcement was also reviewed. This statement is referenced below:

<http://www.dom.edu/diversity/policies>

We begin these comments by affirming the current Dear Colleague letters for Title IX guidance because we believe they provide important protections for victim/survivors and perpetrators of sexual assault. Although we understand that change is both necessary and appropriate given the experiences of some students, faculty, and staff, Dominican University does not advocate rescinding the current guidance. As a private institution, we believe that universities should have responsibility for keeping our campuses safe from sexual assault and we believe that schools should have the discretion to determine how to administer and adjudicate their policies.

We know that one concern with the current guidance is that respondent due process rights are not being enforced. We unequivocally support the principle of due process and believe such principles should absolutely apply to complainants and respondents alike. Nonetheless, we believe that higher education should have the flexibility to determine how to protect the rights of the accuser and the accused. Moreover, Title IX enforcement on college campuses should not become legalistic systems that require lawyers to administer. Systems for Title IX enforcement should be accessible to the community and should not be separate and apart from a university’s standards of community behavior.

We further believe that the evidentiary standard of “a preponderance of the evidence” is necessary for colleges and universities to appropriately adjudicate their policies in a fair, impartial, and timely way.  Higher education institutions do not have chain-of-evidence protections, subpoena power or infinite resources to devote to compliance, a higher standard of proof would be difficult to sustain, especially for small colleges and universities. Based on our experiences with Title IX cases, we agree that requirements for adjudicatory hearings and guidance for investigative systems should be clarified so that evidence and findings can be reviewed by all parties and that services are available for the accused as well as for survivors.

We also agree that universities should extend the effort, care, and due diligence needed to work cooperatively with law enforcement, when appropriate. We recommend that because universities are increasingly implementing research-based trauma-informed practices to protect survivors, DOE should modify existing guidance to require law enforcement to provide trauma informed enforcement for victim/survivors of sexual assault. When it comes to working with law enforcement, victims/survivors should have the independence and autonomy to determine whether or not to report a case.

In conclusion, we call on the Department of Education not to rescind the current Title IX guidance. We believe that the current guidance supports the legal theory and evidence-based practice for keeping campuses free of sexual assault and gender-based misconduct. We respectfully suggest that the Department maintain the current evidentiary standard of preponderance of evidence and require that law enforcement be trained to provide trauma-informed services and protections for victim/survivors.