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PERSPECTIVE

Lessons learned from the USC Title IX investigation of George Tyndall

By Karen Feld

University of Southern California and the Office of Civil Rights recently entered into a resolution agreement putting a (tentative) end to the investigation of USC's handling of Dr. George Tyndall's sexual misconduct against USC students.

The resolution agreement provides helpful direction to higher education as well as other public entities in order to prevent a repeat performance of what happened with Tyndall.

Background

The sexual misconduct by Tyndall occurred between 2000 and 2016 when several employees and students reported that he was taking photos of female patient's genitals, conducting inappropriate examinations, and making inappropriate comments.

After the discovery of the photos on June 6, 2016, USC put Tyndall on administrative leave from June 20, 2016 to June 23, 2017. Tyndall and USC entered into a settlement agreement whereby he voluntarily resigned with a confidential severance payout.

In May 2019, the Los Angeles Times published an article outlining the sexual abuse allegations against the USC gynecologist. Tyndall was arrested by the Los Angeles Police Department in June 2019 and charged with 29 felonies. (The criminal case has not yet gone to trial.)

Tyndall surrendered his medical license to the California Medical Board in September 2019.

USC agreed to a \$215 million class action settlement for the students and the first payments to students were supposed to start in April 2020.

OCR Investigation

The OCR is responsible for en-

forcing Title IX of the Education Amendments of 1972 (20 U.S.C. Section 1681 et. seq.) and 34 CFR Part 106 which prohibit discrimination on the basis of sex in programs receiving financial assistance.

OCR began its first Title IX investigation into the allegations of USC's response to the Tyndall complaints and concluded that USC (1) had notice of possible sexual harassment starting in 2000 and failed to investigate, (2) failed to assess whether interim measure were needed, (3) failed to take steps to prevent recurrence, and (4) failed to respond to complaints and give notice of the outcomes.

In January 2018, OCR entered into an agreement with USC to resolve the Title IX complaints.

2018 Resolution Agreement

After the 2018 agreement, OCR learned of additional complaints that had not been previously disclosed by USC. OCR opened another investigation, concerned that USC had not turned over all the relevant documents.

2020 Resolution Agreement

In response to the OCR's new investigation, USC claimed that the failure to disclose was unintentional and due on organizational errors. USC claimed that the Tyndall complaints had been erroneously categorized in the case management database and personnel records were kept in multiple places and were not centralized which prevented USC from recognizing repeat respondents.

USC and OCR entered into a new resolution agreement on March 2020.

Lessons Learned

The requirements in the 2020 resolution agreement provide direction as to how higher education, as well as other agencies can prevent the

same mistakes as USC in Title IX investigations. The agreement required:

1. *Centralizing and Re-Structuring the Title IX Compliance Office:* The coordinators will report to the senior vice president for human resources instead of the general counsel. This requirement may have reflected a belief that the desire to protect the university did not align with the need to protect the students from harm.

2. *Tracking Title IX Complaints.* Employee evaluation forms will include a notation whether the employee complied with USC policies, whether any complaints were made against the employee regarding policy noncompliance, whether they did their required training, whether supervisors promptly forwarded all reports of sexual discrimination to the Title IX Coordinator. Title IX Letters of Findings and any remedial measures will be placed in the personnel file and the newly created Title IX data system (see #4).

3. *Centralized Reporting.* After doing the evaluations identified in #2, the supervisor will advise the Title IX office if the evaluation revealed whether sex discrimination complaints were provided to a supervisor or whether the employee may have engaged in sexual discrimination.

4. *Record Keeping.* USC will maintain a data system to search for prior or concurrent complaints. The database will track the date of the initial report receipt to the employee, date of initial report receipt to the Title IX office, closing date, manner of resolution, date of notification to complainant, names of parties, protective measured requested / provided, date of completion of report, date of notification to complainant and respondent of the outcome, sanction, date of notification of appeal to the parties, decision re appeal sanction and remedies, date

of resolution of appeal, date of written notification to complainant and respondent of the outcome. Upon receipt of any complaint against an employee, the Title IX office will run a query in all data systems for prior complaints, will contact the employee's supervisor to find out about prior complaints, obtain performance evaluations.

5. *Revise Title IX Procedures:* Notice to parties and witnesses of applicable procedures, identification of complainants, give notice of the outcome, written notice whether an investigation will proceed and appeal of decision to not proceed within 10 days of complaint, and prohibition of retaliation.

6. *Training* what constitutes a Title IX Complaint, how to report it, how to identify it in the context of health care service.

Higher education should review their own Title IX training, reporting procedures, and record keeping to see if they are in compliance with the OCR goals and spirit of Title IX. No university would want to be in the position that USC found itself in during the summer of 2019. ■

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