

Memo

To: Mary Mitchell and Alicia Anderson

CC: Andrew Pomerville

From: [REDACTED], Aimee Moiso, [REDACTED]

Date: August 5, 2024 (*small error on page 3 corrected August 9, 2024*)

Re: Retaliation and Title IX protections

Please include in your investigation the following memo, which documents retaliatory behavior exhibited by Raymond Bonwell that violates Title IX protections of Louisville Institute staff.

In addition to the serious way in which retaliatory behavior is taken by human resources (which was mentioned to us by HR last week), at institutions of higher education staff are also protected from retaliation under Title IX. Here is the language from the Title IX Legal Manual (<https://www.justice.gov/crt/title-ix>):

The Title IX regulations incorporate the requirement in the Title VI regulations, which provides that “[n]o recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by [Title VI], or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under this subpart.”

Retaliation protections are designed to preserve the integrity and effectiveness of the enforcement process itself. Because of this purpose, the merits of any underlying complaint of sex discrimination are irrelevant in assessing a retaliation complaint. *The prohibited conduct is the act of retaliation itself.*¹

Moreover, protected activities include more than filing complaints seeking a vindication of personal rights. The Department believes that a narrow reading requiring the prior exercise of personal rights is inconsistent with the broad remedial purposes behind Title IX itself. It is important to re-emphasize that Title VI agency anti-retaliation regulations (incorporated into Title IX regulations) provide “[n]o recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by [Title VI], . . .” Thus, anyone who asserts rights secured by Title IX is protected. Retaliation claims have their own remedial purpose in that they seek to ensure that rights created under a federal civil rights statute do not go unenforced for fear of adverse official reaction.

Additionally, a “Dear Colleague” letter issued by the Office of Civil Rights (OCR) in the U.S. Department of Education states that:

The ability of individuals to oppose discriminatory practices, and to participate in OCR investigations and other proceedings, is critical to ensuring equal educational opportunity in accordance with Federal civil rights laws. Discriminatory practices are often only raised and remedied when students, parents, teachers, coaches, and others can report such practices to school administrators without the fear of retaliation. Individuals should be commended when they raise concerns about compliance with the Federal civil rights laws, not punished for doing so.

¹ My emphasis.

The Federal civil rights laws make it unlawful to retaliate against an individual for the purpose of interfering with any right or privilege secured by these laws. If, for example, an individual brings concerns about possible civil rights problems to a school's attention, it is unlawful for the school to retaliate against that individual for doing so. It is also unlawful to retaliate against an individual because he or she made a complaint, testified, or participated in any manner in an OCR investigation or proceeding. *Thus, once a student, parent, teacher, coach, or other individual complains formally or informally to a school about a potential civil rights violation or participates in an OCR investigation or proceeding, the recipient is prohibited from retaliating (including intimidating, threatening, coercing, or in any way discriminating against the individual) because of the individual's complaint or participation.*² OCR will continue to vigorously enforce this prohibition against retaliation.

The female staff of the Louisville Institute are doubly protected from retaliation under these statutes. We are all already part of a formal Title IX complaint process with the seminary currently being adjudicated. We are additionally protected from retaliation related to more recent events because in May we brought concerns about the Louisville Institute interim executive director to the seminary Ombuds, and these concerns included gender-based discrimination.

The termination warning letters the four female staff members of the Louisville Institute — [REDACTED], Aimee Moiso, and [REDACTED] — received from Raymond Bonwell, Louisville Institute interim executive director, on July 16 and 17, 2024, violate the above Title IX protections against retaliation.

1. The termination warning letters each of us received, while referencing different individual situations, collectively seek to threaten and intimidate the staff. Each of the accusations leveled against us carries the penalty of being “terminated with good cause” for further violations, but do not explain how such violations would be measured or determined. Moreover, none of concerns in our letters were raised with any of us beforehand. ***The vagueness of these “violations,” coupled with a lack of prior notice about the behaviors cited and the warning of immediate termination for future “violations,” constitutes a clear effort to threaten and intimidate the staff.***

2. Each of the letters received on July 16 and 17, 2024, includes a paragraph similar to the following:

*Finally, there may be questions regarding appeals processes for decisions relating to Louisville Institute. It must be clear it is not in the role of the [Louisville Institute staff] to appeal decisions about the vision and/or general philosophy of the organization. The interpretation and implementation of grants received by LPTS via the LPTS board of trustees, comes through the president, to the interim executive director. Any issues with these decisions may not be “appealed” within or outside the organization. Should there be concerns about the conduct of one's direct supervisor, or any other LPTS employee, such concerns may be taken to the LPTS HR Department or otherwise handled in accordance with the LPTS Employee Handbook.*³

² My emphasis.

³ It is notable that the interim executive director himself did not follow the parameters of the LPTS Employee Handbook when issuing the termination warning letters. He did not use procedures outlined on page 26 of the Handbook that are intended for resolving staff issues. He did not notify the HR department until the letters had already been prepared, and initiated legal rather than HR processes. And he began each of our termination warning conversations by stating that he had prepared the letters with legal counsel, which is itself an act of intimidation.

The validity of the claims made in the “appeals” paragraph above can and will be disputed, but what is important for the question of retaliation is that the letters unilaterally declare that we are not “allowed” to protest or raise concerns about the work of the Louisville Institute beyond a narrow interpretation of what constitutes the conduct of our supervisor. This declaration seeks to limit our capacity to seek counsel and guidance or serve as whistleblowers about actions we see as contrary to the mission and vision of the Louisville Institute. More importantly, however, ***this paragraph reflects awareness that we have made appeals in the past and might again in the future, and uses threats and intimidation to keep us from doing so. This itself is retaliatory and a violation of our protections under Title IX.***

3. Under the existing and ongoing Title IX complaint filed with Louisville Presbyterian Theological Seminary in December 2023, which is focused on gender discrimination, the female staff of the Louisville Institute, as complainant and witnesses, are protected from retaliation that would seek to limit our capacity to raise concerns or to participate without threat in the Title IX process. The seminary is the respondent in the Title IX complaint process. The interim executive director of the Louisville Institute shared with two supervisors — the acting executive (Tyler Mayfield) and the seminary president (Andrew Pomerville) — his intention to issue termination warning letters to his staff. Both of these supervisors were aware of the active Title IX investigation, and served or serve as the representatives of the seminary in that process. The interim executive director was also aware of an active Title IX complaint, as he had been informed of its existence by [REDACTED] on June 27, 2024.

Retaliation provisions in Title IX are designed to protect “the integrity and effectiveness of the process itself.” ***The fact that seminary leaders were aware of the Title IX complaint against the seminary and the interim executive director was still allowed to issue termination warning letters to the entire female staff of the Louisville Institute — letters that included threats and intimidation related specifically to raising concerns and questioning procedures — is a violation of Title IX protections of the integrity and effectiveness of the process.***

Further, because the existing Title IX complaint process is incomplete and the complaint itself could be amended or supplemented at any time, threats and intimidation that seek to keep Louisville Institute staff from speaking freely not only constitute a violation of protection from retaliation, they could become additional evidence in the Title IX process.

4. The female staff of the Louisville Institute met with the LPTS Ombuds on May 23, 2024,⁴ to raise concerns about the interim executive director’s leadership, including issues of gender-based mistreatment and discrimination. In coming days, we will be providing HR with additional documentation of the gender-based discriminatory behaviors we have experienced under the interim executive director.

Following our meeting with the Ombuds, at the June 6 LI staff meeting the female staff brought up for discussion the significant interpersonal and team problems we were having with Raymond’s leadership — problems the interim executive director acknowledged he had noticed several weeks prior. The interim executive director agreed to reach out to the Ombuds for further conversation, but took no other action to address these concerns. He did not contact HR, attempt to bring in

⁴ The August 5 version of this memo stated this meeting took place May 29, but that was incorrect.

other resource persons to help, or even raise the topic in subsequent meetings with staff. This is not to say that the issues were not mentioned during meetings, but each time they were brought up by female staff who continually asked that some kind of action be taken. Female staff repeatedly and openly named feelings of dread and anxiety about coming to the office due to the leadership issues and treatment by the interim, as well as the general experience of a toxic and dysfunctional working environment. The staff is not aware of any action the interim executive director took to address these concerns beyond attempting to contact the Ombuds.

On June 26, 2024, [REDACTED] stated in a staff meeting that because of the hostile and toxic environment she was having panic attacks before coming to work. That comment prompted the interim executive director to initiate a one-on-one conversation with [REDACTED] on June 27, in which she detailed the challenges of the past two years at the Louisville Institute, including issues with previous leadership at LI and at the seminary, the existence of the Title IX complaint, and the distressing and exhausting situations the staff has been experiencing for two years. The interim executive director's response was that [REDACTED] had given him "a lot to think about." Upon returning to the office after a Fourth of July vacation, however, the interim executive director said nothing to [REDACTED] about the conversation they had had, did not mention anything about the mental health or wellbeing of the staff, and did not address any of the ongoing office problems. Further, at no time did he raise concerns about performance or behavior of the staff, either individually or during staff meetings.

The following week, the interim executive director unexpectedly and abruptly issued termination warning letters to the entire staff accusing us of insubordination and unprofessional behavior.

The facts are that the interim executive director:

- was aware that the staff of the Louisville Institute had concerns about how things were going under his leadership
- was aware that we had brought concerns to the Ombuds
- acknowledged that problems in the office had begun shortly after his tenure began
- was aware of the significant mental and emotional strain the current situation was causing staff
- was aware staff had been through traumatic experiences with previous leadership
- was aware the staff had a history of raising and documenting concerns
- was aware of an ongoing Title IX process with the seminary.

Given the weight of evidence, it is difficult to interpret the termination warning letters against four long-term female employees by a male interim executive director as anything other than retaliation for raising concerns about his leadership. The spurious and superficial charges made in the letters only corroborate the idea that the interim executive director intended to threaten and intimidate female staff and keep us from speaking further. This retaliatory behavior constitutes a violation of our rights under Title IX, both because we are already active participants in a Title IX investigation against the seminary, and because we raised concerns about the interim executive director and gender-based discrimination with an official of the seminary (the Ombuds) in May. Moreover, the seminary may have demonstrated willful negligence in allowing such letters to be issued against participants in an ongoing Title IX investigation.