



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION I
5 POST OFFICE SQUARE, 8th FLOOR
BOSTON, MASSACHUSETTS 02109-3921

January 16, 2019

President Joseph E. Aoun
Northeastern University

By email: x.xxxxxx@northeastern.edu

Re: Complaint No. 01-19-2158
Northeastern University

Dear President Joseph E. Aoun:

This letter is to advise you of the outcome of the above-referenced complaint that the U.S. Department of Education (Department), Office for Civil Rights (OCR) received against Northeastern University (University). The Complainant alleged that the University discriminated against her on the basis of sex (parental status and pregnancy and related conditions). Specifically, the complaint alleges that the University failed to promptly and equitably respond to the Complainant's xxxxx xxxx complaint of sex discrimination. The complaint also alleges that the Complainant's xxxxxxxxxxxxxxxxxxxx (xxxxxxxxxxxx) professor failed to excuse her absences due to pregnancy and related conditions, including recovery from childbirth, during the xxxxx xxxx semester.

OCR enforces Title IX of the Education Amendments of 1972 (Title IX) and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any program or activity receiving federal financial assistance from the Department. Because the University receives federal financial assistance from the Department, OCR has jurisdiction over it pursuant to Title IX.

On August 8, 2019, OCR opened the following allegations for investigation:

1. Whether the University failed to provide a prompt and equitable response to the Complainant's xxxxx xxxx complaint of discrimination based on sex (i.e., pregnancy and related conditions and/or parental status), in violation of 34 C.F.R. §§ 106.8(b) and 106.31(a) and (b) (Allegation 1).
2. Whether the University discriminated against the Complainant on the basis of pregnancy, childbirth, or recovery therefrom when it failed to excuse her pregnancy or childbirth-related absences in xxxxxxx xxxxxxx during the xxxxxx xxxx semester, in violation of 34 C.F.R. § 106.40(b)(1) (Allegation 2).

Before OCR completed its investigation of Allegation 1, the University expressed a willingness to resolve the allegation pursuant to Section 302 of OCR's *Case Processing Manual* (CPM) and

OCR determined that it was appropriate for the University to do so by taking the steps set out in the enclosed Resolution Agreement (Agreement).¹

OCR has completed its investigation of Allegation 2. In reaching a determination, OCR reviewed documents provided by the Complainant and the University. After carefully considering all of the information obtained during the investigation, OCR found insufficient evidence to support Allegation 2.

OCR’s findings and conclusions are discussed below.

Background

During the xxxxx xxxxx semester, the Complainant was xxxxxxxx as a xxxxxxxxxxxx, xxxxxxxx Student in the University’s xxxxxxxx xx xxxxxxxx degree program in xxxxxxxx and xxxxxxxx xxxxxxxx and took two courses – xxxxxxxxxxxxxxxxxxxx (xxxxxxxxxxxxxxxx) and xxxxxxxxxxxxxxxxxxxx. As a condition of the Complainant’s xxxxxxxx in the program, the University informed her that she would be “xxxxxxxx xxx xxxxxxxxxxx xxxxxxxxxxx” if she failed to “xxxxx xxx xxxxxx xxxxxx xxxxxxx xxxxxxxxxxx (xxx) xxxxxx xxx xxxxxxxxxxx xx xxx xx xxx xxx xx” the semester.²

The xxxxxxxxxxx xxxxxxxx syllabus states that “[a]ttendance is mandatory” and accounts for xxxxxxxx percent of the student’s final grade, but if a student “need[s] to miss a class,” he or she should “inform [the course Professor] . . . ahead of time, in order to avoid an unexcused absence.” The syllabus notes that “[m]ore than two unexcused absences will result in a full letter-grade being deducted from the student’s final grade for each subsequent absence.”

The Complainant informed OCR that she “was present the first xxx classes” in xxxxxxxxxxxx, on xxxxxx x and x, xxxx.

On xxxxxxx xx, xxxxx, the Complainant emailed the Professor to introduce herself and let the Professor know that she would not “be able to make it to class” the following day “because it [wa]s so . . . xxx out” and she could “[n]ot risk falling during the end of pregnancy.” She also stated that she would “not be able to make it to next weeks [sic] class either (xxxxxxxx xx),” but she would “definitely email [the Professor her] research topic by its due date xxxxxxx xxx.” She asked the Professor if they could “prepare for [her] to present the week of xxxxxxx xxx” or “ask the class if someone would switch with” her to present on that date, and the Professor responded that, “in lieu of” presenting in class, the Complainant could “submit a 3-4 [page], double-spaced response paper on [he]r assigned reading for xxxxxxxxxx xxx, due the same day . . . via e-mail, so that [she could] work from home and around childcare duties as needed.” The Complainant responded that this “sound[ed] perfect to” her and she would “see [the Professor] in class xxxxxxxxxxx xxx.”

On xxxxxxxxxxx xx, xxxxx, the Complainant gave birth. On xxxxxxxxxxx xx, xxxxx, she informed her xxxxxxxxxxxxxx professor that she “intend[ed] on attending class” the following day but was “waiting to here [sic] back from the sitter.”

¹ The CPM is available at <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.

² The Complainant had failed to xxxxxxxx x xx xxx xxx during her xxxxxx xxxxxxxx in the program.

In response to an inquiry from the Complainant’s xxxxxxxxxxxx Program Director on xxxxxx xx, xxxx, the Professor reported that the Complainant “ha[d] only been present for xx full classes, and left halfway through a xxxxx one.” She noted that she had made “accommodations for [the Complainant] to submit a written response paper instead of coming in to do her presentation in the beginning of the semester, when she had her baby.” The Professor stated that she could not “give her a passing grade for participation and attendance, which is worth xx% of her grade.”³

On xxxxxx x, xxxx, the Complainant emailed the University’s Title IX Coordinator “to file a formal complaint of a violation of [her] Title IX rights of being a parenting student and also based upon [her] recent pregnancy.” She noted that she “had all xxxx of [her] children with [her] for the past xx days straight” and her “stance as . . . a young mother so close to xxxxxxxxxxx . . . should be taken into some consideration” by her professors. The Complainant informed OCR on xxxxx x, xxxxx that she never received a response to this email, and the University informed OCR that it “failed to timely respond to the Complainant due to an administrative oversight.”

On xxxxxx xx, xxxx, the Complainant emailed the Professor that she should “not be accountable for [the] xx% participation grade” the Professor had given her, as she “ha[d] read into rights for parenting students and there was much information under title IX . . . that students in [her] specific position should be offered ways to make up missed work from legitimate absences.” She requested “to submit any type of work/paper to make up for the missed participation.” Later that day, the Professor responded as follows:

I have been and continue to be sympathetic to your situation this semester as a new parent, and have not counted any absences the first xxx weeks of the semester, when your baby was due. In terms of the participation grade, my attendance sheet and class discussion notes indicate that you came to xx full classes, and xx more classes where you left during the break midway, right before the discussion portion of the class, where participation is subject to grading. Without counting the xxx xxxx xxx we had and the xxx-week excused absences, that leaves us with xx meeting times – out of which you participated in effectively in xx classes, worth xx percent of the participation grade (assuming you actively participated in class discussion). . . . [T]he syllabus transparently outlined the importance of class discussion. Even so, . . . I have given you the opportunity to submit a response paper instead of a class presentation

The University provided OCR a copy of the Complainant’s University transcript, which indicates that she earned a xx in xxxxxxxxxxxx during the xxxxxx xxxx semester and an overall GPA across all coursework of xxxxx. The University issued an “xxxxxxxx xxxxxxxx” to the Complainant on xxxx x, xxxx because her xxxx was “xxxx xxxxx xxx xxxxxxxxxxx xxxxxxxx xxxxx xxxxxxxxxxx xxx xxxxxx xxxxxxxxxxx xxxxxxxx xx x xxxxxxxxxxx xxxxxxx.”

³ The Professor also noted that “the policy on attendance in [her] syllabus is that ‘more than two unexcused absences will result in a full letter-grade being deducted from the student’s final grade for each subsequent absence.’”

Legal Standards

Title IX prohibits discrimination on the basis of sex in education programs or activities operated by recipients of federal financial assistance. The Title IX regulation, at 34 C.F.R. § 106.31(a), states that no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity operated by a recipient of federal financial assistance. Discrimination on the basis of a student’s parental status, pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom, can be a form of sex discrimination prohibited by Title IX.

The Title IX regulation, at 34 C.F.R. § 106.8(b), requires recipients to adopt and publish grievance procedures that provide for the prompt and equitable resolution of student and employee complaints of Title IX violations. In response to a complaint of sex discrimination, a recipient must take prompt and equitable responsive action. OCR evaluates on a case-by-case basis whether the resolution of a sex discrimination complaint is prompt and equitable.

The Title IX regulation, at 34 C.F.R. § 106.40(b)(1), specifically prohibits a recipient from discriminating against a student or excluding the student from its education program or activity on the basis of the student’s pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery from any of these conditions, unless the student requests voluntarily to participate in a separate portion of the District’s education programs or activities. The Title IX regulation, at 34 C.F.R. § 106.40(b)(5), states that, in the case of a recipient which does not maintain a leave policy for its students, or in the case of a student who does not otherwise qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as a justification for a leave of absence for so long a period of time as is deemed medically necessary by the student’s physician, at the conclusion of which the student shall be reinstated to the status which she held when the leave began. In particular, recipients must excuse a student’s absences because of pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery from any of these conditions for as long as the student’s physician deems the absences medically necessary.

Analysis

Allegation 1

OCR is concerned that the University may have failed to promptly and equitably resolve the Complainant’s xxxxx x, xxxx Title IX complaint “due to an administrative oversight.” The University has agreed to resolve Allegation 1 pursuant to the enclosed Agreement.

Allegation 2

OCR has determined that there is insufficient evidence to support the Complainant’s allegation that the University discriminated against her on the basis of pregnancy, childbirth, or recovery therefrom when it failed to excuse her pregnancy or childbirth-related absences in xxxxxxxxxxxx during the xxxxxxxx xxxx semester.

The evidence indicates that the Professor excused the Complainant's xxx absences that she informed the Professor were due to her pregnancy, childbirth, or recovery therefrom – for class sessions on xxxxxxxx xxx xxxx xxx xxxx⁴ – notwithstanding the lack of any information from a physician provided to the University regarding the medical necessity of these absences. The Professor offered the Complainant an academic adjustment “so that [she could] work from home and around childcare duties as needed” during this period, which “sound[ed] perfect to” the Complainant. The Complainant informed the Professor that she intended to return to class on xxxxxxxxxxxx x, xxxx, and she did not inform the University or otherwise allege that any of her subsequent absences in the course were due to pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery from any of these conditions.

Accordingly, OCR concludes that there is insufficient evidence to support Allegation 2.

Conclusion

Prior to the conclusion of OCR's investigation of Allegation 1 and pursuant to Section 302 of the CPM, the University expressed an interest in resolving Allegation 1 and OCR determined that a voluntary resolution is appropriate. Subsequent discussions between OCR and the University resulted in the University signing the enclosed Agreement which, when fully implemented, will address OCR's concerns relating to Allegation 1. OCR will monitor the University's implementation of the Agreement.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the University's compliance with any other regulatory provision or to address any issues other than those addressed in 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. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the University must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

⁴ Although the Professor mistakenly informed the Complainant that these absences were during “the first xxx weeks of the semester,” she also clarified that she was referring to the Complainant's absences “when [her] baby was due.” There is no evidence in the record indicating that the Complainant was previously absent in the relevant course or that she had requested that any absences in this course be excused prior to xxxxxxxx xx, xxxx.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

Sincerely,

/s/

Timothy Mattson
Compliance Team Leader

Enclosure

cc: Philip Catanzano, Esq. (by email: phil.catanzano@hklaw.com)