

March 31, 2017

President Robert Barchi
Rutgers, The State University of New Jersey
Office of the President
Room 203
Old Queens, College Avenue Campus
83 Somerset Street
New Brunswick, New Jersey 08901-1281

Re: Case No. 02-16-2315
Rutgers University

Dear President Barchi:

This letter is to advise you of the resolution of the above-referenced complaint filed with the U.S. Department of Education, Office for Civil Rights (OCR), against Rutgers University (the University). The complainant alleged that the University discriminated against him, on the basis of his sex, when his XXXXX XXXXX course (the course) instructor (the instructor) lowered his grade on the final paper for the course, on or about May 10, 2016; and, the dean of the School of Social Work (the dean) failed to respond appropriately to his complaint of sex discrimination regarding his grade on the final paper for the course, on or about June 24, 2016.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), as amended, 20 U.S.C. § 1681 *et seq.*, and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any education program and activity receiving financial assistance from the U.S. Department of Education (the Department). The University is a recipient of financial assistance from the Department. Therefore, OCR has jurisdictional authority to investigate this complaint under Title IX.

The regulation implementing Title IX, at 34 C.F.R. § 106.31(b), states that in providing any aid, benefit, or service, a recipient shall not, on the basis of sex, provide aid, benefits, or services in a different manner; subject any person to separate or different rules of behavior, sanctions, or other treatment; or, otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity. Enforcement of a rule or application in a discriminatory manner is prohibited intentional discrimination. For disparate treatment,

absent direct proof of intentional discrimination based on sex, OCR generally asks the following questions to determine whether different treatment has occurred:¹

1. Did the recipient treat a student or group of students differently from a similarly situated student or group of students of another sex, and thereby limit or deny the student(s) educational services, benefits, or opportunities?
2. Did the recipient have any legitimate, non-discriminatory reason for its actions?
3. Was the reason given a pretext for unlawful discrimination?

The regulation implementing Title IX, at 34 C.F.R. § 106.8(b), also requires a recipient to adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action prohibited by the regulation implementing Title IX.²

In its investigation, OCR interviewed the complainant, the XXXX XXXXX (the instructor), and the XXXX XXXXXXX XXXX XXXXXXX (the lead instructor). OCR also reviewed documentation that the complainant and the University submitted.

The complainant alleged that the University discriminated against him, on the basis of his sex, when the instructor lowered his grade on the final paper for the course, on or about May 10, 2016, and the dean failed to respond appropriately to his complaint of sex discrimination regarding his grade on the final paper for the course, on June 24, 2016.

The complainant was enrolled as a student in the University's XXXXX XXXXX program (the program) in spring 2016, and enrolled in the course XXXXX for spring 2016. Students received grades in the course on the following grading scale: A - 92-100%; B+ - 87-91%; B - 82-86%; C+ - 77-81%; C - 70-76%; F - 0-69%. A student had to receive a grade of C or better to pass the course. The course assignments for spring 2016 included a midterm exam (30% of the final grade); a reaction paper to the book, XXXX XXXX XXXXX (10% of the final grade); the final paper (40% of the final grade); and a final paper presentation (20% of the final grade).

On April 21, 2016, the complainant submitted his final paper for the course to the instructor. By electronic mail (email) message on May 10, 2016, the instructor sent the complainant a graded paper with a final grade of 45/100, i.e., an F grade. The course syllabus contained the following grading rubric for papers:

- A - *excellent*: superb and sophisticated analytical depth, complete, demonstrates excellent command of material, provides pertinent case example, excellent written skills;

¹ See *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).

² The University has policies and procedures prohibiting discrimination and harassment on the basis of sex, pursuant to Title IX, which appear on the University's website. These policies and procedures describe the process for filing and investigating complaints of sex discrimination and harassment. The University's Title IX policies and procedures are currently under review in OCR Case No. 02-15-2387; therefore, these policies and procedures are not addressed herein.

- B+ - *very good*: very good analytical depth, complete, demonstrates reasonable command of material, provides pertinent case example, solid written skills;
- B - *good*: analytical depth is generally good but inconsistent/uneven, incomplete and/or lacks some necessary and/or required elements, uneven case example, uneven written skills;
- C+ - *marginal*: lacks analytical depth (superficial analysis), incomplete and/or lacks numerous necessary and/or required elements, errors of fact, difficulty with conceptual grasp of material, uneven case example, uneven written skills;
- C - *poor*: lacks analytical depth (superficial analysis), incomplete and/or lacks numerous necessary and/or required elements, errors of fact, difficulty with conceptual grasp of material, uneven case example, poor written skills; and
- F - *failing*³: seriously lacks analytical depth (superficial analysis), incomplete and/or lacks numerous necessary and/or required elements, errors of fact, serious difficulty with conceptual grasp of material, uneven or inaccurate case example, poor written skills.

The instructor's total deductions were: ten (10) points for "frequent missing citations"; five (5) points for "need[ing] original source for newspaper articles"; fifteen (15) points for "confusing discussion of the topic"; ten (10) points for "repeated missing data to support claims"; and fifteen (15) points for "inappropriate language." The instructor deducted fifteen (15) points from the complainant's final paper for "inappropriate language" based on the complainant's use of the word "pussy" in the paper. The complainant asserted that if the instructor had not deducted fifteen (15) points for "inappropriate language" his grade on the final paper would have been a 60% - F; and if he had received a 60% - F grade on the final paper, he would have passed the course with a final grade of 73.7% - C.⁴

In an email to the instructor dated May 12, 2016, the complainant stated that he used the word in the context of its use in the book, XXXX XXXX XXXXX, an assigned reading for the course. The complainant did not allege any discrimination, based on his sex or otherwise, in this communication. On May 13, 2016, the complainant met with the XXXXXX XXXXXXXX (the coordinator) to discuss his concerns about his paper grade. In an email to the coordinator dated May 17, 2016, the complainant stated that he believed the paper deserved a higher grade than a 45/100; and, that he disagreed with the instructor's determination that his use of the term "pussy" was inappropriate or offensive in the context in which he used it, and asked that his paper be reviewed by someone other than the instructor. OCR determined that the complainant did not allege discrimination on any basis in this communication.

The instructor held a telephone conference with the coordinator and complainant, on May 24, 2016, in which the complainant told the instructor that he had intended to cite to an in-class reading assignment when using the term. The instructor stated that she told the complainant that he did not cite to the assignment or otherwise use the term in any acceptable context in the final paper for the course. The instructor stated that, during the

³ The instructor's grading rubric did not provide for any grades in the "D" range.

⁴ The complainant received a final grade of 67.7% - F.

call, she discussed the term with the complainant, including her belief that it could be construed as a sexist term, but the complainant never alleged that he believed she deducted points because of his sex. During the call, the instructor declined to change the complainant's grade. The instructor stated that her decision was not based on the complainant's sex, but rather because he used an inappropriate term without any citation or context that made his use of the term reasonable. The instructor further stated that had the term been used with citations and in an appropriate context, she would not have deducted points. The instructor advised OCR that the complainant had previously used the same term in his prior reaction paper to XXXX XXXXX XXXXXXXX, with proper citations, and the instructor had not deducted points. The instructor stated that in the reaction paper, unlike in the final paper, the complainant noted that the word was a "very non-professional diagnosis" and cited to the page in the book to which he was referring.

In a letter to the lead instructor, dated May 25, 2016, the complainant again stated his belief that he had used the term in proper context in the final paper, and that the instructor's point deduction was not warranted. The complainant again did not allege that he had been subjected to any discrimination. Subsequently, on June 1, 2016, the complainant and the lead instructor met to discuss the final paper. The lead instructor stated that she informed the complainant at the meeting that she agreed with the instructor's assessment of the paper. The lead instructor stated that her decision was not based on the complainant's sex, and that the complainant never alleged that he had been subjected to discrimination based on his sex or otherwise. The lead instructor stated that the complainant reiterated his objections regarding his grade on the final paper, but they did not specifically discuss the inappropriate term at the meeting. By letter dated June 2, 2016, the lead instructor informed the complainant that she was upholding the grade of 45/100 on the final paper.

In a letter to the dean, dated June 14, 2016, the complainant continued his grade appeal for the final paper. OCR determined that this was the first instance in which the complainant alleged sex discrimination to the University. By letter dated June 24, 2016, the dean provided the complainant with written notice that his grade appeal had been denied. The dean's letter did not refer to the complainant's allegation of sex discrimination.

By email to the University Chancellor (the chancellor) dated June 30, 2016, the complainant stated that he had completed a grade grievance and alleged that he had been discriminated against based on his sex. By email dated August 16, 2016, the chancellor responded that he was not in a position to change the complainant's grade, and that he saw no evidence of sex discrimination with respect to the complainant's grade.

Based on its investigation, OCR has concerns as to whether the University addressed the complainant's allegations of sex discrimination in the context of the University's Title IX grievance procedures. On March 10, 2017, the University signed the attached resolution agreement to voluntarily resolve the complaint's allegation without further investigation, in accordance with Section 302 of OCR's Case Processing Manual. OCR will monitor

the implementation of the resolution agreement. If the University fails to comply with the terms of the resolution agreement, OCR will resume its investigation.

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 file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the University may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the individual may file another complaint alleging such treatment.

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

If you have any questions regarding OCR's determination, please contact Lance Neyland, Compliance Team Attorney, at (646) 428-3824 or lance.neyland@ed.gov; or Nadja Allen Gill, Compliance Team Leader, at (646) 428-3801 or nadja.r.allen.gill@ed.gov.

Sincerely,

/s/

Timothy C.J. Blanchard

Encl.

cc: XXXXXXXXXXXX