



**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS**

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January 6, 2017

Dr. Robert J. Jones, Jr.
Chancellor
University of Illinois – Urbana-Champaign
Swanlund Admin Bldg
601 E. John
M/C 304
Champaign, IL 61820-5711

Re: OCR Docket # 05-16-2308

Dear Dr. Jones:

This letter is to notify you of the disposition of the above-referenced complaint, filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against the University of Illinois – Urbana-Champaign (University). The complaint alleged that the University discriminated against Applicant A on the basis of sex when she was denied admission to the University on XX. The complaint also alleged the University did not properly investigate a discrimination complaint filed by Applicant A with the University in XX.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681-1688, and its implementing regulation at 34 C.F.R. Part 106, which prohibits discrimination based upon sex in any educational program or activity operated by a recipient of Federal financial assistance from the Department. As a recipient of Federal financial assistance from the Department, the University is subject to Title IX.

During its investigation, OCR interviewed Applicant A, interviewed University staff members, and reviewed documents submitted by both parties. With respect to the allegation that the University discriminated against Applicant A on the basis of sex when she was denied admission to the University on XX, OCR determined that there is insufficient evidence to support the allegation. Prior to OCR's conclusion of its investigation of the allegation that the University did not properly investigate a discrimination complaint filed by Applicant A with the University in XX, in accordance with Section 302 of OCR's *Case Processing Manual* (CPM), the University expressed interest in resolving this allegation. The University signed the enclosed Resolution Agreement, which, when fully implemented will resolve the issues raised in the second allegation. The reasons for this determination are set for below.

Legal Standard

The regulation implementing Title IX, at 34 C.F.R. 106.21(a) states, “no person shall, on the basis of sex, be denied admission, or be subjected to discrimination in admission, by any recipient to which this subpart applies.” The regulation further states, at 34 C.F.R. 106.21(c)(1), “in determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which this subpart applies shall not apply any rule concerning the actual or potential parental, familial, or marital status of a student or applicant which treats persons differently on the basis of sex.”

In determining whether a recipient applies any rule concerning the actual or potential parental, familial, or marital status of a student or applicant which treats persons differently on the basis of sex, OCR first considers whether there are any apparent differences in the treatment of similarly-situated applicants based on actual or potential parental, familial, or marital status. If so, OCR then evaluates the reasons, if any, offered by the recipient to explain any differences in treatment of similarly-situated applicants to determine whether the reasons are legitimate and non-discriminatory, or whether they are merely a pretext for unlawful discrimination. OCR also examines whether the recipient treated the applicant in a manner that was consistent with its established policies and procedures, and whether there is any other evidence of discrimination in violation of Title IX.

The regulation implementing Title IX, at 34 C.F.R. 106.9(a)(1), requires recipients to “implement specific and continuing steps to notify applicants for admission and employment ... that it does not discriminate on the basis of sex in the educational program or activity which it operates, and that it is required by Title IX and this part not to discriminate in such a manner.” The regulation implementing Title IX, at 34 C.F.R. 106.8(b), requires recipients to adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by this part. The regulation implementing Title IX, at 34 C.F.R. 106.8(a), states that each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to such recipient alleging its noncompliance with this part of alleging any actions which would be prohibited.

University Policies and Procedures

The University’s Non-discrimination Statement can be found online¹ and states the University “will not engage in discrimination or harassment against any person because of race, color, religion, sex, national origin, ancestry, age, order of protection status, genetic information, marital status, disability, sexual orientation including gender identity, unfavorable discharge from the military or status as a protected veteran and will comply with all federal and state nondiscrimination, equal opportunity and affirmative action laws, orders and regulations.” The nondiscrimination policy applies to admissions, employment, access to and treatment in University programs and activities. The Nondiscrimination policies also are available in the

¹ <https://diversity.illinois.edu/discrimination-and-harrassment-prevention.html>

Campus Administrative Manual and Student Code. Students, faculty and staff are notified of the University’s Nondiscrimination policy in an annual email from the Chancellor.

The University has a designated Title IX Coordinator to coordinate its efforts to comply with and carry out its responsibilities under Title IX. The Title IX Coordinator’s contact information is available on the University’s website,² in the Student Code, and in the Campus Administrative Manual.

The University has adopted and published grievance procedures for resolving complaints of discrimination, including complaints of discrimination under Title IX. The University’s “Policy and Procedures for Addressing Discrimination and Harassment at the University” can be found online.³ The University also has “Procedural Guidelines for Handling Discrimination and Harassment Complaints Under the Nondiscrimination Policy of the University,” which also can be found online.⁴ The procedures can be used by students, applicants, visitors, faculty, staff, employees or former employees, and allow individuals who believe they have been subjected to harassment or discrimination in violation of the nondiscrimination policy to file a complaint with the University’s Office of Diversity, Equity and Access (ODEA) by using an online form, sending an email, or calling the office directly.

Allegation 1 – Discrimination in Admission

Factual Background

The University allows students to transfer into the University from other colleges or universities. To apply to the University as a transfer student, an applicant must: (1) complete an application (which includes choosing a major(s), writing an essay, and listing extracurricular activities, work experience, honors and awards), (2) pay the application fee or submit a fee waiver form, (3) submit official transcripts from all colleges and universities attended, as well as an official high school transcript or GED results, (4) submit official ACT or SAT test scores, and (5) prove English proficiency. The application generally is completed online through the applicant’s “myIllini” account.

In addition to the required information, the application allows transfer applicants to identify any challenges they have faced throughout their academic career that they would like the admissions committee to be aware of when reviewing the application. The University Admissions website for transfer students includes a section entitled “We listen to your story,” which encourages applicants to take advantage of the opportunity to explain any unique circumstances that demonstrate skills that will help the applicant succeed, or to identify circumstances that resulted in an applicant’s performance during a course or semester not matching other course

² The Title IX Coordinator’s contact information is provided on numerous University websites, including: <http://wecare.illinois.edu/titleix/> and <https://diversity.illinois.edu/reporting.html>.

³ <http://cam.illinois.edu/ix/ix-b/ix-b-3.htm>.

⁴

<http://diversity.illinois.edu/Procedural%20Guidelines%20For%20Complaints%20Under%20The%20Nondiscrimination%20Policy.pdf>.

performances. According to the University, this is an opportunity for an applicant to identify any particular challenge that impacted the applicant's ability to focus on schooling that may have resulted in a GPA that is not indicative of the applicant's full potential. This portion of the application is optional and provides an open text box for a narrative description that the applicant may complete if he or she chooses.

According to the University's Associate Director of Transfer Admissions (Associate Director), once a transfer applicant completes the online application, the Office of Undergraduate Admissions reviews the application to ensure it is complete. Each different college within the University has a designated process for how it admits transfer students to its program. Some colleges and majors include additional admission requirements.

For the College of Education, the Office of Undergraduate Admissions reviews the application to ensure the University-wide portion of the application is complete, then forwards it on to the College of Education because applicants to this College have additional requirements. Transfer applications are not forwarded to the College of Education until all required documentation for the University application is received.

In addition to the general admission requirements, the University's Transfer Handbook (Handbook) for the College of Education outlines the additional requirements for admission to the College of Education. The College of Education gathers the additional required documentation after it receives the application from the Office of Undergraduate Admission. The Handbook states that students are required to have a 2.5 minimum GPA, but highly recommends a GPA of 3.0 or higher. Teacher Education applicants need to pass the Test of Academic Proficiency (TAP) or achieve a sufficient ACT Plus Writing or SAT score in lieu of a passing score on the TAP. Applicants to the College of Education's Special Education Program (SPED Program) also need to complete 50 hours of experience with students with disabilities and submit an Hours Verification Form. The College of Education strongly encourages transfer applicants to complete three years of a language other than English in high school or 3 semesters of a language other than English in college, which is required in order to graduate from the program, prior to transferring.

Applicant A applied as a transfer student from XX to the SPED Program for the 2016-17 academic year. According to Applicant A, she submitted a transfer application to the Admissions Counselor and her official high school transcript to the Office of Undergraduate Admissions in XX. She identified the College of Education's SPED Program as her major of choice. In her application, Applicant A listed the courses she was currently taking at XX, as well as the previous courses she had taken and grades she had received. She noted that she had retaken three courses at XX. She retook XX, with her initial grade an "F" and her repeated grade a "C." She retook XX, with her initial grade a "D" and her repeated grade a "B." She also was in the process of retaking XX, with her initial grade an "F" and her grade at the time of her application an "IP" (In Progress). Applicant A also completed the portion of the application in which she could explain any challenges she faced throughout her academic career. In this portion of the application, she disclosed that she is a single parent of two children.

In XX, Applicant A's fee waiver was approved. Her application was forwarded to the College of Education for further review.

In XX, the College of Education's Admissions and Records Supervisor (Supervisor) sent Applicant A an email thanking her for applying to the SPED Program and letting her know that 50 hours of experience with students with disabilities is an admissions requirement, and that these hours should be documented on the Hours Verification Form (with a link included). She also informed Applicant A that the TAP or an "ACT Plus Writing" composite score of 22 or higher and a writing score of 16 or higher is an admission requirement. This email stated that Applicant A's application cannot be reviewed until the hours form and test scores are received, and that submission of these requirements does not guarantee admission to the College of Education, but makes the application eligible for review.

Approximately two weeks later, Applicant A responded to this email and asked if the 50 hour requirement had ever been waived, and stated that she took a class that required 30 hours of observation, which she completed in a resource class for students with learning disabilities. She also informed the Supervisor that the earliest she would be able to take the ACT test was in March, and asked if taking it then would make her application too late to be reviewed. The same day, the Supervisor responded and recommended Applicant A submit the form using the 30 hours to complete a portion of the 50 hours and complete another form for any other experiences she has working with children of special needs. The Supervisor informed Applicant A that her ACT test scores would be available 5-8 weeks after the test date and that she could hold Applicant's application until after she received the test scores, at which time the committee could review the application. She again stated that the submission of the ACT Plus Writing score and hours verification form does not guarantee admission into the College of Education, but rather makes the application eligible for review.

On XX, the Supervisor emailed Applicant A to inform her that she had received her ACT scores and requested that she submit the 50 hours verification so the application could be forwarded to the committee for review. Later that day, Applicant A submitted an Hours Verification Form that included the 30 hours of observation. She did not submit a supplemental form with additional hours.

The Supervisor forwarded Applicant A's application materials to the admissions committee for review. On XX, the University notified Applicant A that her application for admission was denied because her "academic qualifications were not at the level at which transfer students were admitted this semester." The decision included a phone number to call to speak to an admissions counselor and informed Applicant A that "due to the confidential nature of an application, we are unable to discuss your decision by email." The decision also included a link to "Denial Decision FAQ," a website that includes information on how to appeal the decision by completing an Admission Appeal form.

After receiving her admission denial, Applicant A contacted the Supervisor via email and asked if her final grades from XX could be considered and whether she had the option to apply the following year. The Supervisor directed Applicant A to the Office of Undergraduate Admissions

for answers to her questions. Applicant A then sent an email to admissions@illinois.edu requesting that her spring semester grades be considered.

Applicant A alleges that on XX, she contacted the Office of Undergraduate Admissions on the phone because she had not received a response to her XX email. According to Applicant A, she asked if she could appeal the decision and have her spring grades reviewed. Applicant A alleges she spoke with a counselor⁵ who pulled her file to find out what the committee noted as their concerns, and the counselor informed her that “F” grades on her transcript and her extenuating circumstances “i.e., being a single mother” were discussed, and her enrollment was denied. According to Applicant A, when she asked if her lack of volunteer hours impacted the decision, the counselor told her this was not a concern. Applicant A alleges that the counselor told her that based on the notes in her file, an appeal would not be successful.

The next day, on XX, the Associate Director responded to Applicant A’s XX email and informed her that the SPED Program is very competitive with limited space, so appealing and sending her spring grades would not change the decision. She further informed Applicant A that she was welcome to appeal, but her opinion was that it would not be successful. Applicant A responded and said she was surprised that she had been denied admissions because she met the minimum requirements, with the exception of the volunteer hours, which she alleges she was told was not a concern. She expressed that she believed the fact that she was a single parent was discussed and that influenced the decision more than her grades and ACT scores.

On XX, Applicant A went to the Office of Undergraduate Admissions to request a copy of the committee notes and her admissions records. Shortly thereafter, she submitted a notarized request for these documents via email. The University declined to provide her with these documents. The Associate Director subsequently responded to her XX email and reiterated that the SPED Program is extremely competitive and her GPA was not high enough to be admitted to the program, even if she submitted her spring grades.

On XX, Applicant A and the Associate Director exchanged several emails regarding Applicant A’s denied admission, in which Applicant A continued to express dissatisfaction with the decision and the Associate Director offered to meet with Applicant A to discuss her application in person. The Associate Director reiterated that Applicant A’s GPA was not high enough, and told her that in addition, she did not have the required number of hours. Applicant A did not believe that her questions were being answered adequately and informed the Associate Director she would be seeking legal advice regarding discrimination.

The University denies that it discriminated against Applicant A in denying her admission to the SPED Program. The University informed OCR that the SPED Program is a competitive program with limited space. The SPED Program received over 140 applications for the fall 2016 admission cycle. Approximately 120 of those applicants were freshman students at the University and 23 were transfer student applicants. Freshman students apply for admission earlier in the year and generally receive an admissions decision before transfer students. Fifty-six (56) of the

⁵ Applicant A did not know the name of the admissions counselor with whom she spoke on the phone.

approximately 120 freshman student applicants were admitted to the SPED Program for the 2016 admission cycle.⁶ Only one transfer student was admitted to the SPED Program for the 2016 admission cycle.⁷

According to the University, Applicant A's application was reviewed and her academic history at her prior College showed she was not competitive for placement in the SPED Program. At the time Applicant A's admissions application was considered, her GPA on her XX transcript was 2.817; however, the University informed OCR that transfer student GPAs are recalculated by the University based on transferable coursework, so the transferable GPA may not be the same as the GPA listed on a transfer student's transcript from his or her previous college or university.⁸ Applicant A's calculated transferable GPA was 2.53. In addition, Applicant A had received Ds and Fs in courses that the College of Education deemed directly relevant SPED Program coursework.

In addition to her low GPA, Applicant A did not complete the required 50 hours of experience with students with disabilities, which is a prerequisite to admission. However, because of Applicant A's low GPA, she would not have been admitted even had she completed the 50 hours of experience with students with disabilities.⁹ According to the University, Applicant A's "extenuating circumstances" were considered because they thoroughly review all applications and she disclosed her extenuating circumstances on her application, but this was not considered as a basis for denying her admission. The University asserts that had Applicant A's application been more competitive, these circumstances may have been considered as a reason to admit her when she otherwise may not have been admitted.

The University documentation indicated that only one transfer student was admitted to the SPED Program for the 2016 admission cycle. This student's GPA was a 3.72. Many transfer applicants with higher GPAs than Applicant A's were denied admission to the SPED Program. Many University freshmen who applied to the SPED Program with higher GPAs than Applicant A's also were denied admission to the SPED Program. The lowest GPA admitted to the SPED Program was a 2.9 – this student was a freshman already admitted to the University. Only one other admitted student's GPA was below a 3.0 – and this student's GPA was a 2.95.

The University does not ask applicants about their parental, marital or familial status in the application for admission. The University stated that some students disclose this information in the optional open-ended questions, but asserts the information provided in these questions is used as a mechanism to allow students with low GPAs or low course grades to explain why their grades may not align with their actual academic potential for any reason. According to the University, information provided as answers to these questions is used in the applicant's favor,

⁶ In addition, seventeen (17) freshmen applicants were admitted to their alternate choice major within the College of Education.

⁷ Two (2) other transfer applicants were admitted to their alternate choice major within the College of Education.

⁸ In addition, when an applicant retakes a course, the University does not use the highest of the two grades, but instead averages the grades when calculating transferable GPA.

⁹ The Supervisor informed OCR that they have never waived the 50 hours of experience requirement for an applicant.

not as a basis for denying the application. The University does not track student's parental, marital or familial status. To the extent applicants disclose this information on their applicant in the open-ended questions, the information is not tracked or compiled in a database by the University.

Analysis

In determining whether the University discriminated against Applicant A when she was denied admission as a transfer student into the SPED Program, OCR first considered whether there were any apparent differences in the treatment of similarly-situated applicants based on actual or potential parental, familial, or marital status. OCR did not find any similarly situated applicants to Applicant A that were admitted to the SPED Program. The University asserts that Applicant A was denied admission to the SPED Program because her transferable GPA was not competitive with other applicants. All applicants admitted to the SPED Program had significantly higher GPAs than Applicant A. Many applicants with higher GPAs than Applicant A were denied admission to the SPED Program. More applicants were denied admission than accepted to the SPED Program, which supports the University's position that the SPED Program is a competitive program in which applicants are selected based on several factors, but applicants with GPAs near the minimum generally are not competitive enough to be accepted into the program.

OCR considered Complainant's assertion that she was told that the University considered her status as a single mother in analyzing her application package.¹⁰ The University explained that the Complainant voluntarily provided this information in her application materials, so the admissions staff would have considered it as a mitigating factor explaining her low grades, but her transferable GPA was so low that the mitigating evidence of her single parent status was not sufficient to overcome her low grades.

Conclusion

In making a determination regarding compliance, OCR must often weigh conflicting evidence and determine whether a preponderance of the evidence substantiates the allegation. In this case, there is insufficient evidence that the University discriminated against Applicant A on the basis of sex when she was denied admission to the University's SPED Program on XX. Therefore, OCR is closing this allegation as of the date of this letter.

¹⁰ Applicant A stated that she believes there are committee notes that reflect her extenuating circumstances were considered as a basis for denying her, and that the University changed the records after she alleged discrimination. OCR reviewed the University's notes and did not find evidence to support these allegations.

Allegation 2 – Failure to Investigate Applicant A’s Discrimination Complaint

Factual Background

On XX, Applicant A sent an email to diversity@illinois.edu¹¹ with the subject “Discrimination Complaint in Denial of Admission.” Applicant A alleged the denial of her admission the University was discriminatory. She provided a detailed description of the alleged discrimination in her email. The University allows individuals who believe that they have been subjected to discrimination or harassment in violation of the Nondiscrimination Policy to submit an online report or contact the Office of Diversity, Equity, and Access (ODEA) at (217) 333-0885 or via email at diversity@illinois.edu.

On XX, the University’s Assistant Director of the ODEA (Assistant Director) confirmed that the ODEA had received the concerns Applicant A submitted to the general intake email. The Assistant Director asked Applicant A if she would like to file an informal complaint and asked her to schedule a time to meet. She additionally requested that Applicant A complete an intake form. Applicant A responded that she did not wish to file an informal complaint and stated she wanted to file a formal complaint. She additionally stated that she did not wish to meet and that she wanted all communication to be in writing. The Assistant Director responded by asking Applicant A what she was seeking as a remedy, to provide documentation to substantiate her allegations, and to provide a written timeline of events. Applicant A provided the requested information. Additionally, Applicant A informed the Assistant Director that she had submitted a request to open an investigation to the Illinois Department of Human Rights (IDHR). According to the Complainant, the Assistant Director responded that she could not proceed with investigating the internal complaint and respond to an external agency complaint at the same time because she serves as a neutral fact-finder for internal complaints, but represents the University in an external complaint. In concluding the email, she asked Applicant A how she would like to proceed.

Applicant A responded via email a little over a week later and informed the Assistant Director that IDHR would not be investigating her complaint¹² and that she was moving forward with filing a complaint with OCR. She requested that her complaint be forwarded to the University’s Title IX Coordinator. The Assistant Director responded, cc-ing the Title IX Coordinator, and stated that the University cannot concurrently investigate an internal complaint and respond to an external agency. She stated that she would respond to OCR in regards to Applicant A’s concerns. The University did not investigate Applicant A’s complaint of discrimination.

¹¹ The University’s discrimination complaint reporting procedure, available on the ODEA’s website, states that “individuals who believe that they have been subjected to discrimination or harassment in violation of the Nondiscrimination Policy should submit an online report ... or contact the [ODEA] at (217) 333-0885 or via email at diversity@illinois.edu.”

¹² In a letter dated XX, IDHR informed Applicant A that her file was being closed because she did not claim that she was discriminated against because of a protected status and because “being a single mother is familial status which is not a protected basis under the Human Rights Act.”

The University advised OCR that it has rarely handled dual filed complaints. Typically, when complainants file with external agencies, they do so after the University has completed its investigation. OCR has not completed interviews of University staff regarding their handling of dual filed complaints or reviewed its handling of these complaints. However, OCR expressed its concerns to the University that they failed to proceed with an internal investigation when Applicant A filed an external complaint. OCR confirmed that the University did not have a written policy prohibiting them from investigating dual filed complaints. The University informed OCR that its practice going forward will be to consistently ensure dual filed complaints are appropriately investigated.

Conclusion

In accordance with Section 302 of OCR's *Case Processing Manual*, a complaint may be resolved at any time when, before the conclusion of an investigation, the recipient expresses an interest in resolving the complaint. Prior to the conclusion of OCR's investigation, the University expressed interest in resolving allegation #2.

OCR determined that a Resolution Agreement is appropriate under the circumstances present in this particular case to resolve the issues. The enclosed Resolution Agreement, when fully implemented, will address all of the issues in this case. The provisions of the Resolution Agreement are aligned with the complaint allegation and the information obtained during OCR's investigation, and are consistent with the applicable regulations. OCR will monitor the implementation of the Resolution Agreement until the University is in compliance with the Title IX regulations at issue in the case.

This concludes OCR's investigation of the complaint and 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.

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 complainant 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, we 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.

The complainant may file a private suit in Federal court, whether or not OCR finds a violation.

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OCR would like to thank the University, including Ms. Jennie Marie Duran, for the cooperation and courtesy extended to OCR during our investigation. If you have any questions about this letter, please contact Melissa Katt, Attorney, at (312) 730-1617 or Melissa.Katt@ed.gov.

Sincerely,

Dawn R. Matthias
Team Leader

Enclosure

CC: Jennie Marie Duran