



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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CHICAGO, IL 60661-4544

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March 16, 2018

Rachel W. Lindsey, Ph.D.  
Interim President  
Chicago State University  
9501 S. King Drive  
Chicago, IL 60628

VIA EMAIL TO [rlindsey@csu.edu](mailto:rlindsey@csu.edu)

Re: OCR Docket #05-17-2414

Dear Dr. Lindsey,

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed against the Chicago State University (University) alleging discrimination based on sex. Specifically, the complaint alleged that the University subjected the Complainant, a student enrolled in the Basic Nursing Assistant Training Program<sup>1</sup> (Program), to sex discrimination on XXX, when Program staff XXX.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.*, and its implementing regulation, 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in education programs and activities operated by recipients of Federal financial assistance from the Department. As a recipient of Federal financial assistance from the Department, the University is subject to this law.

### **Legal Standards**

The Title IX regulation, at 34 C.F.R. § 106.31(a), provides generally that, except as provided elsewhere in the regulation, no person shall on the basis of sex be excluded from participation in, denied the benefits of, or subjected to discrimination in education programs or activities operated by recipients of financial assistance from the Department. The regulation at 34 C.F.R. § 106.31(b)(1)-(4) provides that a recipient may not, on the basis of sex, treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service; provide different aid, benefits, or services, or provide aid, benefits, or services in a different manner; deny any person such aid, benefit or service; or subject any person to separate or different rules of behavior, sanctions, or other treatment.

The Title IX regulation, at 34 C.F.R. § 106.40(a), prohibits a recipient from applying any rule concerning a student's parental, family, or marital status which treats students differently from

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<sup>1</sup> During its investigation, OCR learned that the Complainant XXX.

other students on the basis of sex. The Title IX regulation, at 34 C.F.R. § 106.40(b)(1), also prohibits recipients from discriminating against a student or excluding the student from its education program or activity on the basis of the student’s pregnancy, childbirth, and/or recovery from pregnancy.

Pursuant to the Title IX implementing regulation, at 34 C.F.R. § 106.40(b)(2), a recipient may require a pregnant student or student who has given birth to submit medical certification for academic participation only if the recipient also requires such certification from all students with physical or emotional conditions requiring the attention of a physician. A student who has been hospitalized due to childbirth, for example, should not be required to submit a medical certificate for reentry to the academic program if a certificate is not required of a student who has been hospitalized for other types of medical treatment.

The Title IX implementing regulation, at 34 C.F.R. § 106.40(b)(5), further states, in relevant part, that, in the case of a recipient that 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, 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.

### **Basic Nursing Assistant Training Program Policies**

In the fall of 2016, the University started the Basic Nursing Assistant Training Program (Program) as part of its *Partnership to STEP UP in Health Careers*.<sup>2</sup> The Program provides educational training in high demand healthcare fields to low-income eligible individuals. It is an 8-week certificate course that prepares students to take the state examination to become certified as a basic nursing assistant. The Program has two components: 80 hours of instruction in a classroom setting with a simulation lab and 40 hours of instruction in a clinical setting where students perform specific tasks on residents in a nursing home facility.

The Program Handbook<sup>3</sup> notes that all students must submit a medical release, pass a criminal background check and provide proof of immunizations that includes proof of a flu shot. The Program Handbook also has a section entitled “Pregnancy,” which states,

It is our intent to protect you and your family. Therefore the following guidelines should not be viewed as restrictive:

- A student who is pregnant is required to notify the BNA coordinator and her instructor as soon as she becomes aware of her pregnancy. In addition a statement from her healthcare provider certifying the student is physically able to participate in clinical practice without restrictions (i.e. moving, lifting, and transferring patients) is required.

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<sup>2</sup> STEP UP is funded by a U.S. Department of Health and Human Services’ Health Profession Opportunity Grant. The University partners with a community college and two local social service agencies to operate the program.

<sup>3</sup> The BNAT Program Handbook is not available on the University’s public website.

- Any change in health status must be reported immediately to the clinical instructor in written format. A clinical agency’s policy/protocols concerning pregnancy must be adhered to by all students and faculty.
- Students who have declared their pregnancy during the clinical portions of their program must have written documentation from their primary healthcare provider to remain in clinical practice without restrictions during the course of their pregnancy.
- Students are responsible for obtaining this documentation and providing it to the BNA coordinator and instructor.
- Provider limitations must be clearly stated and may require student withdrawal from the course if program objectives cannot be met. Agency policies concerning pregnant students in their clinical facility and measures to avoid potential hazards to mother and/or unborn fetus may supersede the statement above.<sup>4</sup>
- Confidentiality is strictly enforced; however, it is important for your instructor to know of your pregnancy to keep you safe as possible from environmental and physical dangers in simulation lab and clinical area.
- Each student is given 3 opportunities to achieve the required levels for skills practice.
- Any problems arising with pregnancy is solely the student and MD responsibility.

The Complainant acknowledged receipt of the Program Handbook.

The Program also adheres to the Nursing Assistant Training Performance Skill Evaluation<sup>5</sup> (NATPSE) metrics set forth by the Illinois Department of Public Health.<sup>6</sup> In addition to passing a written exam, NATPSE requires Program students to show competence in 21 manual performance skills to successfully complete the Program. Some of these performance skills require the student to be able to move and lift nursing home residents.

**Factual Summary**

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OCR notes that the Program’s “Readmittance Policy,” which is included in the Program Handbook, states:

If a student **FAILS** (emphasis in original) any portion of the program, they may reapply and (sic) for the entire program again. If a student is **DISMISSED** (emphasis in original) from this program for any reason, they may reapply at a later date, depending on the

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<sup>4</sup> The University reported that to date, no Program participants have been removed from the Program as a result of agency/clinical site policies concerning pregnant students.

<sup>5</sup> <https://nurseaidetesting.com/wp-content/uploads/2013/04/Performance-Skills-Manual-May-2009.pdf>

<sup>6</sup> <http://www.dph.illinois.gov/topics-services/health-care-regulation/health-care-worker-registry/cna-facts>

infraction. Each case will be evaluated by the BNA Coordinator and the College Dean of Nursing, and readmission to the program will be at their discretion.

The Readmittance Policy does not state whether readmitted students will be allowed to resume the Program in the place where they were when they were dismissed and does not distinguish between students who are dismissed for medical and/or physical conditions that preclude lifting and those who are dismissed for other reasons.

The University maintains that Program staff did not XXXXXXXXXXXXXXXXXXXXXXXXXXXX.

The University provided OCR a list of all Program students since its beginning in the fall of 2016. For each student, the University indicated whether the student completed the Program and passed the final Program course exam and whether the student registered for the certification exam and passed it. A total of XX out of 67 students XXX did not complete the Program. XX of the students did not complete the Program because they failed to submit medical releases. The University did not specify why the other students did not complete the Program. The University also reported that a total of XX students that did not complete the Program re-enrolled at a later time. All XX were required to restart the Program from the beginning.

### **Analysis and Conclusion**

OCR finds that the Program policy with respect to pregnant students, as written, violates Title IX in that it imposes restrictions on pregnant students that are not similarly imposed on other students, including students with physical or emotional conditions requiring the attention of a physician. Specifically, OCR determined that the policy requires pregnant students to notify the Program of a pregnancy even if the student is not subject to any medical restrictions and to provide medical documentation of the student's ability to participate in the Program. The policy also requires pregnant students to provide a medical release without restrictions. In addition, the policy states that clinical placement sites can take measures to avoid potential hazards to mother and/or unborn fetus even if the pregnant student does not have medical restrictions.

With respect to the Complainant individually, XXX. Accordingly, OCR found insufficient evidence that despite the Program policy, which violates Title IX as written, the Complainant herself was discriminated against XXX.

Subsequent discussions with the University resulted in the University signing the enclosed Resolution Agreement (Agreement) on March 15, 2018 which, when fully implemented, will resolve the Title IX allegation raised in the complaint. The Agreement requires the University to revise its BNAT Program policies and procedures related to student pregnancy to ensure that the revised policies and procedures comply with the Title IX regulation at 34 C.F.R. §§ 106.31 and 106.40. The provisions of the Agreement are aligned with the complaint allegation and the information obtained during OCR's investigation, and consistent with the applicable regulations. OCR will monitor the University's implementation of the Agreement.

This concludes OCR's investigation of the complaint against the University 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.

The 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 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 privacy.

OCR would like to thank you, your staff and especially your counsel, Ms. Stephanie Seay Kelly, for the courtesy and cooperation extended to OCR. If you have any questions, please contact Ms. Tamara Perry at (312) 730-1510 or by e-mail at [tamara.perry@ed.gov](mailto:tamara.perry@ed.gov).

Sincerely,

Aleeza Strubel  
Supervisory Attorney

Enclosure

cc: Ms. Renee Barnes, Executive Assistant to the President, at [rbarnes@csu.edu](mailto:rbarnes@csu.edu)  
Ms. Stephanie Seay Kelly, Deputy General Counsel, [skelly24@csu.edu](mailto:skelly24@csu.edu)