



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS -- REGION VII

March 13, 2014

By United States Postal Service and email to XXXXX.

David L. Chicoine, Ph.D., President
South Dakota State University
Office of the President
Administration (SAD) 222
Box: 2201
Brookings, South Dakota 57007

Re: Docket # 07132238

Dear Dr. Chicoine:

On June 3, 2013, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint against South Dakota State University (University), Brookings, South Dakota, alleging discrimination on the basis of sex and retaliation. This letter is to confirm the University has voluntarily submitted a Resolution Agreement (Agreement) to resolve allegations 1 and 3. For the reasons set for below, we have determined there is insufficient evidence to conclude the University discriminated against the complainant and other male students on the basis of sex as alleged in allegation 2.

The complainant specifically alleged the University:

1. discriminated against him on the basis of sex (male) by issuing him a final X grade for XXXXX XXXXX, a course he took in spring 2013;
2. discriminated against him on the basis of sex by grading him and other male students more strictly than female students in the XXXXX XXXXX course; and
3. retaliated against him, because he engaged in a protected activity, by denying his formal grade appeal challenging the X grade he received for the XXXXX XXXXX course.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 (Title IX), and its implementing regulation at 34 C.F.R. Part 106. Title IX prohibits discrimination on the basis of sex in any educational program or activity operated by a recipient of Federal financial assistance (FFA). The Title IX regulation at 34 C.F.R. § 106.71 incorporates by reference the Title VI of the Civil Rights Act of 1964 (Title VI) regulation

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prohibiting retaliation, including intimidation, threats, coercion, or discrimination, for engaging in an activity that is protected under the laws OCR enforces. Protected activities include opposing discrimination or any act or practice made unlawful by these laws, or making a complaint, testifying, assisting, or participating in any manner in an investigation, proceeding, or hearing under these laws.

As a recipient of FFA from the Department, the University is subject to Title IX and the regulations prohibiting retaliation. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

OCR applies a preponderance-of-the-evidence standard to determine whether the evidence is sufficient to support a particular conclusion. Specifically, OCR examines the evidence in support of or against a particular conclusion to determine whether the greater weight of the evidence supports the conclusion or whether the evidence is insufficient to support the conclusion.

OCR considered information the complainant and the University submitted, including information the complainant provided in his discussions with OCR staff on June 13, June 20, and November 13, 2013, as well as information he provided on June 10, September 26, and November 18, 2013. OCR obtained and reviewed copies of documents and written information from the University on August 8 and November 27, 2013. OCR interviewed University staff on November 14, 2013, including the complainant's XXXXX instructor, the XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX (XXXXX XXXXX XXXXX), the XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX (XXXXX), the XXXXX XXXXX XXXXX, an XXXXX XXXXX XXXXX, and the XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX (XXXXX). OCR left messages to speak with the complainant's XXXXX lab partner by email and phone on November 11, 2013, and December 2, 2013, respectively, but did not receive return messages or calls. The legal and factual bases of OCR's determination are set forth below.

Allegations 1 and 3

The complainant alleged the University discriminated against him on the basis of sex by issuing him a final X grade for XXXX XXXXX, a course he took in spring 2013. He also alleged the University retaliated against him, because he engaged in a protected activity, by denying his formal grade appeal challenging the X grade he received for the XXXX XXXXX course.

Prior to the completion of OCR's investigation, the University submitted a signed Agreement (copy enclosed) on March 13, 2014, that, when fully implemented, will address allegations 1 and 3 of this complaint. The Agreement requires the University to: 1) refer the

complainant's concern of gender bias to the University's Title IX coordinator for investigation, 2) notify the complainant of the result of the University's Title IX investigation, 3) develop draft institutional policies and procedures implementing South Dakota Board of Regents policy 1:17 and 1:17:1 including either contact information for the Title IX Coordinator/EEO Coordinator or a reference to where individuals can find contact information for the Title IX/EEO Coordinator, 4) publish notice of the new institutional policies and 5) train University personnel who will be directly involved in processing, investigation and/or resolving complaints of sex discrimination. Please consult the Agreement for further details.

OCR considers allegations 1 and 3 of this complaint resolved effective the date of this letter and will monitor the University's implementation of the Agreement. When OCR concludes the University has fully implemented the terms of the Agreement, OCR will close the complaint. If the University fails to carry out the Agreement, OCR may reopen the investigation.

Allegation 2

The complainant alleged the University discriminated against him on the basis of sex by grading him and other male students more strictly than female students in the XXXXX XXXXX course.

Legal Standards

The regulation implementing Title IX at 34 C.F.R. § 106.31(a) provides 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 academic, extracurricular, research, occupational, training, or other education program or activity operated by a recipient of FFA. The Title IX regulation at 34 C.F.R. § 106.31(b) states, in relevant part, that recipients may not, on the basis of sex: (1) treat one person differently from another in determining whether the person satisfies any requirement or condition for the provision of an aid, benefit, or service; (2) provide different aid, benefits, or services or provide aids, benefits, or services in a different manner; (3) deny any person any such aid, benefit, or service; or (4) subject any person to separate or different rules of behavior, sanctions, or other treatment.

To determine whether a recipient discriminated against a student on the basis of sex, OCR applies a different treatment analysis. First, OCR examines whether a *prima facie* case of discrimination exists. To establish a *prima facie* case of discrimination in this case, OCR must find that the University treated the complainant, a male student, differently than similarly situated female students. If OCR finds a *prima facie* case of discrimination exists, it must then determine whether the University has articulated a legitimate, nondiscriminatory reason for

treating the complainant differently. If the University has articulated a legitimate, nondiscriminatory reason for treating the complainant differently than similarly situated female students, OCR cannot find the University discriminated against the complainant on the basis of sex unless OCR determines that the reason the University provided for the different treatment is merely a pretext, or a cover-up, for unlawful discrimination.

Findings of Fact

Background Information

- The University, a public university, was founded initially as a college in 1881. It became South Dakota State University on July 1, 1964. The University now consists of the following colleges: College of Agriculture & Biological Sciences, College of Arts & Sciences, College of Education & Human Sciences, College of Nursing, College of Pharmacy, Graduate School, Jerome J. Lohr College of Engineering, University College, and the Van D. & Barbara B. Fishback Honors College.¹
- The University has policies in place prohibiting discrimination on the basis of sex.
- The complainant enrolled in XXXXX XXXXX, a XXXXX XXXXX XXXXX XXXXX lab, at the University for the spring 2013 semester. According to the course syllabus, the course is a XXXXX .

XXXXX XXXXX Course

- The XXXXX XXXXX course began the week of January 14, 2013. Students in the course completed XX XXXXX .
- There were XXXX sections of XXXXX during the spring 2013 semester. The complainant's XXXXX course section met on XXXXX at X P.M. to conduct the lab experiments. His section's lab reports were due the coming XXXX by X P.M. His class was comprised of XX students, including XX females and X males (including himself).
- The complainant stated to OCR that every male or female student he talked to and whose lab reports he saw clearly demonstrated to him that there was a difference in grading by gender by his instructor in XXXXX XXXXX. OCR requested names of any students who may be able to corroborate his assertion. However, the complainant did not provide names of any students to OCR.

¹ See www.sdstate.edu/about/history/index.cfm.

contain any lab reports from the complainant’s lab partner. OCR’s review of the lab reports did not show deviations in the application of the XXXX XXXXX between students based on gender.

- After the complainant raised his concern of gender bias at his XXXXX XX, XX meeting with the XXXXX XXXXX XXXXX and XXXXX, the XXXXX XXXXX XXXXX ran a “t-test” statistical analysis of the complainant’s instructor’s final grades issued in the last XX years. The sample included approximately 170 students: 106 females and 64 males. The XXXXX XXXXX XXXXX interpreted the results of the “t-test” to be statistically insignificant, i.e., there was no significant disparity between grades issued by instructor to male or female students.

Legal Analysis and Conclusion

As described in the Findings of Fact above, there were a total of XX students in the complainant’s spring 2013 semester XXXXX XXXXX section. Including himself, there were X males and XX females. For purposes of analysis, OCR assumed that all of the students in the section were similarly situated to the complainant since all of the students had to complete and were graded on the same lab reports for the class.

Because the grading of written student work, such as lab reports for the complainant’s XXXXX XXXXX section, in the University context is – to a certain extent – subjective and OCR may not substitute its judgment regarding the quality of a student’s work for the judgment of the instructors and educational officials, OCR examined whether the evidence obtained during its investigation indicated that the complainant’s instructor graded the work of male students differently than female students because of sex. OCR considered the grades issued by the instructor to all of the students in the complainant’s XXXXX XXXXX section, the graded lab reports the complainant submitted, the 17 lab reports made available to OCR, and the “t-test” run by the XXXXX XXXXX XXXXX.³ While the complainant stated he was graded more harshly than his female lab partner for the same work, the complainant did not provide OCR a copy of his lab report XX, and OCR did not have any of his female lab partner’s lab reports to review.

OCR determined that the preponderance of the evidence did not support a conclusion that the complainant’s spring 2013 semester XXXXX XXXXX instructor graded him or the other male students’ work more strictly than the work of female students in the complainant’s section because of sex. The instructor stated XX did not consider the sex of the student in grading lab reports. The instructor also stated XX did not look at the names on the lab reports until he had

returning graded lab reports to students. The reports provided were in the professor’s possession either because there was some issue (such as the complainant’s report) or because the student had failed to pick up the report after it was graded.

³ The XXXXX XXXXX XXXXX did not retain the analysis he ran. At OCR’s request he provided a “mock-up” analysis.

finished grading it. OCR's review of the 17 lab reports in the sample provided by the University did not show deviations in the application of the XXXXX XXXXX between students based on sex. Moreover, the complainant was not able to provide OCR any specific examples with respect to his own lab reports to demonstrate any deviation from the XXXXX XXXXX by the instructor based on sex. The complainant also did not provide OCR with names of any students who would be able to corroborate his conversations about differences in grading based on sex. Although females in the complainant's class received higher grades overall than males, that fact alone does not provide a factual basis to support a conclusion that the disparity in grades was due to discriminatory treatment by the instructor. OCR reviewed no information to indicate a pretext, or cover-up, for sex discrimination. Accordingly, OCR is unable to determine that the University discriminated against the complainant, specifically, or male students in XXXXX XXXXX more generally, on the basis of sex as alleged, and is closing Allegation 2 of the complaint as of the date of this letter.

Conclusion

This concludes OCR's investigation of the complaint with respect to allegation 2 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 be not 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 a 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 personal privacy.

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OCR is committed to prompt and effective service. If you have any questions, please contact XXXX, XXXXX, at (XXX) XXX-XXXX (voice) or (877) 521-2172 (telecommunications device for the deaf), or by email at [XXXX](#).

Sincerely,

/s/ Karl Menninger

Karl Menninger
Supervisory Attorney