



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VIII

ARIZONA
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NEW MEXICO
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May 9, 2022

President Joyce McConnell
Office of the President
102 Administration Building
0100 Campus Delivery
Fort Collins, CO 80523-0100

By email only to presofc@colostate.edu

Re: OCR Complaint No. 08-22-2077
Colorado State University

Dear President McConnell:

On December 14, 2021, the United States Department of Education (Department), Office for Civil Rights (OCR) received a complaint against Colorado State University (the University). The complaint alleged that the University treats male employees differently than female employees by sponsoring employees to attend a professional development opportunity through the Higher Education Resource Services (HERS) Institute, which was alleged to exclude males from participation.

Because OCR has jurisdiction and the complaint was filed timely, OCR initiated an investigation pursuant to Title IX of the Education Amendments of 1972 (Title IX), 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 or activity operated by a recipient of federal financial assistance from the Department.

Investigation Summary

OCR notified the University and the Complainant on January 21, 2022, that OCR opened the allegation for investigation. On February 25, 2022, the University provided a data response to OCR, which OCR reviewed, including a position statement asserting that the professional development opportunity at issue did not exclude or discriminate on the basis of sex. On March 16, 2022, before OCR had the opportunity to fully investigate the allegations at issue and determine whether the actions were discriminatory, the University expressed interest in resolving these allegations. On April 1, 2022, OCR conducted a witness interview with the University's Assistant Vice President for the Office of Inclusive Excellence.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

The following is a discussion of the relevant legal standards and information obtained by OCR during the investigation that informed the development of the voluntary Resolution Agreement (Agreement) in this case.

Legal Standard

The Title IX regulations, at 34 C.F.R. §106.31(a)-(b), prohibit a recipient from excluding, denying benefits to, or otherwise treating any person differently on the basis of sex in its education programs or activities, unless expressly authorized to do so under Title IX or the regulations. Additionally, the Title IX regulations at 34 C.F.R. §106.31(b)(6) prohibit a recipient from providing significant assistance to any outside organization that discriminates on the basis of sex in providing any aid, benefit, or service to students or employees.

Background and Facts

The Complainant provided OCR with a copy of an email communication sent by the University on December 13, 2021, soliciting individuals to apply for the 2022 Higher Educate Resource Services (HERS) Institute. This email states that the University will support participants in this professional development experience by covering tuition and housing for the institute. The email states, in relevant part:

... The HERS Institute is supported by an educational non-profit that has been providing leadership and management development for women in higher education administration around the globe since 1972. HERS attracts hundreds of diverse and dynamic women leaders each year who seek to share with and learn from women with multiple institutional perspectives. [The University] has been supporting the involvement of [University] administrators, staff, and faculty in this important opportunity since 1985. Many past participants stay connected with one another and seek ways to share what they learned from this experience with the rest of our campus community ... Strong candidates are women who hold mid- to senior-level positions from all divisions and units on our campus. Individuals who show potential to assume leadership positions are encouraged to apply.

Via email on January 26, 2022, the Complainant stated that he received this email from a male faculty member, who “certainly” felt that he was discriminated against, along with all other University male faculty, when they received this email, but the Complainant has not been authorized to disclose that faculty member’s name to OCR. The Complainant stated he would contact that faculty member and assess his willingness to speak with OCR. On January 28, 2022, OCR emailed the Complainant to state that if any male faculty member would like to speak with OCR, the Complainant could either get their permission to provide OCR with their contact information or could share OCR’s contact information with them so that they may contact OCR directly. OCR also informed the Complainant that if any male employee wanted to file their own complaint, they could do so. To date, the Complainant has not provided the names, contact

information, or any additional information about any University employee who had been excluded from applying to or participating in this professional development opportunity on the basis of sex or gender.

OCR accessed the website for the HERS Institute Summer Program,¹ which is described on the website as “A Leadership Development Program for Women in Higher Ed.” The program is further described as “a transformational, leadership development program for women in higher education, founded to fill leadership pipelines across the United States with dynamic women, each capable of ushering their respective institutions into a more inclusive and equitable future.” The “Who We Are” tab on the HERS Institute website states they are dedicated to creating and sustaining a diverse community of woman-identified leaders. The website does not state that this program, or other programming through the HERS Institute, is open to anyone, regardless of sex, or, more specifically, is open to those who do not identify as women.

In the data response provided, the University denied violating Title IX and stated that both male and female parties are free to apply for this professional development opportunity and that their applications will be considered using gender-neutral criteria. The University reported that male or female identifying employees may apply to or participate in events through the HERS Institute and, if selected by the University, the University will pay for their participation and that the HERS Institute confirmed that any male applicant approved by the University may participate in its programs. During a witness interview on April 1, 2022, the Assistant Vice President for the Office of Inclusive Excellence (AVP) reported that to her knowledge, no male employees have expressed interest in or applied to participate in professional development opportunities through the HERS Institute. The AVP reported that she confirmed with the HERS Institute that any male applicants approved by the University would be considered and allowed to participate in programming through the HERS Institute. The AVP reported that the University utilizes a selection committee to review applications submitted by University employees and this committee scores applications based on gender-neutral criteria. The AVP reported that if any male employees expressed interest or applied to professional development opportunities through the HERS Institute, they would be considered without regard to their sex or gender.

Based on the totality of the information contained in the University’s response to the allegations and provided by the witness interview, OCR determined this case was suitable for a Resolution Agreement, prior to the investigation concluding. Specifically, OCR identified a concern that, although the information provided by the University states that the professional development opportunity offered through the HERS Institute is open to all, regardless of sex or gender, the language used in the email sent by the University to solicit applications and on the HERS Institute website for the program at issue does not make that explicit and could have resulted in male-identified employees not understanding this opportunity was open to anyone. As a result, the University has agreed to include an explicit statement of non-discrimination on the basis of sex in all future promotional materials regarding professional development opportunities offered through the HERS Institute. In order to complete the investigation and make a compliance

¹ Available: <https://www.hersnetwork.org/programs/hers-institute/>

determination, OCR would need to, at a minimum, conduct additional interviews with University employees, review the University's policies and procedures and their discrimination and harassment policy, and request additional documentation from the University regarding professional development opportunities for employees.

Analysis

Pursuant to Section 302 of the CPM, allegations under investigation may be resolved at any time when, prior to issuing a final determination under CPM Section 303, the Recipient expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified issues that can be addressed through a resolution agreement. The provisions of the resolution agreement must be tied to the allegations and the evidence obtained during the investigation, and will be consistent with applicable regulations. Based on the allegations and the evidence provided, OCR determined that this complaint may be appropriately resolved through an agreement under Section 302 of the CPM. On May 6, 2022, OCR received the University's signed Agreement (enclosed).

Conclusion

OCR is closing the investigative phase of this case effective the date of this letter. The case is now in the monitoring phase. OCR will closely monitor the recipient's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively and that the recipient's policies and practices are administered in a nondiscriminatory manner. When the Agreement is fully implemented, the allegations will have been resolved consistent with the requirements of Title IX, and its implementing regulations. If the University fails to implement the Agreement, OCR will take appropriate action, which may include enforcement actions, as described in the Agreement.

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.

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, personal information, which if released, could constitute an unwarranted invasion of privacy.

Individuals filing a complaint or participating in our resolution process are protected from retaliation by Federal law.

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If you have any questions, please contact XXX, the Attorney assigned to this complaint, XXX-XXX-XXX or by email at XXX. You may also contact me at XXX-XXX-XXXX or by email at XXX.

Sincerely,

/s/

XXX

Supervisory Attorney

Enclosure – Resolution Agreement