



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

50 BEALE ST., SUITE 7200
SAN FRANCISCO, CA 94105

REGION IX
CALIFORNIA

April 10, 2014

Leslie E. Wong
President
San Francisco State University
16007 Holloway Avenue
San Francisco, California 94132

(In reply, please refer to case no. 09-14-2005.)

Dear President Wong:

In a letter dated November 1, 2013, the U.S. Department of Education (Department), Office for Civil Rights (OCR), notified San Francisco State University (University) of a complaint alleging discrimination. Specifically, the Complainant¹ alleged that the University did not respond to her allegations of sex and race based discrimination in grading for her Spring 2012 XXXXXXXX XXXXXXXXXX course.

OCR investigated the complaint under the authority of Title VI of the Civil Rights Act 1964 and its implementing regulation at 34 C.F.R. Part 100. Title VI prohibits discrimination on the basis of race, color or national origin in programs and activities operated by recipients of Federal financial assistance. OCR also investigated the complaint under the authority of Title IX of the Education Amendments of 1972 and its implementing regulation at 34 C.F.R. Part 106. Title IX prohibits discrimination on the basis of sex in education programs and activities operated by recipients of Federal financial assistance. The University receives Department funds, is a public education system, and is subject to the requirements of Title VI and Title IX.

OCR gathered evidence through documentation submitted by the Complainant and the University. OCR concluded that there was sufficient evidence to support a conclusion of noncompliance with Title VI, Title IX, and their implementing regulations with regard to the University's failure to appropriately respond to the Complainant's allegations of sex and race based discrimination. The attached Resolution Agreement, when fully implemented, will resolve the noncompliance issue found in this case.

The applicable legal standards, relevant facts gathered during the investigation, and OCR's analysis are set forth below.

Under the Title VI regulations at 34 C.F.R. §100.3(a) and (b), university may not treat individuals differently on the basis of race, color, or national origin with regard to any aspect of services, benefits, or opportunities it provides. Similarly, under the Title IX

¹ OCR notified the College of the Complainant's identity during the investigation. We are withholding her name from this letter to protect her privacy.

regulations at 34 C.F.R. §106.31(a) and (b), a university may not treat individuals differently on the basis of sex with regard to any aspect of services, benefits, or opportunities it provides. The Title IX regulations, at 34 C.F.R. §106.8(b), also require universities to adopt and publish grievance procedures providing for a prompt and equitable resolution of complaints alleging sex discrimination. The Title VI regulations do not specifically require recipients to adopt grievance procedures to respond to complaints of discrimination on the basis of race, color, or national origin. However, a university is responsible for providing students with a nondiscriminatory educational environment. Therefore, universities must have an effective process for responding to allegations of discrimination on the basis of race, color, or national origin.

Therefore, under Title IX, Title VI, and the regulations, if a student alleges discrimination by an employee, the university is responsible for determining what occurred and responding appropriately. OCR evaluates the appropriateness of the responsive action by assessing whether it was prompt, thorough and effective.

Factual Findings:

- On November 13, 2012, the Complainant petitioned for a grade change in her Spring 2012 XXXXXXXX XXXXXXXXXXXX course. The Complainant believed that she was graded differently on the basis of race and sex. The Complainant provided the University with a comparator of the same ethnicity as the XXXXXXXX XXXXXXXXXXXX professor, and information relating to a relationship between the professor and a female teaching assistant who was responsible for reviewing the Complainant's work in the course.
- During the Spring 2012 semester, prior to the completion of the course, the Complainant successfully petitioned the University to receive a "credit/no credit" grade in the XXXXXXXX XXXXXXXXXXXX course. The Complainant received a "credit" grade in the course. Per Academic Senate Policy SO4-230, a "credit" grade cannot be appealed, and the credit grade cannot be reverted to a letter grade after a student has chosen to receive "credit/no credit". The Complainant was provided with this information in emails dated November 14, 2012 and January 11, 2013 from the Department Chair, who had also consulted with the Associate Dean.
- In the January 11, 2013 e-mail, the Department Chair also stated that she had "investigated" the Complainant's allegation of race (but not sex) discrimination by reviewing the instructor's assignment of grades for several courses and concluded that "in no case did the objective statistical data support the Complainant's charge."
- Through the November 14, 2012 and January 11, 2013 emails, the Department Chair denied the Complainant's grade change petition.

- On January 28, 2013, the Complainant filed a formal "Student Concerns and Complaints Intake Form" alleging "race and or gender discrimination resulting in grading inequality" with the Student Affairs/Enrollment Department, headed by the Associate Vice President (AVP).
- The University's policy for investigating allegations of race and sex discrimination is outlined in Executive Order 1074 (EO 1074), California State University Chancellor's Office at <http://www.calstate.edu/eo/EO-1074.html>.
- The University reported to OCR that the AVP, in his capacity as the Title IX Coordinator at the time, was responsible for responding to the Complainant's discrimination complaint consistent with the provisions of EO 1074.
- EO 1074 provides that grade appeals that allege discrimination, harassment, or retaliation must proceed concurrently under campus grade appeal procedures and EO 1074, but that campus grade appeal procedures shall be placed in abeyance until the EO 1074 process is concluded. It further provides that the final determination under EO 1074 regarding whether discrimination, harassment, or retaliation occurred will be provided to the campus grade appeal committee and that the committee will be bound by that determination.
- EO 1074 states that the University will meet with a student complainant no later than 10 working days after a discrimination complaint is received, and that an investigation will be conducted and concluded no more than 60 working days after this intake interview. This timeline may be extended for an additional 30 working days under certain circumstances. The student complainant is to be notified in writing of the investigation outcome, and the notice must include a summary of: the allegations, the investigative process, the preponderance of the evidence standard, the evidence considered, the findings of fact, a determination as to whether EO 1074 was violated, and, if so, any remedies to be afforded to the complainant.
- On March 12, 2013, the Complainant sent an e-mail to the AVP's office and resubmitted her complaint, stating that she has not been contacted since she first filed on January 28. She requested the AVP inform her if there has been an investigation into the matter.
- The AVP responded to the Complainant's inquiry in an email dated March 19, 2013. He stated that he looked into the Complainant's request to change her grade from a credit/no credit option to a letter grade and determined that according to University policy her request would not be approved because it was not submitted in a timely fashion. He stated that her grade of "credit" for this class stands, and that the matter was now closed.
- The AVP's response did not address the Complainant's race/sex discrimination allegations or indicate that any investigation had been conducted under EO

1074. The Complainant followed up on the discrimination issues with the University several more times between March 19, 2013 and the time that she filed her OCR complaint on October 17, 2013. The University did not provide any information to the Complainant indicating that an investigation was being conducted under EO 1074.

- OCR questioned the University's lack of response to the Complainant's discrimination allegations. The University stated that at the time the complaint was filed, discrimination allegations were being handled by a different University Department that was ultimately responsible for investigating the allegations and determining if discrimination occurred using the standards set forth in EO 1074. Since the filing of this OCR complaint, the University turned over the investigation of discrimination allegations to the University's Faculty & Staff Labor Relations (FSLR) Title IX Coordinator/DHR Administrator.
- The Title IX Coordinator/DHR Administrator told OCR that his office is committed to resolving discrimination issues in a timely fashion. The FSLR Office, on January 22, 2014, requested a meeting with the Complainant to discuss her internal grade appeals and discrimination complaints. To date the Complainant has not responded.

Analysis and Conclusion:

The University failed to provide the complainant with a prompt and equitable investigation into her allegations of race and sex discrimination in grading for the Spring 2012 XXXXXXXX XXXXXXXXXX course. Even though the University has adopted a grievance procedure (EO 1074) providing for the prompt and equitable resolution of grade disputes involving allegations of discrimination, it failed to follow its procedure in this instance. No investigation was conducted, no findings were reached, and the Complainant was never provided notice of the outcome of any investigation. Accordingly, OCR finds that the University failed to meet Title VI and Title IX requirements with respect to this issue.

The University has agreed to address this area of noncompliance through signing a Resolution Agreement, a copy of which is attached. Based on the commitments made in the Resolution Agreement, OCR is closing the investigation of this complaint as of the date of this letter. OCR will monitor the University's implementation of the Resolution Agreement.

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. OCR is informing the Complainant of the complaint resolution by concurrent letter. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

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 individual may file a complaint with OCR 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.

OCR would like to thank XXXXX XXXXXXXX for his cooperation and efforts to resolve this case. If you have any questions about this letter, please contact David Howard, Equal Opportunity Specialist, at (415) 486-5523 or via email at david.howard@ed.gov.

Sincerely,

/s/

MaryBeth McLeod
Team Leader
Office for Civil Rights
San Francisco

Cc: XXXXX XXXXXXXX, Director, Faculty & Staff Labor Relations (via electronic mail)

Attachment