



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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SAN FRANCISCO, CA 94105

REGION IX
CALIFORNIA

May 22, 2015

Horace Mitchell, Ph.D.
President
California State University, Bakersfield
9001 Stockdale Highway
Bakersfield, CA 93311-10221

(In reply, please refer to case no. 09-14-2230.)

Dear President Mitchell:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above referenced complaint against the California State University, Bakersfield (University). The Complainant¹ alleged that the University discriminated against her on the basis of her sex (pregnancy) and disability. The issues OCR investigated were:

1. Whether the University failed to provide the Complainant with academic adjustments or auxiliary aids for her disability to ensure that she could participate in the nursing program in a nondiscriminatory manner.
2. Whether the University discriminated against the Complainant on the basis of sex by dismissing her from the nursing program due to her pregnancy.
3. Whether the University failed to provide the Complainant with accommodations during her pregnancy.
4. Whether the University harassed the Complainant based on sex and disability.
5. Whether the University failed to respond appropriately and effectively to an internal complaint the Complainant filed with the University alleging that she was discriminated on the basis of sex and disability.²

¹ OCR notified the District of the identity of the Complainant when the investigation began. We are withholding her name from this letter to protect her privacy.

² The Complainant initially filed her OCR complaint on September 12, 2013. OCR dismissed her initial complaint on October 25, 2013 under docket number 09-13-2386. On December 24, 2013, the Complainant appealed the dismissal of her initial complaint. On March 10, 2014, the case was re-opened for resolution.

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

OCR investigated the complaint under the authority of Title IX of the Education Amendments of 1972 (Title IX), Section 504 of the Rehabilitation Act of 1973 (Section 504), Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulations. Title IX prohibits discrimination on the basis of sex in education programs and activities operated by recipients of Federal financial assistance. Section 504 prohibits discrimination on the basis of disability in programs and activities operated by recipients of Federal financial assistance. OCR also has jurisdiction as a designated agency under Title II and its implementing regulation over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The University receives Department funds, is a public education system, and is subject to the requirements of Title IX, Section 504, Title II and their regulations.

OCR gathered evidence through interviews with the Complainant and University employees, and by reviewing documents submitted by the parties. After reviewing all of the evidence, OCR concluded that the University is in compliance with regards to allegations 1-4. For allegation 5, OCR found that the University failed to respond appropriately to the Complainant's internal complaint alleging discrimination on the basis of sex.

On May 18, 2015 without admitting to any violation of law, the University submitted a signed agreement (attached to this letter) which, when fully implemented, will resolve the findings in this case. The applicable legal standards, the facts gathered during the investigation, and the reasons for OCR's determinations are summarized below.

The Section 504 regulations, at 34 C.F.R. §104.43(a), provide that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any postsecondary education program of a recipient. The Title II regulations, at 28 C.F.R. §35.130(a), contain a similar prohibition applicable to public postsecondary educational institutions.

The Section 504 regulations, at 34 C.F.R. §104.44(a), require recipient colleges and universities to make modifications to their academic requirements that are necessary to ensure that such requirements do not discriminate, or have the effect of discriminating, against qualified individuals with disabilities. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific required courses, and adaptation of the manner in which courses are conducted. However, academic requirements that recipient colleges and universities can demonstrate are essential to the program of instruction being pursued or to any directly related licensing requirement will not be regarded as discriminatory.

Under the Title II regulations, at 28 C.F.R. §35.130(b)(1)(ii) and (iii), public colleges and universities may not afford a qualified individual with a disability opportunities that are not equal to those afforded others, and may not provide aids, benefits or services that are not effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others. Under 28 C.F.R. §35.130(b)(7), public colleges and universities must make reasonable modifications in policies, practices or procedures when necessary to avoid discrimination on the basis of disability, unless

doing so would fundamentally alter the nature of the service, program or activity. Section 35.103(a) provides that the Title II regulations shall not be construed to permit a lesser standard than is established by the Section 504 regulations. Therefore, OCR interprets the Title II regulations to require public colleges and universities to provide necessary academic adjustments to the same extent as is required under the Section 504 regulations.

The Title IX regulation at 34 C.F.R. §106.31 protects students in all of the academic, educational, extracurricular, athletic, and other programs or activities of schools. This includes prohibiting discrimination on the basis of pregnancy. In addition, the Title IX regulations establish procedural requirements that are important for the prevention and correction of sex discrimination, including sexual harassment. These requirements include issuance of a policy against sex discrimination (34 C.F.R. § 106.9) and adoption and publication of grievance procedures providing for the prompt and equitable resolution of complaints of sex discrimination (34 C.F.R. § 106.8[b]). The regulations also require that recipients designate at least one employee to coordinate compliance with the regulations, including coordination of investigations of complaints alleging noncompliance (34 C.F.R. § 106.8[a]).

Our investigation showed the following:

Allegation 1: Whether the University failed to provide the Complainant with academic adjustments or auxiliary aids needed to ensure that she could participate in the nursing program in a nondiscriminatory manner.

- The Complainant began taking undergraduate courses at the University during the summer of 2007. On January XX, 2011, the Complainant applied for accommodations at the Office for Services for Students with Disabilities for her disability. On February X, 2011, the University sent the Complainant her Accommodation Letter which provided her with time and a half on tests, tape-recorded lectures and a note taker. The Accommodation Letter was valid until August XX, 2011. The University informed OCR that the Complainant did not request any accommodations after her Accommodation Letter expired on August XX, 2011.
- The Complainant confirmed to OCR that the University previously provided her with accommodations for her disability. The Complainant also stated that she did not reapply for accommodations after they expired on August XX, 2011 because she did not need the accommodations in order to participate in the nursing program.

OCR concluded that the District was in compliance with the regulations implementing Section 504 and Title II. The Complainant informed OCR that she did not request any accommodations for her disability while she was in the nursing program.

Allegation 2: Whether the University discriminated against the Complainant on the basis of sex by dismissing her from the nursing program due to her pregnancy.

- The Complainant was admitted to the University's nursing program at the beginning of the fall quarter of 2011. The Department of Nursing's Progression Policy states, "A grade of a C is the minimal grade acceptable for the progression into subsequent nursing courses. Students who fail to achieve at least a C in a nursing course may request reentry into the program (based on seat availability) to repeat the course one time. Students who have previously failed a nursing course will be ineligible to remain in the nursing program if any subsequent nursing course (repeat of same course OR different course) is failed."
- At the end of the winter quarter of 2012, the Complainant received a C- final grade for Nursing 264: Health Care of Adults I (clinical). After the Complainant received the failing grade, she emailed her Professor (Professor 1) on April X, 2012 stating that she had health issues during the time she was enrolled in Nursing 264 and that she also suffered X XXXXXXXXXXXX. The Complainant asked Professor 1 to allow her to continue on to Nursing 266: Health Care of Adults II (clinical).
- Professor 1 told OCR that after she received the Complainant's April X, 2012 email, she referred the Complainant to the Undergraduate Program Director/Associate Professor and the Chair of Undergraduate Program Committee to determine if she could request reentry into the program and repeat Nursing 264. On April XX, 2013, the Complainant submitted a request to the Undergraduate Program Committee requesting readmission to the program. The Committee granted the Complainant's request and the Complainant repeated Nursing 264 during the winter quarter of 2013 and earned a B+.
- During the spring quarter of 2013, the Complainant enrolled in Nursing 266: Health Care of Adults II (clinical). The Complainant informed OCR that on April XX, 2013, she fainted at the hospital during her clinical rotation and was taken to the emergency room (ER). After taking a number of tests in the ER, the Complainant learned that she was pregnant. The Complainant also stated to OCR that during the time she was in the ER, her clinical Professor for Nursing 266 (Professor 2) came by to check on her approximately two times. During her first visit, the Complainant stated to OCR that she saw Professor 2 reading her medical chart. The Complainant believes that the Professor 2 saw the results of her pregnancy test and when she read her chart. The Complainant further stated to OCR that the physician treating her informed her that the fainting may have been caused by the fluorescent lights in the hospital and that she should follow-up with a neurologist. The Complainant was discharged from the emergency room later that day.
- Professor 2 told OCR that on April XX, 2013, she saw the Complainant pass out during her clinical rotation at the hospital. Professor 2 was not sure if the Complainant had a seizure or fainted. Professor 2 stated to OCR that she accompanied the Complainant to the ER and explained to the triage team what she had witnessed. Professor 2 also denied looking at the Complainant's medical chart or knowing anything about her

medical situation. According to Professor 2, the Health Insurance Portability and Accountability Act of 1996 Privacy Rules (HIPAA) prohibit her from looking at anyone's medical records and that the only medical records she is authorized to review at the hospital are those belonging to the patients her students are assigned to. Professor 2 also stated she would not look at the Complainant's medical records and risk losing her nursing license by violating HIPAA laws. Professor 2 further stated that she left the Complainant in the ER because she needed to supervise her other students, but checked in on her throughout the day to make sure she was okay. During one of her visits, the Complainant told Professor 2 that the lighting in the hospital may have caused her to faint. Professor 2 denied knowing anything else about the Complainant's medical condition.

- On April XX, 2013, the Complainant obtained clearance from the Student Health Center and returned to her clinical placement at the hospital.
- The Department Chair for the Nursing Department told OCR that she met with the Complainant on April XX, 2013 to discuss her progress in the nursing program. At that time, the Complainant had received a C, B-, C in theory courses and C, C- (B+ on repeat) in clinical courses. Professor 2 also reported to the Department Chair that she was concerned about the Complainant's clinical performance and thought that the Complainant had gaps in her knowledge that were not acceptable for a student in Nursing 266. In addition, the Team Leader for the Complainant's Nursing 266 theory course told the Department Chair that the Complainant received a D on her first theory exam.
- The Department Chair stated to OCR that when she met with the Complainant, she discussed strategies to help improve her performance in the nursing program. During the meeting, the Complainant informed the Department Chair that her neurologist told her that she fainted at the hospital because of the fluorescent lighting at the site. The Department Chair told the Complainant that she should consider completing her clinical at another hospital so that the lighting would not be a problem for her, but the Complainant declined and stated that she wanted to stay at the same hospital.
- The Complainant stated to OCR that after she returned to her clinical setting, Professor 2 became distant and began treating her in a harsh manner. According to the Complainant, Professor 2 only had negative things to say about her performance. The Complainant believes that Professor 2 did not like her because she knew about her pregnancy. On the morning of May X, 2013, the Complainant told OCR that Professor 2 unfairly accused her of being unprofessional when she sat down in her patient's room and fanned herself when she started to feel faint. The Complainant also stated to OCR that she did not think that her behavior was unprofessional because the patient in the room was diagnosed with dementia and was unaware of what she did.

- Professor 2 stated to OCR that on May X, 2013, the Complainant was standing next to her in the patient's room when hospital staff members were in the process of giving an oral report on the patient. While the staff members were talking, the Complainant walked in front of the staff members and sat down in the patient's room and began fanning herself with a piece of paper. According to Professor 2, the Complainant's behavior distracted the hospital staff members during their oral report. Professor 2 felt that the Complainant should have excused herself instead of remaining in the patient's room. Professor 2 also stated that the Complainant's actions of quickly fanning herself could have caused the patient, who was diagnosed with Alzheimer's, with anxiety and that it was irresponsible of the Complainant to behave in that manner in front of the patient.
- The Complainant told OCR that Professor 2 continued to make negative comments about her performance. Later that day, Professor 2 accused the Complainant of "badgering" the hospital nurse when she asked the nurse twice to give a patient her medication. The Complainant felt that Professor 2 was harassing her because she knew about her pregnancy.
- Professor 2 stated to OCR that the hospital nurse told her that the Complainant was behaving unprofessionally by continually interrupting her and asking her to provide a laxative to a patient. The nurse asked Professor 2 to talk to the Complainant about her behavior and to ask her to not interrupt her while she was working with other patients with urgent medical needs. Professor 2 stated to OCR that she talked to the Complainant and informed her that it was not her responsibility to determine what medications a patient needed and that she was behaving unprofessionally by interrupting the nurse. According to Professor 2, the Complainant continued to interrupt the nurse despite the warning.
- On May X, 2013, Professor 2 issued a written warning to the Complainant for failing to check a patient's identification prior to administering medication. Professor 2 told OCR that she was supervising the Complainant while she was administering oral medication to a patient and had to intervene when she offered the medication without checking the patient's identification. According to Professor 2, nurses are required to check a patient's identification prior to administering any medication and that this skill is taught to nursing students during the first quarter of the program. Professor 2 also stated that students in Nursing 266 are expected to have already mastered this skill.
- The Complainant told OCR that Professor 2 stopped her before she administered the medication to the patient and accused her of forgetting to do something. The Complainant stated that she properly identified the patient at that point and did not feel that the Professor 2 needed to issue a written warning for this incident.
- On May X, 2013, Professor 2 met with the Complainant to discuss her midterm

evaluation. Professor 2 informed the Complainant that she was at risk of failing Nursing 266 due to her unprofessional behavior at the hospital and unsafe medical administration. The Department Chair subsequently joined the meeting and recommended that the Complainant continue her clinical at a different hospital, under Professor 1's supervision, in order to remove the fluorescent lighting from her work environment. The Complainant told OCR that she did not want Professor 1 as her instructor because she previously failed her in Nursing 264. However, the Complainant decided to transfer to another hospital because her physician told her that the fluorescent lights at the hospital she was currently assigned to might cause her to faint.

- The Complainant began her clinical at the new hospital on or about May XX, 2013. Professor 1 told OCR that she asked the Complainant on a regular basis if the lights at hospital were causing her any health issues. According to Professor 1, the Complainant informed her that she was feeling each time she spoke to her.
- On May XX, 2013, the University issued the Complainant a violation notice for "use of another student's paper or a purchased paper." The Department Chair told OCR that the Complainant and four other students all submitted identical papers for Nursing 266. The Complainant told OCR that she and the other students thought they could submit a group paper, when the assignment required each student to write their own report. The Department Chair told OCR that the problem was clarified with all of the students.³
- On May XX, 2013, Professor 1 issued a written warning to the Complainant for being unsafe. The warning states that the Complainant "attempted to give an IV push with the blunt tip needle into the IV tubing" and that she also placed a sharp item on the patient's bed. The Complainant told OCR that she did not behave in an unsafe manner because she capped the needle on the syringe before she placed it on the patient's bed and that she also placed the syringe near the patient's lower leg, where the patient could not reach it.
- Professor 1 told OCR that she gave the Complainant a written warning because she incorrectly tried to perform an IV push by poking a needle into the hub of the IV and she also placed the needle on the patient's bed. According to Professor 1, nursing students are taught not to leave any sharp objects on a patient's bed, including a capped syringe, because there is no guarantee the cap will stay on and the needle can potentially injure the patient or hospital staff member cleaning the bed.
- The Complainant told OCR that Professor 1 contacted her on June XX, 2013 and asked to meet with her at 8:00 am the next day to go over her final evaluation for Nursing 266. The Complainant stated to OCR that she told Professor 1 that she had an important final exam for her theory class at 8:30 am and that meeting at 8:00 am would not be convenient for her. According to the Complainant, Professor 1 continued to insist that

³ The Department Chair informed OCR that the other four students passed Nursing 266.

they meet at that time. The Complainant alleged to OCR that Professor 1 harassed her by forcing her to meet before her final exam. The Complainant believes that Professor 1 harassed her because she heard about her pregnancy from Professor 2.

- The Complainant further stated to OCR that she met with Professor 1 on June XX, 2013 at 8:00 am and was shocked to hear that she failed Nursing 266. The Complainant believes that she earned a passing grade in Nursing 266 and provided OCR with a picture of the University's "Blackboard" showing that she had "weighted total" grade of 87.46% at the end of the quarter. The Complainant alleged to OCR that Professor 1 and Professor 2 failed her from the class and that the University ultimately dropped her from the program because of her pregnancy.
- Professor 1 confirmed to OCR that she met with the Complainant on June XX, 2013 for her final evaluation for Nursing 266 but denied forcing the Complainant to meet with her at 8:00 am. According to Professor 1, all of her students were required to meet with her for the final evaluation during that week. The Complainant's original meeting date was on June XX, 2013 at 12:30 pm, but that the Complainant did not show up for the meeting.
- The University provided OCR with a copy of an email Professor 1 sent to the Complainant on June XX, 2013 at 11:52 am informing her that she left her a voicemail message reminding her of the meeting. Subsequently, the Complainant sent Professor 1 a responsive email stating that she received Professor 1's email and phone calls but that she was at work until 2:00 pm and missed going to the 12:30 pm meeting. Professor 1 sent another email to the Complainant informing her that she could meet at 8:00 am on June XX. The Complainant sent a follow-up email to Professor 1 stating, "I'm sorry I wasn't able to meet with you today. Tomorrow morning at 0800 is fine. Thank you for taking [the] time to meet with me."
- Professor 1 and Professor 2 told OCR that the Complainant received a C- for Nursing 266 because she failed to meet two course objectives. Both professors evaluated their students using the Clinical Performance Evaluation Tool for Nursing 266. The Evaluation Tool lists all of the objectives a student must meet in order to pass the course. The Evaluation Tool also states, "Failure of any sub-objective on the final rating will result in failures of that objective and failure in the course."
- OCR obtained a copy of the Complainant's Clinical Evaluation Tool that was completed by Professors 1 and 2 and noted that the Complainant failed the following two objectives in Nursing 266:
 - Objective #8 – The student will exhibit professional behavior in interactions with clients, health team members, peers, and the public.
 - Objective #11 - The student will demonstrate competence in medication

administration, team leading, and specialty area assignments.

- The University also informed OCR that the Complainant's weighted total for Nursing 266 was high based on what she received on her assignments: Clinical performance 67%, Simulation Lab 88%, Short Care Plans 100%, Modified Care Plans and Specialty Assignments 90%, Article Review 100%, and CPA 100%. However, the professors gave the Complainant a C- for her final grade because she failed to meet objectives #8 and #11. According to both professors, the Complainant failed these two objectives because she performed in an unsafe and unskilled manner at the hospital and she required continuous supportive directions and cues while in the clinical setting. Since the minimum passing grade is a C, the Complainant failed the clinical portion of the course.
- After the meeting on June XX, 2013, the Complainant sent an email to Professor 1 informing her that she fainted during her clinical rotation because she was pregnant and that she XXXXX XX XXXXX XX XXXXXXXX so that she could stay in the nursing program. The Complainant also stated that she returned to her classes without telling anyone about her pregnancy.
- Both Professor 1 and Professor 2 told OCR that this was first time they heard about the Complainant's pregnancy and that they did not know that she was pregnant during the time she was enrolled in Nursing 266. Both professors also denied failing the Complainant from Nursing 266 on the basis of her pregnancy.
- The Department Chair told OCR that the Complainant was dismissed from the Nursing Program for not meeting the University's Progression Policy. The Progression Policy states that a student who has previously failed a nursing course will be ineligible to remain in the nursing program if any subsequent nursing course is failed. The Complainant previously failed Nursing 264 during the winter quarter of 2012.
- The Complainant told OCR that she decided to pursue her nursing degree at another college after she was dismissed from the University.

The Complainant contends that Professor 1 and Professor 2 failed her from her clinical course Nursing 266, which led to her dismissal from the nursing program, because of her pregnancy. The Complainant told OCR that she saw Professor 2 read her medical chart while she was in the ER on April XX, 2013 and that she believes that Professor 2 saw the results of her pregnancy test in her records and subsequently told Professor 1 that she was pregnant at that time. The Complainant also told OCR that she had earned a weighted total grade of 87.46% in Nursing 266 and that the only reason why her professors gave her a failing grade (C-) was because of her pregnancy.

Professor 2 denied reading the Complainant's medical chart and told OCR that she would not violate HIPPA laws and risk losing her nursing license by looking at the Complainant's medical

records. Professor 1 and Professor 2 also told OCR that they did not know about the Complainant's pregnancy until they received her June XX, 2013 e-mail, which was after the course had ended. Both professors acknowledged that the Complainant had earned a high weighted total grade in Nursing 266 because she did well on her assignments, but that she failed the course because did not meet two course objectives for the clinical. According to the professors, the Complainant did not meet objectives 8 and 11 for Nursing 266 because she failed to perform in a safe and skilled manner and required continuous supportive directions in the hospital setting.

Since OCR obtained conflicting testimony from the parties, OCR considered each witnesses testimony in reaching our conclusion with regards to this allegation. In reviewing the witnesses' testimony, OCR found Professor 2 to be credible when she told OCR that she would not violate HIPAA privacy laws and read the Complainant's medical chart. The fact that Professor 2 could face disciplinary consequences, including the possibility of losing her nursing license, would make it unlikely that she would read the Complainant's medical chart while she was in the ER.

OCR also took into consideration the fact that the Complainant's account of events was not accurate with regards to her allegation against Professor 1. The Complainant alleged that Professor 1 harassed her by forcing her to meet before her final examination on June XX, 2013 at 8:00 am (allegation 4). The e-mails exchanged by the Complainant and Professor 1, however, showed that the Complainant agreed to meet with Professor 1 at that time and that there was no evidence that Professor 1 harassed the Complainant. Taking this into account, OCR found Professor 1 and Professor 2 to be credible witnesses and determined that they did not know about the Complainant's pregnancy until they received her June XX, 2013 e-mail. Thus, OCR found that the preponderance of the evidence did not show that the professors discriminated against the Complainant based on sex by failing her from Nursing 266 because they did not learn about her pregnancy until she had already completed the clinical and issued her final grade for the course. As a result, OCR determined that the University is in compliance with Title IX and its implementing regulations.

Allegation 3: Whether the University failed to provide the Complainant with accommodations during her pregnancy.

The Complainant confirmed to OCR that she did not request any accommodations for her pregnancy while she was in the nursing program. Thus, the University is in compliance with regards to this allegation.

Allegation 4: Whether the University harassed the Complainant based on sex and disability.

- The Complainant alleged that Professor 2 harassed her by accusing her of being unprofessional on May X, 2013. She also alleged that Professor 1 harassed her by forcing her to meet with her right before her final exam on June XX, 2013. The Complainant told OCR that her professors harassed her because they knew about her

pregnancy. The Complainant did not allege that her professors harassed her on the basis of her disability.

- Professor 2 denied harassing the Complainant and told OCR that the Complainant did not exhibit professional behavior when she disrupted the hospital staff members during oral reports by sitting down and fanning herself in the patient's room or when she continued to interrupt the hospital nurse, who was assisting other patients with urgent needs, to bring a laxative to another patient. Professor 2 also stated that she told the Complainant that as a nursing student, she could ask the nurse questions, but that the nurse was the one who made decisions about the patient's medication and that once the nurse made her decision, the Complainant was not to continue to intervene and ask the nurse to do something.
- Professor 1 also denied harassing the Complainant and provided OCR with copies of emails that she exchanged with Complainant when they were scheduling the 8:00 am meeting on June XX, 2013 as evidence that she did not force her to meet before her final exam. OCR reviewed the emails and found that the Complainant agreed to meet with Professor 1 at 8:00 am.
- Professors 1 and Professor 2 also told OCR that they did not know that the Complainant was pregnant until she sent the June XX, 2013 email informing them of her pregnancy.

As previously stated, OCR determined that Professor 1 and Professor 2 did not learn about the Complainant's pregnancy until after she completed Nursing 266. Since the two professors did not know about the Complainant's pregnancy, OCR concluded that there was insufficient evidence to find that the professors harassed her on the basis of sex. In addition, OCR did not find that either Professor 1 or Professor 2's actions towards the Complainant were harassing.

Allegation 5: Whether the University failed to respond appropriately and effectively to an internal complaint the Complainant filed with the University alleging that she was discriminated on the basis of sex and disability.

- On August XX, 2013, the Complainant sent a letter to the Dean of the School of Natural Sciences, Mathematics and Engineering alleging that her professors discriminated against her on the basis of sex by failing her from Nursing 266 due to her pregnancy. In the letter, the Complainant also alleged that she received a passing grade in Nursing 266 and she would like to grieve her final course grade. The Complainant, however, did not alleged disability discrimination in her letter.
- Since the Complainant's letter to the Dean included an allegation of sex discrimination, the University informed OCR that the Associate Vice President for Human Resources and Administrative Services was assigned to investigate the discrimination allegation as the

Title IX Coordinator, under Executive Order 1074.⁴ OCR reviewed Executive Order 1074 and determined that it provides for a prompt and equitable resolution of discrimination complaints. Executive Order 1074 states that investigations must be completed no later than 60 working days and that the Complainant will be notified of the outcome of the investigation in writing within 10 working days of the completed report. Any complainant who is not satisfied with the determination may file an appeal with the Office of the Chancellor.

- The Dean told OCR that after she received the Complainant's letter, she looked into the matter and responded to the Complainant on September X, 2013. In the September X, 2013 letter, the Dean informed the Complainant that the University's policy required that any grade-related grievance be temporarily held in abeyance until the Associate Vice President, who was designated as the University's Title IX Coordinator, completed her investigation into the sex discrimination allegation.⁵ Although the Dean told OCR that she was only responsible for addressing the grade grievance she also notified the Complainant in her letter that she determined that it would be impossible for her instructors to discriminate against her on the basis of her pregnancy when they did not learn about her pregnancy until after they issued her final grade in Nursing 266. The Dean told OCR that she learned from the Department Chair that the Complainant did not notify her professors about her pregnancy until June XX, 2013, after she completed the clinical.
- The Complainant provided OCR with two emails she received from the Associate Vice President on August XX and XX, 2013 confirming that she would be investigating her sex discrimination allegation in accordance with Executive Order 1074. The Complainant alleged to OCR that the University never responded to her sex discrimination complaint.
- The Associate Vice President told OCR that among her many responsibilities, she was designated as the Title IX Coordinator for a brief time from August to September of

⁴ On June 3, 2014, the California State University, Office of the Chancellor issued Executive Order 1097 to supersede Executive Order 1074 - Systemwide Policy Prohibiting Discrimination, Harassment and Retaliation against Students and Systemwide Procedure for Handling Discrimination, Harassment and Retaliation Complaints by Students in response to the Campus Sexual Violence Elimination Act and related guidance from OCR addressing Title IX. Executive Order 1097 also states that that investigations must be completed no later than 60 working days and that the complainant will be notified of the outcome of the investigation in writing within 10 working days of the completed report. Any complainant who is not satisfied with the determination may file an appeal with the Office of the Chancellor.

⁵ The Student Complaint and Grievance Procedures states that the Grievance Review Board will hear grade related grievances. A decision made by the Grievance Review Board can be appealed to the Presiding Officer, who can either reject the appeal based on lack of evidence or refer the matter to the University's President for a final decision.

2013. The Associate Vice President told OCR that she received the Complainant's sex discrimination complaint sometime towards the end of the August. The Associate Vice President emailed the Complainant and informed her that she would contact her after she returned from her vacation. According to the Associate Vice President, when she returned from her vacation in September, the University hired a fulltime Title IX Coordinator. The Associate Vice President believed that the Complainant's case was transferred to the new Title IX Coordinator and that she was no longer assigned to the case.

- The University's legal counsel told OCR that a number of telephone conversations took place with him, the Associate Vice President, the Department Chair, and the Dean regarding the Complainant's grade grievance and sex discrimination complaint. Counsel stated that the Dean investigated the matter and determined that the University did not discriminate against the Complainant on the basis of sex because the University did not learn about the Complainant's pregnancy until she sent her June XX, 2013 email to her professors after it was already determined that she failed Nursing 266, which resulted in her dismissal from the nursing program. Based on this finding, the University believed that the Dean addressed the Complainant's sex discrimination complaint in her September X, 2013 letter. As a result, the Complainant's case was not transferred to the new Title IX Coordinator when she was hired by the University. The Title IX Coordinator also told OCR that she was not given the Complainant's complaint when she began her position in September and only became aware of it after she received the OCR complaint.

The issue OCR investigated was whether the University responded appropriately to the Complainant's August XX, 2013 complaint alleging possible sex discrimination and whether the University's procedures complied with the requirements of Title IX regulations. OCR found that the University did not comply with Title IX requirements when it failed to take steps to investigate and respond to the Complainant's sex discrimination complaint. At the time the Complainant filed her complaint in August of 2013, the Associate Vice President, who was designated as the Title IX Coordinator, was responsible for investigating the Complainant's sex discrimination allegation under Executive Order 1074 while the Dean of the School of Natural Sciences, Mathematics and Engineering was responsible for addressing the Complainant's grade grievance under the Student Complaint and Grievance Procedures. When the University hired a full-time Title IX Coordinator in September of 2013, the University did not transfer the Complainant's sex discrimination case to her because the University believed that the Dean had addressed the Complainant's sex discrimination allegation in her September X, 2013 letter. Although the Dean's letter discusses the Complainant's sex discrimination allegation, the letter also states that the Title IX Coordinator will be investigating her discrimination allegation under Executive Order 1074.

Since the sex discrimination allegation and the grade grievance are investigated under separate procedures, the University should have transferred the sex discrimination allegation to the new Title IX Coordinator so that the complaint could be investigated and a written response

provided to the Complainant with an opportunity for her to appeal the University's findings. Since this did not occur, OCR determined that the University was not in compliance with Title IX and its implementing regulations.

To correct this noncompliance, the University signed the attached Resolution Agreement agreeing to issue guidance notifying administrators that if a student files a grievance, that includes an allegation of unlawful discrimination, including harassment and retaliation, the grievance, or portion of the grievance, will be immediately referred to the Discrimination, Harassment and Retaliation Administrator or the Title IX Coordinator (in cases alleging sexual discrimination, including sexual harassment and sexual violence) for investigation under Executive Order 1097. The University also agreed to inform the student which administrator will be investigating each of the allegations and the specific procedures that will be followed.⁶

Lastly, OCR determined that the University met the procedural rights requirements of the Title IX regulations. The University's Executive Order 1074 and Executive Order 1097, which supersedes Executive Order 1074, comply with Title IX requirements and the University regularly notifies students of its procedures. In addition, the University has a Title IX Coordinator to coordinate compliance with regulations and investigation of complaints. Thus, OCR determined that the University is in compliance with 34 C.F.R. §§ 106.8 and 106.9.

This concludes OCR's investigation of the complaint and should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. OCR is closing this case as of the date of this letter and concurrently notifying the Complainant.

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 Institute 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.

⁶ OCR did not require the University to investigate and respond to the Complainant's sex discrimination allegation in this particular case because OCR investigated that allegation as part of this complaint. Under allegation 2, OCR determined that the University did not discriminate against the Complainant on the basis of sex (pregnancy) by failing her from Nursing 266 and dismissing her from the nursing program. OCR also determined that the University did not harass the Student on the basis of her sex under allegation 4.

Under the Freedom of Information Act, it may be necessary to release this document and related records upon request. In the event that OCR receives such a request, we will seek to protect, to the extent provided by law, personal information which, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

OCR thanks XXXXXXXX XXXXXX for her continued assistance during the resolution of this case. If you have any questions about this letter, please contact Minako Sakurai at (415) 486-5552 or me at (415) 486-5566.

Sincerely,

/s/

James M. Wood
Team Leader