



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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SAN FRANCISCO, CA 94105

REGION IX
CALIFORNIA

May 24, 2016

Dr. Sam Hawgood
Chancellor
University of California, San Francisco
550 16th Street, 7th Floor
San Francisco, California 94143-0402

(In reply, please refer to case no. 09-16-2036.)

Dear Chancellor Hawgood:

On October 13, 2015, the U.S. Department of Education, Office for Civil Rights (OCR), received a complaint against the University of California, San Francisco (University). OCR investigated whether the University discriminated against the complainant on the basis of national origin.¹ Specifically, OCR investigated the following issues:

1. Whether the complainant was subjected to harassment by an employee in her externship placement based on national origin, and the University failed to respond appropriately and effectively to notice of the harassment.
2. Whether the complainant was inappropriately disciplined by the University due to her national origin.

OCR investigated the complaint under the authority of Title VI of the Civil Rights Act of 1964 and its implementing regulation. Title VI prohibits discrimination on the basis of race, color, or national origin in programs and activities operated by recipients of Federal financial assistance. The University receives funds from the Department and is subject to Title VI and the regulation.

OCR gathered evidence by reviewing documents and other information provided by the complainant and the University. Prior to OCR completing its investigation, the University voluntarily agreed to address the areas of concern identified by OCR with respect to respect both issues. This letter summarizes the applicable legal standards, the relevant facts obtained during the investigation, and the terms of the resolution reached with the University.

¹ OCR previously provided the University with the identity of the complainant. We are withholding her name from this letter to protect her privacy.

Issue 1: Whether the complainant was subjected to harassment by an employee in her externship placement based on national origin, and the University failed to respond appropriately and effectively to notice of the harassment.

Legal Standard

The regulations implementing Title VI, at 34 C.F.R. §100.3(a) and (b), prohibit discrimination based on race, color or national origin by recipients of Federal financial assistance. Universities are responsible under Title VI and the regulation for providing students with a nondiscriminatory educational environment. Harassment of a student based on race, color or national origin can result in the denial or limitation of the student's ability to participate in or receive education benefits, services, or opportunities.

In a case of alleged third party harassment, a university violates Title VI and the regulations if the evidence shows that: (1) the harassing conduct (physical, verbal, graphic, or written) on the basis of race, color, or national origin is sufficiently serious so as to limit or deny a student's ability to participate in or benefit from the services, activities or privileges provided by a university; (2) the university had actual or constructive notice about the harassment; and (3) the university failed to take an appropriate, prompt, and effective responsive action that is within its authority to end the harassment, eliminate any hostile environment that has been created, prevent its recurrence, and, where appropriate, remedy the effects of the harassment on the student who was harassed.

The university is not responsible for the actions of the third party, but rather for its own discrimination in failing to respond adequately. Once the university has notice of harassment, the responsibility to take appropriate and effective action is the university's responsibility whether or not the student who was harassed makes a complaint or otherwise asks the school to take action. So long as an agent or responsible employee of the university received notice, that notice will be imputed to the university.

In analyzing claims of harassment under Title VI, OCR first considers the totality of the circumstances to determine whether a hostile environment has been created, i.e., whether the harassing conduct is sufficiently severe, persistent or pervasive that it denies or limits a student's ability to participate in or benefit from the recipient's program. These circumstances include the type of harassment, context, nature, scope, frequency and severity, age, race, duration, and location of the harassment incidents, as well as the identity, number, and relationships of the persons involved. It also considers whether other incidents motivated by race, color or national origin have occurred at the university to this complainant or others.

OCR evaluates the appropriateness of the responsive action by assessing whether it was prompt, thorough, and effective. What constitutes a reasonable response to harassment will differ depending upon the circumstances. However, in all cases the university must promptly conduct an impartial inquiry designed to reliably determine what occurred. If a university's grievance procedures encompass race, color, and

national origin discrimination, it must apply such procedures consistently and in a manner that does not constitute Title VI discrimination.

Facts Gathered to Date

- The complainant is currently a fourth year dental student at the University. The incident upon which this allegation is based took place in September 2015, while the complainant worked at a clinical rotation site (externship site). The University has an affiliation agreement with the externship site, which includes a provision prohibiting discrimination and harassment against any student on the basis of race, color, or national origin.
- The complainant was born in America and speaks Arabic. Her parents were born in Egypt. Although the complainant does not self-identify as Arab, she alleged discrimination on the basis of perceived Arabic origin, and the facts herein below confirm that she was perceived as being of Arabic national origin.
- On June XX, 2015, the complainant completed her first three-week rotation at the externship site. No issues were reported to the University by the externship site or by the complainant.
- On September X, 2015, the University's course director visited the externship site for an annual site visit. At the site visit, the assistant dental director told the course director that the externship site had an issue with one of the students. The next day, the assistant dental director reported to the University that the complainant was the student at issue and had engaged in the following conduct:
 - Occasionally reported late and left early;
 - Was out sick on the last day of her externship without providing requisite notice;
 - Failed to report an incident in which she lacerated a pediatric patient's cheek with a dental bur (drill) in two places, causing bleeding;
 - Failed to respond to paging and had to be tracked down and spent a lot of time in the break room;
 - Told staff she was bored and complained about limited procedures at the site; and
 - Told the dental assistant not to call her because she was doing school work.
- On September XX, 2015, the course director met with the complainant to discuss these issues. The complainant denied having injured a patient, but acknowledged that she had missed her last day of rotation due to an ear infection and that she had told people at the clinic that the rotation assignment was slow.
- The course director explained that the complainant's next three-week rotation at the site would be delayed because the site requested the complainant undergo counseling prior to returning. The course director also advised the complainant that she would be investigating the matter.

- The complainant emailed the course director, explaining that she was concerned that she would not have anything to do during the three weeks she would have been at the rotation site and that she felt that the assistant dental director handled the situation poorly. The course director responded that she would develop a plan for the three weeks that the complainant would have been at the externship site.
- On September XX, 2015, the course director met with the complainant to discuss the issues related to her externship. During this meeting, the complainant acknowledged lacerating a pediatric patient's cheek, but disagreed about the amount of bleeding that was documented and stated that she did not know that she was supposed to report injured patients.
- The course director explained that the complainant would receive counseling for her failure to report the injury, explained the details of the required remediation, and presented the complainant with a Professionalism Evaluation Report (PER form). The PER form detailed the University's concerns, and its action plan to counsel the complainant. The PER form also had a section for student comments and a section for the student to sign indicating that they had a discussion with the course or clinical director regarding the concerns. The complainant signed the PER form. On September XX, 2015, the course director sent the complainant an email memorializing the terms of the remediation plan.
- Later that day, the complainant made the following complaints to an investigator with the University's Office for the Prevention of Discrimination and Harassment (OPHD):
 - The complainant stated that she heard two externship site staff members, including the associate dental director, speaking to each other and one said, "Do you know what language she was speaking to that patient?" The other responded, "I think it was Arabic, I didn't know she was Arab." The associate dental director said, "I don't particularly like her. There are too many Muslims in the world."
 - The associate dental director asked her if she wanted to record patient depths for her, and then questioned if she knew how to do so in front of a patient. The complainant found this insulting.
 - The complainant and the associate dental director were with a patient who inquired about a denture versus a bridge; the associate dental director cut her off while she was responding to the patient.
 - The complainant felt that the associate dental director tried to blame her "for everything," even though they rarely interacted.
 - The complainant believed that associate dental director solicited lies from other dentists with whom the complainant worked to bolster her claims of poor performance.
- On September XX, 2015, the complainant sent an email to the course director, former course director, and the associate dean for education attaching her written response to the PER. She noted that the associate dental director had made an offensive statement about her "being an Arab" and that, "There are too many

Muslims in this country.” She stated that she believed this would explain the “unreasonably hostile working environment” and the “sudden, last-minute effort to prevent her” from returning to the externship site.

- On November XX, 2015, the complainant met with an OPHD officer regarding her complaint of discrimination against the associate dental director. The officer told the complainant that the OPHD did not have jurisdiction over employees of externship sites and thus had no authority to conduct an investigation into her complaints against the assistant dental director. The complainant was provided information about how to file a complaint with the externship site.

Analysis

Based on the facts gathered to date, OCR has concerns that the complainant was harassed on the basis of her national origin and the University failed to respond appropriately to notice of the harassment. The facts obtained in the investigation thus far show that the complainant notified the University of her belief that the assistant dental director harassed her, including mentioning that the assistant dental director made disparaging comments about the complainant based on her perceived national origin. The facts obtained thus far further show that the University did not respond to this complaint of harassment based on its belief that it had no obligation to respond to complaints brought against third parties, which does not accurately reflect the University’s obligations under Title VI and its implementing regulations with respect to third party conduct in programs and activities that are required for graduation. At present, OCR has not yet conducted an interview with the complainant or with University and rotation site staff to determine whether the harassment occurred. Accordingly, this matter remains unresolved. Prior to completing the investigation, the University expressed an interest in entering into the enclosed resolution agreement, which resolves the concerns identified above.

Issue 2: Whether the Complainant was inappropriately disciplined by the University due to her national origin.

Legal Standard

Under the Title VI regulations at 34 C.F.R. §100.3(a) and (b), a 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. Section (b)(1) states in relevant part that a university may not, directly or through contractual or other arrangements, on the basis of race, color or national origin,

(i) provide an individual any service, financial aid or other benefit that is different, or is provided in a different manner, from that provided to others....

(ii) restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit.

(iii) treat an individual differently in determining whether he or she satisfies any admission, enrollment, eligibility or other requirement which must be met to receive any service, financial aid, or other benefit.

To determine whether a student has been discriminated against on the basis of national origin under Title VI, OCR looks at whether there is evidence that the student was treated differently than students of other national origins under similar circumstances, and whether the treatment has resulted in the denial or limitation of services, benefits, or opportunities. If there is such evidence, OCR examines whether the university provided a nondiscriminatory reason for its actions and whether there is evidence that the stated reason is a pretext for discrimination. For OCR to find a violation, the preponderance of the evidence must establish that the university's actions were based on the student's national origin.

Facts Gathered to Date

- As a result of the report of poor performance made by the assistant dental director, the complainant received a one-week temporary removal from patient care and was required to complete a paper related to patient management.
- In October and November of 2015, the complainant attempted to negotiate changes to the discipline plan provided by the University. On October XX, 2015, the complainant sent the University an email requesting the following:
 - That her 1 week suspension be dismissed;
 - That her internship rotation be accepted as completed;
 - That all student records related to this matter be expunged;
 - That the University provide her with a passing grade for her clinical rotation;
 - Acknowledgement that the University would not retaliate against her; and
 - That the University void the PER form written on September XX.
- On October XX, 2015, the associate dean for education sent a letter to the complainant to address her concerns. She advised the complainant that:
 - The one-week suspension had already been completed and would not be dismissed;
 - The PER had not been entered into the complainant's student file and it would be shredded upon the complainant's graduation as long as no additional PERs were received by the complainant prior to graduation;
 - The complainant's grade would be replaced once she remediated and successfully passed the course. The complainant was still required to meet all course requirements of the clinical rotation, which she did not complete due to her one week suspension; and

- The University does not condone retaliation and that the complainant would not have to return to the externship site. Her new externship site would not be provided with details as to why the site change occurred.
- On November XX, 2015, the associate dean of academic affairs met with the complainant a second time. Her renewed request included the following:
 - That her grade be removed from the summer quarter;
 - That all 3 weeks of the initial suspension be counted toward her externship site rotation; and
 - That she receive an apology from the course directors.
- On December X, 2015, the complainant met with the associate dean of academic affairs a third time. The proposed terms for resolution were discussed and revised as follows:
 - The complainant's grade would be corrected once her paper as required by the remediation plan was turned in;
 - Instead of completing 3 weeks of externship for her second rotation, she would complete 7 days at a different rotation site. The 7 days would not have to be consecutive and could be done on Saturdays; and
 - The complainant would receive a description of the process followed by the course director, instead of an apology.
- The complainant was given an extension until December XX, 2015 to submit the paper she was required to write as part of her remediation. She ultimately turned in the paper and received a passing grade.
- The University did not address the national origin discrimination complaint against the assistant dental director, including the complainant's allegation that she referred to the complainant as "an Arab" and stated that "there are too many Muslims in this country" and solicited lies to bolster the report of poor performance and end her externship at the site.

Analysis

Based on the facts gathered to date, OCR has concerns that the complainant was treated differently on the basis of her national origin and the University's disciplinary process failed to consider the alleged discrimination prior to disciplining the complainant. The facts obtained in the investigation thus far indicate that subsequent to the University notifying the complainant of the performance concerns associated with her clinical rotation placement site, the complainant notified the University of her belief that the assistant dental director discriminated against and harassed her, and that the assistant dental director's bias against her on the basis of her perceived national origin motivated the assistant dental director to report performance concerns and end her externship at the site. The facts obtained thus far further show that the University did not respond to this complaint of discrimination and harassment. At present, OCR has not yet conducted an interview with the complainant or with University and rotation site staff.

Accordingly, this matter remains unresolved. Prior to completing the investigation, the University expressed an interest in entering into the enclosed resolution agreement, which resolves the concerns identified.

Summary and Resolution

The University, without admitting any violation of law, entered into the enclosed resolution agreement, which is aligned with the complaint allegations and the information obtained by OCR during its investigation.

Under the agreement, the University will: (i) respond to the complainant's complaint of national origin harassment; (ii) review its policies and procedures to ensure that they prohibit discrimination by third parties or within programs and activities of the University; (iii) revise those policies as needed (iv) provide training and guidance to responsible staff concerning their obligation to resolve complaints made against third parties that occurred in the University's program, including externship and clinical programs arranged by or required by the University; and (v) provide OCR documentation of the completion of all items as required by the terms of the Agreement.

Conclusion

Based on the commitments made in the enclosed resolution agreement, OCR is closing the investigation of this complaint as of the date of this letter, and notifying the complainant concurrently. When fully implemented, the resolution agreement is intended to address all of OCR's compliance concerns in this investigation. OCR will monitor the implementation of agreement until the University is in compliance with Title VI and its implementing regulation, which was at issue in this complaint.

This concludes the investigation of this complaint. OCR's determination in this matter 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 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 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, it will seek to protect, to the extent provided by the law, personal

information that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact Abony Alexander, Civil Rights Attorney, at Abony.Alexander@ed.gov.

Sincerely,

/s/

Zachary Pelchat
Team Leader

Enclosure

cc: Darnele Wright, Counsel for the University