



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

REGION IX
CALIFORNIA

50 UNITED NATIONS PLAZA
MAIL BOX 1200; ROOM 1545
SAN FRANCISCO, CA 94102

January 16, 2018

Fr. Michael E. Engh, S.J.
President
Santa Clara University
500 El Camino Real,
Santa Clara, California 95053

(In reply, please refer to case no. 09-17-2584.)

Dear President Engh:

This letter is to inform you that the U.S. Department of Education (the Department), Office for Civil Rights (OCR), has completed the resolution of the above-referenced complaint against Santa Clara University (the University). OCR investigated whether the University failed to promptly investigate the Complainant's complaint alleging discrimination on the basis of sex and national origin, filed on January 3, 2017 and responded to by the University on August 2, 2017.¹

OCR investigated the complaint under the authority of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d, and its implementing regulation, 34 C.F.R. Part 100. Title VI prohibits discrimination on the bases of race, color, or national origin in programs and activities operated by recipients of financial assistance from the Department. OCR is also responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), as amended, 20 U.S.C. § 1681 *et seq.*, and its implementing regulation, 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in programs and activities receiving financial assistance from the Department. The University is a recipient of financial assistance from the Department. Therefore, OCR had jurisdiction to investigate this matter under Title VI and Title IX.

To investigate this complaint, OCR reviewed documents and other information provided by the Complainant and the University. The applicable legal standards, the facts obtained during the investigation, and the reasons for the determinations are summarized below.

¹ OCR informed the University of the Complainant's identity in our letter notifying the University of the complaint. We are withholding her name in this letter to protect her privacy.

Legal Standards

The Title VI regulation, 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 regulations for providing students with a nondiscriminatory educational environment.

Universities provide program benefits, services, and opportunities to students through the responsibilities given to employees. Under Title VI and the regulation, if a student is discriminated against by an employee on the basis of race, color or national origin, the university is responsible for determining what occurred and responding appropriately. OCR evaluates the appropriateness of the responsive action by assessing whether it was timely, reasonable, and effective. What constitutes a reasonable response to discrimination will differ depending upon the circumstances. However, in all cases the university must timely conduct an impartial inquiry designed to reliably determine what occurred.

Under the Title IX 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. To determine whether a student has been discriminated against on the basis of sex under Title IX, OCR looks at whether there is evidence that the student was treated differently than students of the other sex under similar circumstances, and whether the treatment has resulted in the denial or limitation of education services, benefits, or opportunities. If there is such evidence, OCR examines whether the university provided a legitimate, 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 sex.

Under Title IX and the regulations, if a student is discriminated against by an employee on the basis of sex, 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 and effective. What constitutes a reasonable response to discrimination will differ depending upon the circumstances. However, in all cases, the University must conduct a prompt, adequate and impartial inquiry designed to reliably determine what occurred. If discrimination is found, it should take reasonable, timely, age-appropriate, and effective corrective action, including steps tailored to the specific situation.

Findings of Fact

In fall 2016, the Complainant was a female international student from XXXXX and was enrolled in the Masters of Business Administration (MBA) program. On January X, 2017, the Complainant submitted a complaint alleging national origin and sex discrimination by a professor in the School of Business. She alleged that she received a "C" grade in a business management class primarily because the professor provided

her inadequate instructional support, and that she received inadequate support based on her national origin and sex. The University assigned an investigator, who is the EEO and Title IX and compliance Coordinator (Coordinator), on January X, 2017, and initiated the investigation by interviewing the Complainant. Soon after, the Complainant returned to XXXXX on a one-year leave of absence and ultimately dropped out of the program.

The Coordinator interviewed the professor and one other witness in March and April, 2017. The University states that the Coordinator completed her investigation on June XX, 2017, and made a recommendation to the Provost. On August X, 2017, the Coordinator issued a notification to both parties of insufficient evidence of discrimination. The Complainant appealed the decision on August XX, 2017 and was informed on August XX, 2017 that her appeal was denied.

The Coordinator considered the Complainant's grade in the class, based on her performance in each area (team project, peer evaluation, class discussion and final examination) and compared her performance to that of others, particularly male students and those who are not international students from XXXXX. She found that the Complainant and her four teammates (who included male students and those not from XXXXX) all received the same grade for a team presentation that contributed to 40% of the final grade. Her analysis also showed that the Complainant's grade was based in part on her final exam grade, which was far below the average for the class (the Complainant received 18.5 and the median grade was 27). The Coordinator also considered the Complainant's argument that the professor was unresponsive when he refused to meet with her after class to discuss a class participation grade. The Coordinator confirmed that the professor asked her to schedule an appointment through e-mail and that the Complainant spoke to the professor by phone two weeks later. The Complainant found the call unhelpful. The Coordinator also examined how long it took the professor to respond to posted comments by the Complainant on the class's electronic discussion board. The Coordinator found that for every posted comment, the professor either posted links responsive to the Complainant's question. In reviewing the discussion board overall, she also found that the professor routinely did not reply personally to posted comments by other students. The Coordinator noted that even the Complainant acknowledged that the professor had received ratings by other students for being slow to respond to messages and generally unavailable for office hours. The Coordinator concluded that there was insufficient evidence to establish discrimination based on sex or national origin.

OCR spoke to the Complainant about the investigation and what she felt was insufficient. She stated that she disagreed with the conclusion of the investigation and with the University's analysis of how the professor graded her final, because it did not consider that that the professor failed to share his rubric and graded exam answers in a subjective manner. Further, she stated that the investigator "lied" to her when she told her that her case was a "top priority". She stated that the length of time impacted her because it took so long and it convinced her that the University was "not a fair place to study." Her course grade of "C" contributed to her GPA going down from 3.6 to 3.4, but

she acknowledged it would not have impacted her ability to continue in the MBA program, of which she had completed 2 or the 4 quarters.

In its data response to OCR, the University acknowledged that the investigation timeline exceeded what is typical, and its own internal guidelines for promptness. The University stated that the fact that the Complainant was no longer on campus, or in the program, meant that she was not in danger of being negatively impacted in terms of her access to an educational program or activity. Further, it stated that the delays were related to three other complaint investigations alleging sex, race and disability discrimination that were ongoing and had higher priority, and two other sexual misconduct complaints that were demanding the attention of the Title IX coordinator. The Coordinator was also overextended by a family medical emergency in March and April 2017 and her own medical emergency in July of 2017.

Analysis and Conclusion

OCR's investigation raised a concern that the delays in the University investigation timeline were unrelated to the complexity of the case investigation or other factors, such as summer and holiday breaks or the unavailability of witness, and that the investigation, which took almost seven months to complete, did not meet the prompt and timely standards for completing an investigation under Title IX and Title VI.

OCR's review of the investigative report, including the evidence considered and the application of legal standards, did not raise separate concerns about whether the University provided an adequate response. Although the Complainant argued that the University's investigation was not adequate because it did not consider how the professor ignored her, OCR determined that the investigator considered this allegation but did not find evidence to substantiate it. The Complainant's further argument that the professor graded final exams subjectively does not describe possible discrimination that should have been examined.

OCR discussed with the University the concern that the University does not have an adequate plan in place to ensure that investigations of discrimination complaints are promptly investigated, as required. The University expressed an interest in voluntarily resolving this concern prior to the conclusion of the investigation. OCR agreed it was appropriate to enter into an agreement to address this issue.

Conclusion

On January 10, 2018, the University, without admitting to any violation of law, entered into the enclosed Resolution Agreement (Agreement), which is aligned with the complaint allegation and the information obtained by OCR during its investigation. The Agreement provides that the University will develop a pool of trained investigators to conduct discrimination complaints and to ensure that there are adequate resources in place to ensure prompt investigations and responses. Further, the University agreed to conduct a review of complaints from the 2017-18 school year to review the timeline of

resolution and determine if any change in policy or practice is necessary to ensure prompt resolutions. The University will report to OCR on all actions taken.

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.

Based on the commitments made in the enclosed Agreement, OCR is closing the investigation of this complaint as of the date of this letter, and notifying the University concurrently. When fully implemented, the Agreement is intended to address all of OCR's compliance concerns in this investigation. OCR will monitor the implementation of the Agreement until the University is in compliance with Title VI and Title IX and their implementing regulations, which were at issue in this case.

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, retaliate, 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 another complaint alleging such treatment.

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, it will seek to protect, to the extent provided by law, personal information which, if released, would 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 Ava De Almeida Law, Senior Investigator, at 415-486-5513 or ava.m.dealmeida-law@ed.gov.

Sincerely,

/s/

Katherine Riggs
Acting Team Leader

Enclosure

cc: Bridget K. Colbert, Assistant General Counsel