



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

April 10, 2018

Carole Goldsmith
President
Fresno City College
1101 E. University Avenue
Fresno, California 93741

(In reply, please refer to case number 09-18-2013.)

Dear President Goldsmith:

The U.S. Department of Education (Department), Office for Civil Rights (OCR) has resolved the above-referenced complaint against Fresno City College (College). The Complainant alleged that the College discriminated against the Student on the basis of sex.¹ Specifically, OCR accepted for investigation the following issue:

Whether the College discriminated against the Student on the basis of her pregnancy when she was hospitalized and gave birth on the days when the final was offered in her XXXXXXXX class, and she was not provided with the opportunity to take the final.

OCR is 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 at 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 College is a recipient of financial assistance from the Department. Therefore, OCR had jurisdiction to investigate this matter under Title IX.

OCR began its investigation by reviewing documents and correspondence provided by the Complainant and the College, and by interviewing the Complainant and the Student. Prior to OCR completing its investigation, the College voluntarily agreed to address compliance concerns identified by OCR with respect to the issue investigated. This letter summarizes the applicable legal standards, the relevant facts obtained during the investigation, and the terms of the resolution reached with the College.

Legal Standard

Under the Title IX regulations, at 34 C.F.R. § 106.31(a) and (b), a recipient college or university may not treat individuals differently on the basis of sex with regard to any aspect of services, benefits, or opportunities it provides. Section 106.31 (b) states that a college or university may not, on the basis of sex, treat a person differently in determining whether he or she satisfies any requirement or condition for the provision of an aid, benefit, or service.

Under 34 C.F.R. § 106.40(a), a college or university shall not apply any rule concerning a student's actual or potential parental, family, or marital status which treats students differently on the basis of sex.

¹ OCR previously provided the College the identity of the Complainant and Student. We are withholding their names from this letter to protect their privacy.

Section 106.40(b)(1) states that colleges or universities are prohibited from discriminating against a student based on pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery from any of these conditions. Section 106.40(b)(5) provides as follows: if a college or university does not maintain a leave policy for its students, or in the case of the student who does not otherwise qualify for leave under such a policy, a college or university shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as a justification for a leave of absence for so long a period of time as is deemed medically necessary by the student's physician, at the conclusion of which the student shall be reinstated to the status which she held when the leave began.

Title IX requires a college or university to excuse a student's absences due to pregnancy or related conditions, including recovery from childbirth, for as long as the student's doctor deems the absences to be medically necessary. When the student returns to school, she must be reinstated to the status that she held when the leave began, which should include giving her the opportunity to make up any work missed.

Factual Background

The Student was enrolled in a XXXXXXXX X class in XXXXXXX 2017 and was pregnant at the time. The final exam for this class was scheduled to take place on XXXX XX and XX, 2017, and included a written component and a lab component. The lab component involved viewing and answering questions about a XXXXXXX XX XXXXXXXXXXX XXXXX XXXX.

On XXXX XX, 2017, the Student sent the XXXXXXX X instructor (Instructor) an electronic message before the final exam began, stating that she had to go to the hospital for a pregnancy/birth-related condition and that she would have to miss the final exam that day. She asked if she could take the exam the following day. The Instructor responded in the affirmative, but also informed the Student that if she was admitted to the hospital she would need to take an incomplete in the class for medical issues. Later the same day, the Student sent another electronic message informing the Instructor that she had been admitted to the hospital and would have to stay there until XXXX XX. The Instructor replied and described two options---one option was to drop the class and retake it; the other option was to take an incomplete in the class and make up the final exam at a later date.

The Student gave birth on XXXX XX, 2017.

The College informed OCR that the Instructor reported that the Student did not contact her to request rescheduling the final exam as an accommodation until after grades were finalized and entered and XXX XXXXX XXXX used for the lab component XXX XXXX XXXXXXXXXXX. However, the evidence shows that the Student sent an electronic message to the Instructor on XXXXXXX X, 2017, asking whether there was any chance that she could still take the final exam before grades were turned in, and inquiring whether there was anything else she could do to make up the final exam. In reply, the Instructor advised the Student to speak with a counselor about the situation and again told the Student that she may want to look into dropping the class due to extenuating circumstances.

The Student consulted with an adjunct counselor (Counselor) at the Counseling Center's "Q&A" desk on XXXXXXX X, 2017, and explained her situation. The Student reported to OCR that the Counselor told her that it was up to the discretion of the Instructor whether the Student could make up the final exam. The Student told OCR, and the College confirmed, that the Counselor advised her to contact the Dean of the Math/Science/Engineering Department (Dean) about the matter.

Later on XXXXXX X, 2017, the Student sent another electronic message to the Instructor and specifically requested an opportunity to take the final exam. She stated that she had read about her Title IX rights and believed that she should have been given the opportunity to make up the exam. The Student wrote that she understood that grades would be submitted and posted by XXXXXX XX. She stated that she hoped that she would receive a passing grade in the XXXXXX X class and be able to continue on to XXXXXX XX² XX XXXX 2017. The Instructor replied to the Student's message on XXXXXX X and said that she would consult with the Dean.

The Student and Complainant told OCR that they contacted the Dean's office on XXXXXX X, 2017, and were initially told by the Dean's assistant (Assistant) that they could meet with the Dean on XXXXXX XX. However, they stated that when they called on XXXXXX XX to confirm the appointment the Assistant told them that the Dean was not available the day. They told OCR that the Assistant rescheduled the appointment for XXXXXX XX, the day that the 2017 fall term started.

The Student and Complainant reported to OCR that they met with the Dean on XXXXXX XX, 2017, and specifically raised Title IX concerns. They stated that the Dean told them that it would be unfair to other students if the Student was allowed to take the final exam and that the Instructor had no access to XXX XXXX XXXX. The Student and the Complainant told OCR that the Dean again suggested that the Student withdraw from or drop the class. They noted that XXXXXX grades had been submitted and posted by the time they met with the Dean.

The College reported to OCR that the Student never contacted the Dean after being advised to do so by the Counselor.³ With respect to the Instructor's denial of the Student's request to make up the final exam, the College stated that the request was denied because: grades had been finalized and entered; XXX XXXX XXXX for the lab component XXX XXXX XXXXXXXXXXXX; and modifying the lab component of the exam to something other than XXX XXXX XXX assessment would be unfair to other students and potentially compromise the academic rigor of the course.

The Complainant told OCR that the Student ultimately dropped the XXXXXX 2017 XXXXXXXX X class instead of withdrawing from it because she did not want a notation of withdrawal on her transcript. The Student re-enrolled in XXXXXXXX X XX XXXX 2017 with a different instructor. The Complainant confirmed that the Student was given the opportunity to take the final exam at the conclusion of the XXXX 2017 class, including both written and lab components. The Complainant reported that the Student did not receive a passing grade in the XXXX 2017 class for reasons unrelated to the issue raised by her OCR complaint. The Complainant stated that the only cost that the Student incurred for retaking the class was the cost of new course materials which were required to be purchased.

Analysis

The Title IX regulations, at 34 C.F.R. § 106.40(b), require the College to excuse a student's absences due to pregnancy or birth-related conditions and, when the student returns to school, reinstate her to the

² The Complainant and the Student told OCR that completing XXXXXXXX X was a prerequisite to enrolling in XXXXXXXX XX.

³ The College reported to OCR that neither the Student nor the Complainant ever contacted any College administrator regarding the Student's request to make up the final exam.

status that she held when the leave began. This obligation includes providing the student an opportunity to make up any work missed, such as exams.

Based on the facts gathered to date, OCR has identified several compliance concerns. When the Student initially informed the Instructor of the pregnancy/birth-related hospitalization that would preclude her from taking the final exam on the scheduled dates, the Instructor responded with only two options--- dropping or taking an incomplete for the class. OCR is concerned that the Instructor did not inform the Student of her option under Title IX to remain enrolled in the class and make up the final exam before the end of the XXXXXX 2017 term if she was medically able to do so.

The facts also show that after the Student returned to the College she made two written requests to the Instructor on XXXXXX X, 2017, to make up the XXXXXXXX X final exam prior to the conclusion of the XXXXXX 2017 term so that she could progress in her course of study in XXXX 2017. In response, the Instructor advised the Student to speak with a counselor, suggested that she consider dropping the class, and told the Student that she would consult with the Dean. Again, OCR is concerned that the Instructor did not provide the Student the option under Title IX to make up the final exam prior to the date that grades were finalized and posted on XXXXXX XX.

There is a conflict in the evidence with respect to whether the Student and the Complainant met with the Dean on XXXXXX XX, 2017. However, if this meeting did take place and the Dean denied the request to make up the exam based on her belief that it would be unfair to other students and/or because the Instructor had no access to XXX XXXXX XXXX, OCR is concerned that the Dean, in addition to the Instructor, did not provide the Student the option under Title IX to make up the final exam without dropping the class.

Finally, OCR was concerned that, based on its investigation thus far, there is no evidence that the Instructor, the Counselor, or the Dean, if, in fact, she was involved, consulted with the College's Title IX Coordinator to inform their responses to the Student's request to make up the final exam before the end of the 2017 XXXXXX term.

OCR did not complete its investigation, and therefore has not reached a conclusion as to whether the College violated Title IX, as alleged. However, as explained above, the facts OCR has gathered thus far raise Title IX compliance concerns with respect to the allegation in this case. In order to complete its investigation and reach a compliance determination, OCR would need to review additional data and conduct interviews of College personnel, including the Instructor, the Counselor, and the Dean.

Resolution

Prior to the completion of OCR's investigation, the College requested to enter into a Resolution Agreement Reached During an Investigation pursuant to Section 302 of OCR's Complaint Processing Manual. OCR determined that a Section 302 Agreement was appropriate in this case. The College, without admitting to any violation of law, signed the attached Resolution Agreement (Agreement) which is aligned with the complaint issue and the information obtained by OCR thus far during its investigation.

Under the Agreement, the College agreed to reimburse the Student for the cost of her XXXX 2017 XXXXXXXX X course materials. The College also committed to issuing written guidance to its faculty, administrators, and counselors regarding: Title IX's prohibition of discrimination against students based on pregnancy or birth-related conditions; the College's obligation to accommodate pregnant students

and those recovering from childbirth; and the College's expectation that its personnel promptly notify and consult with the Title IX Coordinator upon receipt of any pregnancy or birth-related accommodation request from a student. Finally, The College agreed to add a notice to its website and send an email to all of its students to inform them of the notice. The notice will contain the following: Title IX's prohibition of discrimination against students based on pregnancy or birth-related conditions; the College's obligation to accommodate pregnant students and those recovering from childbirth; and contact information for the Title IX Coordinator and his/her availability to respond to questions and concerns by pregnant students and those recovering from childbirth.

Conclusion

Based on the commitments made in the enclosed Agreement, OCR is closing the investigation of the complaint as of the date of this letter and notifying the Complainant and the Student concurrently. When fully implemented, the Agreement is intended to address the complaint allegation. OCR will monitor the implementation of Agreement until the College is in compliance with the terms of the Agreement. Upon completion of the obligations under the Agreement, OCR will close the complaint.

This concludes OCR's investigation of the complaint and should not be interpreted to address the College's compliance with any other regulatory provision or to address any issue other than that addressed in this letter. The Complainant and the Student 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 College 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 a 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 which, 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 Julie Baenziger, Civil Rights Attorney, at (415) 486-XXXX, or Brian Lambert, Acting Team Leader, at (415) 486-XXXX.

Sincerely,

/s/

Brian Lambert
Acting Team Leader

Attachment

Cc: Gregory Taylor, General Counsel