



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

REGION IX
CALIFORNIA

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

September 29, 2023

Via Electronic Mail

Dr. Carol Folt, President
University of Southern California
president@usc.edu

(In reply, please refer to case no. 09-20-2450.)

Dear Dr. Folt:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has resolved the above-referenced complaint against the University of Southern California (University), which was filed on August 17, 2020. OCR investigated whether the University discriminated against a student (Student)¹ on the basis of sex, in violation of Title IX of the Education Amendments of 1972 (Title IX), as amended, 20 U.S.C. §§ 1681-1688, and its implementing regulation, 34 C.F.R. Part 106. Specifically, OCR investigated whether the University responded promptly to the Student's complaint, filed on [redacted content], 2018, that a professor of one of his classes (the Professor) harassed him on the basis of his sexual orientation in the Fall 2017 semester.

OCR is responsible for enforcing Title IX and its implementing regulations, which prohibit discrimination on the basis of sex under any education program or activity receiving Federal financial assistance.² The University receives funds from the Department and is therefore subject to Title IX and the regulations.

OCR investigated the complaint by interviewing the Student and reviewing documentation provided by the University. Based upon the evidence gathered to date, OCR identified compliance concerns that the University may have failed to respond promptly and equitably to notice of sex-based harassment. Before OCR completed its investigation, the University voluntarily agreed to resolve the concerns OCR identified, and OCR determined that it was

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

² Amendments to the Title IX regulation went into effect on August 14, 2020, and can be viewed [here](#). However, OCR is evaluating this complaint based on the prior Title IX regulation that was in effect at the time when the alleged acts occurred. You can find that regulation [here](#). For more information about Title IX, including the new Title IX regulation and related resources, visit OCR's website at https://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html and <https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/index.html>.

appropriate to resolve its concerns to date with a voluntary resolution agreement under Section 302 of OCR's Case Processing Manual (CPM).³

Legal Standards

The regulation implementing Title IX, at 34 C.F.R. § 106.31(a), states as follows: "Except as provided elsewhere in this part, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives Federal financial assistance."

Sexual harassment is a form of sex discrimination prohibited by Title IX. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, such as sexual assault or acts of sexual violence.

The regulation also required recipients to adopt and publish grievance procedures providing for the prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by Title IX. *See prior* 34 C.F.R. § 106.8(b). There is no fixed time frame to determine whether a resolution has been prompt; rather, OCR evaluates a recipient's good faith efforts under the circumstances. An equitable response requires a trained investigator to analyze and document the available evidence to support reliable decisions, and that any rights or opportunities that a recipient makes available to one party during an investigation be made available to the other party on equal terms. OCR evaluates on a case-by-case basis whether the resolution of a sexual harassment complaint was prompt and equitable.

When the recipient has actual or constructive notice of sexual harassment, it must take appropriate steps to investigate or otherwise determine what occurred, and it may be appropriate for a school to take interim measures prior to or during the investigation of a complaint. Interim measures are individualized services offered as appropriate to either or both the reporting and responding parties involved in an alleged incident of sexual misconduct. Interim measures include counseling, extensions of time or other course-related adjustments, modifications of work or class schedules, campus escort services, restrictions on contact between the parties, changes in work locations, leaves of absence, increased security and monitoring of certain areas of campus, and other similar accommodations.

Factual Findings

In [redacted content] 2017, the Student, who is gay, began his graduate program at the University. The Student stated that in [redacted content] 2017, two interactions occurred with a professor of one of his classes (Professor) that he described as homophobic. According to the Student, the first incident occurred in [redacted content] 2017 during an event related to his

³ OCR Case Processing Manual (July 2022) <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>
OCR dismissed the complaint's allegations of retaliation under CPM Section 108(i) because the Student informed OCR that he had raised them in a complaint to the University and the University was investigating them when he filed his complaint with OCR. The University did not substantiate the Student's retaliation allegations in its investigation and notified the Student of this determination in [redacted content] 2021. Under CPM Section 108(i), the Student had the right to refile the allegations of retaliation with OCR within 60 days of the University's determination, but he did not do so.

graduate program, when the Professor asked the Student if he liked the work of a gay male [redacted content] artist whose work the Student described as “hyper-masculinized” and containing sexualized imagery of muscular men. The Student told OCR that he responded by saying that he did not care for the artist’s work, to which the Professor responded, “I think you don’t like [the artist] because you don’t go to the gym.” The Student told OCR that the Professor’s comment was demeaning and that he interpreted it to mean that he was not masculine enough because he did not look like he went to the gym. On [redacted content], 2017, the Student emailed his advisor (Advisor) and complained about the Professor’s comment. The Advisor responded by e-mail, apologizing for the Professor’s comment and stating that it was “absolutely unacceptable (unprofessional and unethical).”

The second incident occurred in [redacted content] 2017, during a gathering of graduate students [redacted content] to discuss the students’ [redacted content]. According to the Student, the Professor responded critically to the Student’s presentation by saying, “Of course you are taking this direction because [the artist] is associated with the [redacted content], who were faggy.” The Student stated that the Professor emphasized the word “you” when she said this, and that he interpreted her comment as saying that the Student was “faggy.” The Student told OCR that he was shocked that the Professor had used a homophobic slur to characterize his work, and that he notified his Advisor about it.

On [redacted content], 2018, the Student reported the Professor’s comments to the University’s Office of Equity and Diversity (OED), which at the time oversaw Title IX complaints. On [redacted content] 7, 2018, the OED Investigator emailed the Student and informed him that OED had not yet determined whether it would formally investigate his report, and that OED may refer the Student’s complaint to “a more appropriate office for handling if it does not fall within the purview of OED.” The OED Investigator’s email included hyperlinks to the University’s “Policy on Discrimination, Harassment, Sexual Harassment, and Sexual Assault” and complaint procedures, including information about how the University responds to reports of prohibited conduct.

According to the University, at the time the Student submitted his complaint, OED had already received two other student complaints regarding the Professor’s conduct, one of which it was investigating and one of which it had referred to the Office of Conduct, Accountability, and Professionalism (OCAP). The University told OCR that OCAP was created in 2018 to conduct investigations into employee conduct that is “persistent, pervasive or significant; has proven not amenable to intervention by Human Resources or Faculty Affairs; does not involve a protected class; and is not within the jurisdiction of another University entity.” The University also stated that “OCAP makes findings of fact and determines if University policy was violated, however, it does not issue sanctions or discipline with respect to its findings, as that responsibility rests with Human Resources (for staff) and the Committee on Professional Responsibility (for faculty).”

On [redacted content], 2018, the OED Investigator interviewed the Student. On [redacted content], 2018, the OED Investigator informed the Student by email that she was moving forward with the investigation of the Student’s harassment allegation against the Professor. Because the Student also reported other concerns unrelated to the alleged sex-based harassment, the OED Investigator informed the Student that she was referring the “other issues they

discussed” to OCAP because they were better suited to that office, and that an OCAP investigator would contact the Student soon about his remaining concerns.⁴ The Student also stated to OCR that he understood the OED Investigator’s email to mean that OED had accepted for investigation his allegation that the Professor’s comments in [redacted content] 2017 constituted harassment based on sexual orientation.

During [redacted content] 2018, the Student and the OED Investigator exchanged emails regarding the status of the OED investigation. On [redacted content], 2018, in an email entitled “OED complaint status,” the OED Investigator informed the Student that two of the three witnesses whose names he had provided refused to be interviewed on the record, and that the Professor was on leave and would be notified of the Student’s complaint when she returned. On [redacted content], 2018, the Student emailed the OED Investigator and told her that the Professor had been in her office and that he felt it was important that they notify her of the OED investigation.

The University stated that on or around [redacted content], 2018, the OED Executive Director,⁵ OED Director, OCAP Investigator 1, and the OED Investigator met and determined that the Professor’s comments to the Student in [redacted content] 2017 “as alleged, would not constitute a [Title IX] policy violation” based on the information gathered up to that point, which included witnesses who were reluctant to speak on the record. The University stated that rather than dismiss the Student’s complaint altogether, OED referred it to OCAP to “evaluate the impact, if any, of the Professor’s conduct on the climate of the department, and to offer supportive resources to individuals who may have been impacted.” On [redacted content], 2018, the OED Investigator emailed the Student and asked him to meet with her to discuss the next steps in the investigation; the Student and the OED Investigator agreed to meet on [redacted content], 2018.

On [redacted content], 2018, the OED Executive Director assigned the Student’s case to OCAP Investigator 2. On [redacted content], 2018, the OED Director emailed the OED Executive Director a spreadsheet of open OED investigations; with regard to the Student’s case, the notes in the spreadsheet read, “Witnesses would not participate because of fear of [the Professor]. Since only one protected class comment OED transferred case to OCAP on [redacted content].”

On [redacted content], 2018, the OED Investigator met the Student and introduced him to OCAP Investigator 2. The University told OCR that “OED notified the Student that there was insufficient evidence to move forward with an investigation into sex discrimination under Title IX and transferred the matter to OCAP to address the remaining non-protected characteristic issues.” The University did not produce any documentary evidence that it notified the Student at that time of its determination. The Student told OCR that neither the OED Investigator nor OCAP Investigator 2 informed him on [redacted content], 2018, that OED had determined that his Title IX complaint could not be substantiated and had been closed. On [redacted content], 2018, OCAP Investigator 2 interviewed the Student. Documents provided by the University indicated that the Student made three allegations during the interview, two of which were the

⁴ The Student told OCR that these remaining concerns included bullying comments by the Professor and the Student’s concerns about potential retaliation. *See supra* n.3.

⁵ At the time of the Student’s complaint, this individual’s title was “Executive Director, OED/OCAP, Title IX”.

same as those investigated by OED (i.e., the Professor's [redacted content] 2017 comments), and a third alleging that the Professor's conduct created a hostile environment in the Student's graduate program.

The Student told OCR that he did not understand the difference between the OED and OCAP investigations, and that he was not sure in [redacted content] 2018 if there were one or two University investigations of the Professor's [redacted content] 2017 comments. The Student told OCR that he emailed OCAP Investigator 2 for clarification in early [redacted content] 2019.

On [redacted content], 2019, OCAP Investigator 2 emailed in response that she wanted to "recap" their [redacted content] meeting and explain the purpose of the OCAP investigation:

When you made your initial report, it was made to the Office of Equity and Diversity, as a complaint. As we discussed, my supervisor decided that this matter will be investigated by OCAP, but not as a disciplinary matter. Instead, I am gathering information, without making credibility determinations. That information will be shared in some format with a person who has supervisory authority over [the Professor]. Therefore, my role is not to decide whether [the Professor] violated or did not violate University policy. My role is never to determine sanctions, if any, are warranted. However, in this situation, according to my supervisor, the matter is not being treated as disciplinary; we are aggregating information so that someone in [the Professor's] management chain can have a conversation with her. As a result, there will not be a determination that allegations are or are not substantiated.

OCAP Investigator 2 informed the Student that she was aware that he may be upset by "the situation" and that he could seek assistance from the University's Counseling Center. The Student told OCR that he did not understand this response to mean that his Title IX complaint was closed.

On [redacted content], 2019, the Student emailed OCAP Investigator 2 and stated that he would like to discuss further her [redacted content] email and its ramifications. OCAP Investigator 2 responded that she had already explained to him that OCAP was not conducting a disciplinary investigation and that there would be no determination of violation of University policy. The Student told OCR that shortly after this email exchange, OCAP Investigator 2 went on leave and he never heard from her again. He told OCR that from late [redacted content] 2019 through [redacted content] 2019, he had no contact with OCAP or OED about his complaints about the Professor and other faculty. The University told OCR that OCAP Investigator 2's leave was extended more than once and ultimately lasted one year, and that during her leave the Student's case was placed on hold, pending her return.

On [redacted content], 2019, the Student emailed the University's Office of Professionalism & Ethics (OPE) and complained that he had been working with OCAP Investigator 2 but that she was on leave. The Student asked whom he could speak with about the Professor's conduct. The University told OCR that OPE referred the Student's complaint to the OED Executive Director, who contacted the OCAP Interim Director and asked her to respond to the Student. On [redacted content], 2019, the OCAP Interim Director interviewed the Student and then assigned the Student's case to an external investigator (External Investigator). The University told OCR that

at that time, the External Investigator was investigating two other complaints about the Professor. On [redacted content], 2019, the External Investigator interviewed the Student. The University stated that the External Investigator told the Student that “the focus of their interview would be on current issues” the Student was experiencing with respect to the Professor and the Student’s graduate program, and the Student responded by discussing recent incidents of alleged bullying and retaliation by the Professor against him for having complained about her. The Student told OCR that the interview was his last contact with OCAP for eight months.

In [redacted content] 2019, the Student took and did not pass his qualifying exams to be a doctoral degree candidate. He told OCR that the Professor was not on his exam committee, but that all of the individuals on his exam committee were aware of his complaint against the Professor and that he believes some of them may have been interviewed as part of the University’s investigations of his complaint.

During the week of [redacted content], 2020, 18 months after the Student filed his Title IX complaint, the University notified the Professor of the Student’s allegations and the OCAP complaint. The Student told OCR that the University Committee on Academic Review (UCAR) was reviewing his graduate program in [redacted content] 2020, and that he provided his feedback in advance to the University Provost’s Office of Academic Affairs on [redacted content], 2020, because he was going to be absent on the day that reviewers met with graduate students. The Student’s email to the Provost’s Office of Academic Affairs stated in pertinent part that the Professor made homophobic comments to him in [redacted content] 2017; he made a Title IX complaint about them and was informed that nobody would go on record about them out of fear of retaliation; and the case was now with OPE. The Student also stated that due to the Professor’s alleged harassment and retaliation, he was considering leaving his graduate program. The University stated that the Student emailed a copy of his letter to the Director of Academic Affairs, Associate Dean and Chief Diversity Officer, and other high-ranking University administrators, who forwarded it to the OED Executive Director, who responded that OED was aware of the Student’s allegations and that OCAP was investigating his concerns.

The University told OCR that between [redacted content], 2019, and [redacted content], 2020, the External Investigator conducted 41 interviews with 34 individuals including the Student, the Professor, and former students and employees who were no longer affiliated with the University.

On [redacted content], 2020, the Student received a written determination from the External Investigator regarding the Student’s complaint of “bullying, hostile learning environment, and retaliation.” The letter stated that OCAP had determined by a preponderance of evidence that the Professor did not violate the Faculty Handbook policy 6-AA (2).⁶ With regard to the comment in [redacted content] 2017, the letter stated that OCAP could not substantiate the Student’s allegation because neither the Professor nor the University employee who was sitting with her could recall that it had occurred. With regard to the Professor’s use of the word “faggy” in [redacted content] 2017, OCAP determined that the comment was made, but the evidence did not substantiate that the Professor had used the word as a homophobic slur. According to the letter, the Professor stated that [redacted content] was “reclaiming and appropriating the term ... much like the word ‘queer’ had been reclaimed and appropriated”; that witnesses supported the Professor’s position; and that

⁶ See <https://policy.usc.edu/files/2019/07/2019-Faculty-Handbook-1.pdf>

“there appears to be no consensus within the community on whether ‘faggy’ is offensive or an accepted term to push towards empowerment.” As a result, OCAP determined by a preponderance of the evidence that the Professor’s “use of the word ‘faggy’ in this context was not harassing, abusive, or intimidating, or objectively offensive, in violation of University policy.”

On [redacted content], 2020, the Student emailed the University’s new “Office of Equity, Equal Opportunity, and Title IX” (EEO-Title IX) and stated that he did not agree with the OCAP determination, and that he did not understand why his complaint of homophobia to OED had been “inexplicably shifted to OCAP.”

On [redacted content], 2020, the Interim Director of the EEO-Title IX Office emailed the Student and stated that it was not OED’s practice to reconsider matters that were previously resolved. The Student continued to advocate for his complaint to be reexamined. The University told OCR that after careful consideration, the EEO-Title IX Office declined to reopen the OCAP investigation of his harassment allegations.⁷

The Student told OCR that he has not been able to have a co-advisor on his dissertation or to change the members of his qualifying exam committee, which included faculty members who had been interviewed as part of the University’s investigation into the Student’s OED/OCAP complaints. As a result, the Student did not retake his qualifying exams and instead took a leave of absence from the University in [redacted content] 2020. The University stated that it evaluated and extended reasonably available supportive measures to the Student during the 2020-2021 academic year, including extending his fellowship stipend and health insurance after he voluntarily withdrew from the University.

Analysis and Resolution

Based upon the evidence gathered to date, OCR identified compliance concerns that the University’s response to the Student’s complaint filed with OED, which oversaw Title IX complaints, was neither prompt nor equitable.

With regard to promptness, the Student told OCR that he complained to OED in [redacted content] 2018, and that his complaint was at some point shifted to OCAP, which provided him with a determination almost two years later in [redacted content] 2020. The University told OCR that it notified the Student in [redacted content] 2018 that it had determined that the Professor’s alleged comments did not constitute a Title IX policy violation. The University, however, did not provide evidence regarding who informed the Student of the determination, when, and how. Instead, the University provided OCR with an internal OED spreadsheet indicating that on [redacted content], 2018, the Student’s case was marked as closed, and with a calendar entry dated [redacted content], 2018, indicating that the OED Investigator was scheduled to meet with the Student and introduce him to OCAP Investigator 2.

The Student told OCR that he met with these individuals on [redacted content], 2018, and that neither informed him specifically that his Title IX sex discrimination complaint had been closed with a finding of insufficient evidence. The Student provided evidence that he emailed the OCAP

⁷ As noted above, the University decided to investigate the Student’s retaliation allegations. *See supra* n.3.

Investigator 2 in early [redacted content] 2019 and asked for clarification as to the status of his Title IX complaint, and that she responded on [redacted content], 2019, informing him that her supervisor had decided that OCAP would investigate his case. The email did not state that the OCAP investigation was a new, separate investigation because the Student's Title IX complaint had been dismissed. (This email exchange was also not included in the University's data response to OCR's request for data.) The University gave OCR information showing that nine months passed before OCAP's External Investigator interviewed the Student on [redacted content], 2019, and another eight months passed before OCAP informed the Student of the investigation's outcome on [redacted content], 2020. While the evidence is conflicting about what the University communicated to the Student about the status of his Title IX complaint at the meeting on [redacted content], 2018, OCR is concerned that the University did not promptly respond to the Student's complaint from [redacted content] 2018.

OCR is also concerned the University's response to the Student's Title IX complaint may not have been equitable because the University did not clearly inform him that the Title IX investigation concluded with OED's determination of insufficient evidence in [redacted content] 2018. The University did not provide written notice of this determination to the Student in [redacted content] 2018 and there is unclear evidence about whether the OED and OCAP investigators notified him orally at the meeting on [redacted content], 2018, that his harassment allegations would be included among others in a new separate OCAP investigation under the Faculty Code. The Student provided OCR with copy of his email to OCAP on [redacted content], 2020, in which he stated that he did not understand why his "complaint of homophobia to OED was inexplicably shifted to OCAP." This email indicates that, 20 months after the University claims to have notified him of the dismissal of his OED complaint, the Student was still confused by its referral to OCAP. The University also provided the Student with confusing information about whether it was conducting one [Title IX] or two [Title IX and OCAP] investigations and which allegations were still being investigated. For example, on [redacted content], 2018, the OED Investigator emailed the Student that OED was "moving forward to investigate" his allegations regarding the Professor's [redacted content] 2017 comments, and that OCAP would conduct a separate investigation of the "other issues" (i.e., non-Title IX issues) they had discussed. On [redacted content], 2019, however, OCAP Investigator 2 told the Student that OCAP was investigating the "same matter" as OED but on a different basis. Then on [redacted content], 2019, the External Investigator asked the Student to discuss "the current issues" he was experiencing with the Professor and his graduate program. The University also told OCR that after it closed the Student's Title IX case, it transferred the allegations to OCAP to address the "remaining non-protected characteristic issues." But the OCAP determination letter, dated [redacted content], 2020, includes the Student's protected characteristic allegations (i.e., the Professor's alleged comments in 2017).

OCR's concern regarding the University's response to the Student's complaint is also based on the University giving the Student confusing information about what he could expect with regard to an outcome. For example, on [redacted content], 2019, OCAP investigator 2 told the Student that there "would not be a determination that allegations are or are not substantiated." However, on [redacted content], 2020, the External Investigator informed the Student that OCAP had determined that it could not substantiate the Student's allegations about the Professor's two comments in 2017.

Finally, even though the University ultimately determined that his Title IX complaint should be closed and handled by OCAP, OCR is concerned that the University did not offer the Student interim measures during the prolonged investigation of his complaint. The Student complained multiple times to the University that the Professor harassed him for failing to conform to sex stereotypes. Emails showed that the Student complained of the alleged harassing conduct to OED in [redacted content] 2018, to OCAP in [redacted content] 2018, to OPE in [redacted content] 2019, and to UCAR in [redacted content] 2020. Despite receiving this repeated notice and initially conducting an investigation under Title IX in [redacted content] 2018, the University did not take steps to determine whether the Student needed interim measures such as changes to his teaching schedule, class schedule, or changes to the members of his qualifying exam committee. The University also did not inform the Professor of the Student's allegations against her or notify her of an investigation until mid-[redacted content] 2020, almost a year and a half after the Student first complained that the Professor had harassed him, and after the University had already begun two investigations into the Professor's alleged harassing conduct. The Student told OCR that during his long wait for the outcome of his complaints, he was subjected to a hostile environment and ongoing retaliation and that as a result he took a leave of absence from his graduate program in [redacted content] 2020, without retaking his qualifying exams.

Conclusion

To address the compliance concerns identified above, the University agreed to enter into a resolution agreement (the Agreement). When fully implemented, the Agreement would resolve the compliance concerns identified by OCR. OCR will monitor the District's implementation of the Agreement until the District is in compliance with the terms of the Agreement and the Title IX statutory and regulatory obligations at issue in this case.

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 Complainant concurrently. 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. 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, retaliate, or discriminate against any individual because that individual asserts a right or privilege under a law enforced by OCR or filed a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a separate retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to

protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Sincerely,

/s/

Ava DeAlmeida Law
Team Leader

Enclosure

cc: Leslie Gomez, Gina Maisto Smith, Cozen O'Connor