



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

November 4, 2022

VIA ELECTRONIC MAIL

Dr. Kim Wilcox
Chancellor
University of California-Riverside
900 University Avenue
Riverside, California 92521
Email to: chancellor@ucr.edu

Re: OCR Complaint No. 09-21-2369

Dear Dr. Wilcox:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the University of California, Riverside (University). The complaint alleged that the University discriminated against a student¹ (the Complainant) on the basis of sex. Specifically, OCR investigated the following issue:

Whether the University failed to respond promptly and effectively to the Complainant's retaliation complaint based on sex by: (a) not providing a reasonably prompt resolution to the allegations; and (b) failing to remedy the effects of the retaliation and prevent its recurrence.

OCR enforces Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681-1688, and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any education program or activity operated by a recipient of Federal financial assistance. As a recipient of Federal financial assistance from the Department, the University is subject to Title IX.²

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

² Amendments to the Title IX regulation went into effect on August 14, 2020 and can be viewed [here](#). However, OCR investigated this case based on the Title IX regulation that was in effect in January 2020 when the incident occurred. You can find that regulation [here](#).

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

To investigate this complaint, OCR gathered evidence by reviewing documents and information provided by the University and the Complainant, and by conducting interviews with the Interim Title IX Coordinator and former Chief Human Resources Officer. After a careful review of the information gathered during the investigation, OCR found that the University failed to provide an effective response to notice of retaliation in violation of Title IX and its implementing regulation with respect to the issue investigated. On November 4, 2022, the University entered into the attached Resolution Agreement (Agreement), which, when implemented will address the noncompliance finding.

Factual Findings

As background, in November 2017, the University concluded an investigation of the Complainant's allegation that she was sexually harassed by an athletics coach employed by the University. The University concluded that the respondent coach had engaged in prohibited conduct as alleged, and he was terminated from his position.

The Complainant remained a student at the University and, beginning in fall 2019, worked for the Office of XXXXXX XXX. Her work supervisor (Supervisor) asked the Complainant if she would be interested in an additional job in the Athletics Department for a role that was similar to her existing position at the Office of XXXXXX XXX. The Complainant conveyed that she was interested in that position, and her Supervisor subsequently contacted the XXXXXX XXXXX XXXXXX (Respondent 1) at the Athletics Department, recommending her for the position. In approximately XXXX March 2020, according to the Complainant, her Supervisor informed her that the Athletics Department would not hire her "because of what happened." The Complainant said that her Supervisor called the decision "stupid," "not fair," and "disgusting and wrong."

On March X, 2020, the Complainant submitted a written report to the University Title IX Office stating that she believed the Athletics Department had retaliated against her. On April X, 2020, the University issued a Notice of Investigation (Investigation Notice) to the Complainant and Respondent 1.

On June X, 2020, the Title IX Investigator (Investigator) interviewed Respondent 1. Respondent 1 stated that when the Complainant's Supervisor recommended the Complainant for the position, he recognized her name as a former student athlete who had departed the athletics program for unknown reasons. Respondent 1 told the Investigator that he spoke to one of the coaches for the Complainant's sport (the Coach) who told him that the Complainant had been "involved in a Title IX investigation related to a coach that was released." Respondent 1 stated that the Coach told him that while the Complainant had a "great attitude" and had been "dealt a really bad hand" regarding her experience with the fired coach, hiring the Complainant could be a "conflict of interest" because the Complainant "bites the hand that feeds her."

On July X, 2020, after additional information was gathered during the investigation, the University issued a second notice of investigation to the Complainant and notified Respondent 2, another employee of the Athletic Department since XXXX XXXX, that he was being added as a respondent to the investigation.

On July XX, 2020, the Investigator interviewed the Coach. The Coach remembered the Complainant from her time as a student athlete, and that she had made the complaint in the 2017 Investigation. The Coach told the Investigator that he and Respondent 1 spoke about the Complainant's interest in working for the Athletics Department. In that conversation, he told Respondent 1 that while the Complainant was "passionate about athletics," she "may not represent the department well because of her choices." He also told the Investigator that out of concern for not being "balanced" in his depiction of the Complainant to Respondent 1, he also told Respondent 1 that the Complainant was "resilient," a "great teammate," and a "great student."

On August X, 2020, the Investigator interviewed Respondent 2, who "denied he was responsible for the decision to not hire Complainant ... and elaborated that Respondent 1 oversees the entire ... hiring process" for that position. Additionally, Respondent 2 "denied participating in a meeting with Respondent 1 about the hiring of any ... applicant," including the Complainant, and said that "he was generally only notified when an official decision had been made regarding hire of a ... student employee." Respondent 2 stated that he "had never heard" the Complainant's name until he received the Investigation Notice and had subsequently learned that she was a former student athlete. Respondent 2 was able to demonstrate to the Investigator that Respondent 1 "XXX-redacted content-XXX."

The Investigator interviewed additional relevant witnesses and made assessments of the credibility of Respondent 1, Respondent 2, and those witnesses.

On August XX, 2020, Respondent 1 was terminated from the Athletics Department for budgetary reasons. He was subsequently rehired to another University position in a different department before the final resolution letter in the retaliation investigation was issued.

On September X, 2020, the Investigator notified the Complainant and Respondents 1 and 2 of the preliminary investigation findings and the opportunity to review the investigation report and supporting evidence. The notification described how to access and review the information, and allowed the parties to provide corrections, comments, new information, and other responses. Following the review process, on September XX, 2020, the University notified the Complainant, Respondent 1, and Respondent 2 of the investigation findings. The Investigator concluded by a preponderance of the evidence that Respondent 1 was responsible for the decision not to hire the Complainant, and that this decision was based on her prior involvement in a sexual harassment investigation within the Athletics Department. The Investigator concluded that Respondent 2 was not responsible for the decision. Further, the Investigator concluded that Respondent 1 had engaged in retaliation against the Complainant.

The Outcome of Investigation letter to the Complainant stated, "[y]ou have an opportunity to respond to the notice of investigation outcome and accompanying investigation report through a written statement and/or in-person meeting that will be submitted to Respondent's supervisor or other appropriate administrative authority and the Chancellor's designee." It stated the purpose of the response would be "an opportunity to express your perspectives and address what outcome you wish to see" and provided contact information for the Chancellor's designee, the Chief Human Resources Officer (CHRO). The letter stated that "[u]nder the Investigation and Adjudication Framework, the respondent's supervisor or other appropriate administrative authority will propose

a decision regarding how to resolve the matter” which would be implemented following the CHRO’s approval. The letter stated that “[t]he supervisor or other appropriate administrative authority should implement their approved decision typically within forty (40) business days of receipt of the notice of investigation outcome and accompanying investigation report” but that extensions could be granted by the CHRO. It stated, “You will be informed of the final resolution of the matter including any discipline imposed.”

Between September 2020 to September 2021, the University continued to determine the resolution of the retaliation complaint. OCR asked the Title IX Coordinator what the process was at the time for determining remedies. She explained that since this matter involved a University staff member, the CHRO was the Chancellor’s designee to determine the resolution. At that point, according to the Title IX Coordinator, the Title IX Office continued to track the process and check in on the status, and there were case management meetings regarding the resolution. The University did not provide OCR with any documentation or notes regarding the case management process or any other internal processes specific to this matter.

According to notes provided by the University, on October XX, 2020, the Complainant and the Title IX Coordinator spoke by telephone regarding the Complainant’s concerns about the Coach’s statements to the Investigator, and the Title IX Coordinator told the Complainant that she would be meeting with the CHRO about appropriate action regarding Respondent 1 and the Coach.

Between October X, 2020 and February 2021, there were several exchanges between the Complainant and the CHRO. The Complainant and the CHRO met sometime in XXX November 2020. The CHRO told OCR that her understanding of her role was that she was supposed to contact the individual about requested remedies and then she would recommend remedies. The CHRO stated she recalled speaking with the Complainant, but she did not remember the details. She also recalled that she communicated with the Title IX Coordinator about determining remedies, but she did not recall any details. In November and December 2020, the CHRO notified the Complainant that the timeline to resolve the retaliation complaint was being extended.

On March XX, 2021, the Complainant wrote a letter via email to several Athletics Department employees, the Title IX Coordinator, and the CHRO. She wrote that “XXX-redacted content-XXX.” The Complainant described how her experiences with the Athletics Department had caused her mental health to deteriorate, and that she was XXXXXXXXXXX XXX XXXXXXXXXXX XXXXXXX XXXXXXXXXXX XXXXXXX. She asked the University to take a number of actions, including paying for her tuition and loans, developing a support group for student athletes, training Athletics Department staff how to intervene in XXXXXXX XXXXXXXXXXX and how to support XXXXXXXXXXX XX XXXXXXX XXXXXXXXXXX, terminate several specific employees of the Athletics Department, pay for her XXXXXXX XXXXXXX XXXXXXXXXXX, and compensate her for wages she should have earned by working for the Athletics Department. The CHRO acknowledged her email on March XX and stated that the University was “planning to provide a response to you soon.”

On March XX, 2021, the CHRO emailed the Complainant again and stated that she would be meeting with the Athletics Department. The Complainant responded and asked for a timeline. The CHRO responded that after she met with the Athletics Department, her “next step is to contact

Title IX.” In April through XXXX May 2021, the CHRO, the Complainant, and the Complainant’s CARE Advocate emailed periodically regarding any updates on the resolution process.

On April XX, 2021, the CHRO emailed the Complainant and thanked the Complainant “for providing the background on what has clearly been an incredibly disappointing and disheartening experience for you. This is not the experience we want any of our student athletes to have, nor will the type of behavior you were subjected to be tolerated. We take these incidents very seriously and have therefore referred your matter to UCR Risk Management as a claim for damages. Someone should be reaching out to you to discuss.”

On May X, 2021, the CHRO emailed Complainant’s CARE Advocate, writing, “It’s my understanding that someone would be reaching out to [the Complainant] directly. If that hasn’t happened, let me know. I’ll be meeting the department today to discuss next steps.” The Complainant responded that she had not been contacted by Risk Management. The CHRO responded, stating, “UCR Legal is coordinating with our OGC monitor and Risk who will be reaching out to [the Complainant] on the damages claim. UCR Legal will also remind them that this information needs to be communicated to [the Complainant].”

On May XX, 2021, the University’s counsel contacted the Complainant’s counsel requesting to schedule a phone call. According to the information provided to OCR by the University, the University had determined that it should go through the Complainant’s legal counsel rather than directly engage with the Complainant.

On September X, 2021, the University sent a final resolution letter to the Complainant regarding the investigation of retaliation. It stated that effective June XX, 2021, the CHRO “approved the final resolution of termination of [Respondent 1]’s employment.” It further stated that “the investigation collected information regarding a coach, including statements made by the coach regarding you ... [and that] corrective action is being taken to address this.”

In response to the allegation that the University failed to provide a prompt response to the Complainant’s retaliation complaint, the University in its narrative response to OCR stated that the “Complainant had been informed previously, and promptly, of the key elements of the resolution: the investigation findings and separation of Respondent 1 from the Athletics Department.” The University noted that the CHRO had left her position during that time, which further delayed the final resolution letter.

With respect to other remedies, according to the University, it considered a potential loss of compensation for the Complainant because it was an employment-related matter. The position at the Athletics Department was for a secondary or back-up employee when the main employee was not available. The Athletics Department already had an employee in the main position. In the end, the University did not hire a secondary/back-up employee in 2020. The campus cancelled all activities where the employee would have worked effective March XX, 2020, and so even if the University had promptly hired a secondary/back-up employee, there would have been few opportunities for that individual to fill the position. As a consequence, according to the University, it determined that it was “unclear whether the retaliation against Complainant resulted in any loss of potential income.”

When OCR interviewed the CHRO, she no longer worked for the University and was not able to recall much about the specific process or matter. She said that when the resolution process at issue was in progress, she was relatively new to the position, it was a newer process, and she left the University in about XXXXX 2021. She did not recall why a year passed between the investigation findings and the final resolution, other than the COVID-19 pandemic.

Legal Standards

In conducting this investigation and evaluating the University's compliance with Title IX, OCR applied the Title IX regulation in effect during the years that the incidents took place and the legal standards discussed below were in effect during the school years subject to this case investigation.

Under the Title IX regulation in effect for the time period reviewed in this investigation, a school must adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action prohibited under Title IX. Among those actions prohibited under the Title IX regulations is retaliation against individuals who have submitted reports of sexual harassment. The Title IX regulations therefore require prompt and equitable resolutions of complaints of retaliation under Title IX.

Legal Analysis

OCR investigated whether the University failed to respond promptly and effectively to the Complainant's retaliation complaint based on sex by: (a) not providing a reasonably prompt resolution to the allegations; and (b) failing to remedy the effects of the retaliation and prevent its recurrence.

With respect to whether the University provided a reasonably prompt resolution to the allegation, OCR calculates the length of time from the date the incident is reported to the final resolution. The entirety of the University's investigation process here exceeded 18 months, which reflected two main phases. First, the time between the Complainant's report to the Title IX office and the conclusion that Respondent 1 had retaliated against the Complainant was six months. This timeline is reasonable and OCR has no concerns about the Investigator's investigative steps or report.

However, the time between the retaliation finding and the final resolution was 12 additional months. With respect to this timeline, the University asserted to OCR that the Complainant was informed in September 2020 of the investigation findings and separation of Respondent 1 from the Athletics Department, and that she was therefore informed of the important elements in a timely manner.

A school's grievance process for Title IX complaints should include reasonably prompt time frames for all steps in concluding the process, including filing and resolving appeals. The time frames designated by the school must account for conclusion of the entire grievance process, and no part of the process is subject to an open-ended time frame. The Complainant was waiting for an additional year after she was told that Respondent 1 had retaliated against her for the conclusion of the entire grievance process. OCR notes that, according to the Complainant, this delay adversely

impacted her ability to focus on participating in the University's education program or activity and impacted her mental health.

When OCR asked for the reasons for the one-year delay in completing the resolution, the University noted that the CHRO left her position at the University in XXXXX 2021, and the former CHRO said that the Covid-19 pandemic also slowed the process. OCR's longstanding guidance has been that administrative factors, such as chronic or unexpected understaffing, are not a reasonable basis for delaying a prompt investigation. OCR is aware that the actual time to complete an investigation depends on factors such as the complexity of the matter and the severity of the alleged conduct. Here, however, the Complainant's allegation was not complex and the evidence was readily available. OCR therefore concluded that the University failed to provide the Complainant with a reasonably prompt resolution to the allegation.

OCR also examined whether the University remedied the effects of the retaliation and prevented its recurrence. A review of the communications between the University and the Complainant demonstrate that she reasonably believed that remedial actions were forthcoming. The CHRO informed the Complainant that the matter had been forwarded as a claim for damages to Risk Management. The Complainant had also informed the University in March 2021, if not previously, of what she believed would help restore or preserve her equal access to the education program or activity. While the University is not obligated to grant any or all remedies requested by a Complainant if there is not a basis for such remedies, it should engage with the Complainant to assess what may have been necessary to repair any damage to the Complainant's access to the educational program. The University's conclusion that the Complainant did not lose wages due to the retaliation is reasonable, but the University failed to examine other ways in which the retaliation may have impacted her or to tailor an individual remedy. OCR therefore concludes that the University failed to engage with the Complainant in an appropriate Title IX process to determine how the retaliation impaired her equal access to education and, if so, what would have restored or preserved that access.

For the reasons explained above, OCR found that pursuant to subsection 303(b) of the Case Processing Manual,³ the University failed to comply with Title IX with respect to the issues investigated.

To address the areas of noncompliance identified by OCR, on November 4, 2022, the University agreed to implement the attached Agreement. In summary, the Agreement requires the University to: engage with the Complainant regarding any appropriate remedial actions regarding the finding of retaliation; maintain a data system to document remedies and sanctions related to Title IX retaliation; and provide written notice to student athletes and Athletics Department employees regarding the prohibition on retaliation.

Conclusion

³ Case Processing Manual (July 18, 2022) at <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.

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. When fully implemented, the Agreement is intended to address the areas of noncompliance and concerns identified by OCR. OCR will monitor the implementation of the Agreement until the University is in compliance with the terms of the Agreement. Upon completion of the obligations under the Agreement, OCR will close the case.

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 must not harass, coerce, intimidate, discriminate, or otherwise retaliate against any individual because that individual asserts a right or privilege under a law enforced by OCR or files 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 (FOIA), 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 that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released.

If you have any questions about this letter, please contact Laura Welp, Civil Rights Attorney, at laura.welp@ed.gov or 415-486-5577.

Sincerely,

/s/

Naghmeh Ordikhani
Team Leader