



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

February 24, 2023

VIA ELECTRONIC MAIL

Dr. Soraya M. Coley
President
California Polytechnic University – Pomona

Via email only to: president@cpp.edu

Re: OCR Complaint No. 09-22-2155

Dear Dr. Soraya M. Coley

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against California Polytechnic University, Pomona (University). The complainant, a former student at the University (Student), alleged that the University discriminated against her on the basis of sex.¹ Specifically, OCR investigated the following issues:

1. Whether the University subjected the Complainant to different treatment on the basis of sex in the “NASA Cal Poly Pomona Business Start-Up Program” (Program) by permitting the allocation of fewer equity shares to the Complainant than the other members of her project team, all of whom were male, as well as by permitting the removal of the Complainant from the same project team.

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.

To investigate this complaint, OCR interviewed the Student and reviewed documents and other information provided by the Student and the University. Prior to OCR completing its investigation and making a compliance determination, the University expressed an interest in voluntary resolution pursuant to section 302 of OCR’s Case Processing Manual (CPM), and OCR determined it was appropriate to do so. The legal standards, facts gathered, and the reasons for OCR’s determinations are summarized below.

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

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

Legal Standards

Under the Title IX regulations, at 34 C.F.R. § 106.31(a), a 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) of the regulation states that, in providing any aid, benefit or service to a student, a University may not, on the basis of sex: (i) treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of an aid, benefit, or service; (ii) provide different aid, benefits, or services or provide aid, benefits, or services in a different manner; (iii) deny any person such aid, benefit, or service; (iv) subject any person to separate or different rules of behavior, sanctions, or other treatment; ... (vii) otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

To determine whether a University has discriminated against a student on the basis of sex under Title IX, OCR investigates whether 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.

Facts

The following facts are relevant to OCR's analysis:

Background

The Student stated that she was majoring in XXX-redacted content-XXX when she participated in the "NASA Cal Poly Pomona Business Start-Up Program" (Program) for four semesters, Fall 2019-Spring 2021. According to the University, the mission of the Program is to improve people's lives through technology by creating a positive impact and financial sustainability. The Student told OCR that in the Program, five and six-person student teams operated relatively independently, like business "Start-Ups," to develop projects that may some day become marketable products. The University told OCR that past student projects included increasing energy efficiency and increasing interest in girls in STEM education. The University stated that notices about the Program are posted in relevant departments inviting students to apply; that applicants are selected for an interview by the project's student "Team Lead", who is designated by the Program Director (Director); and that the Director then chooses the team members. The University stated that student participants are expected to contribute 10 hours per week to their project including class meetings, individual work, and teamwork, and that they earn academic credit for the class and their participation on projects. The Student told OCR that during Fall 2019, Spring 2020, and Fall 2020, she received grades of X, X, and X (respectively) in the Program.

The Director selected the Student to be one of five students, XXX-redacted content-XXX, in the Program in 2020-2021. The University provided OCR with demographic information showing that during Fall 2019-Spring 2022, 52 male students (73%) and 19 female students (27%) participated in the Program. The University's website indicated that in 2019, the University's enrollment was 53%

male and 47% female; and that in 2021 it was 54% male and 46% female.² The Student stated that the other original four Program members were the Team Lead, and Students 1-3. According to the Student, in November 2020, Student 2 and Student 3 were “let go” and replaced by two new students, Students A and B, who were male. The Student stated that the Director told Program team members that work on a project during the Program would lead to full time work on the project, and that she relied on this promise in deciding not to complete a previous internship in 2021-2022.

XXXXX Project

The Student told OCR that the Program team’s project in 2020-2021 was called “XXXXX”, and its purpose was to XXX-redacted content-XXX. The Student stated that Student 1 came up with the idea for the project, but that all five original students were the “co-founders” of XXXXX. The Student stated that she was given the position of “Diversity Equity and Inclusion” lead on the team despite having no background in this field. The University’s told OCR that the Student was a “Researcher,” whose job duties included conducting research on XXX-redacted content-XXX. When asked for further clarification as to the Student’s role, the University responded that the Student “was asked to take a leadership role in the Diversity, Equity, and Inclusion (DEI) part of the project.” The University described the roles of the other project team leaders as General [Team] Lead, Finance Lead, Data Lead, Data Science Specialist, as well as stated that as the project evolved, students were flexible in their job duties. The Student also received a paid assistantship in the Program.

The Student stated that she worked very hard throughout the year on the XXXXX project, but that the Director treated her differently than he did the male students on the team. For example, according to the Student, she made a significant contribution to the XXXXX project in December 2020 when she found a data set without which XXXXX could not have gone forward, but that her final grade in the Program and her “equity share” did not reflect the importance of her discovery. The Student stated that the Director was not involved in the day-to-day operations of the XXXXX project, and left such oversight to the Team Lead, who was a male graduate student.

The University disputed the value of the Student’s discovery of the data set. The University provided OCR with an unattributed document evaluating the Student’s work that stated that, “The actual data set was found by [Student A]. [The Student] simply found the website after it was recommended by another professor.” The Student, however, provided OCR with a screenshot of a chat message between her and the Team Lead on February XX, 2021 in which the Team Lead stated “Honestly, great find [Student]! So happy we can move on with this data. Great work again!” The Student also provided OCR with a screenshot of a February XX, 2021 chat message in which the Team Lead stated that he and Student 1 “would like to look at the data set [the Student] found and decide how to proceed.”

The University stated that Student’s performance on the XXXXX project was significantly lower compared to her previous work in the Program, as well as compared to her teammates’ performances. Specifically, according to the University, the Student was asked to take a leadership role in the XXXXX project several times and did not do so; she missed meetings; and when she was present, her work did not meet the project requirements. Further, according to the University, the Student only

² <https://www.cpp.edu/data/cpp-facts.shtml>

performed up to the 10-hour a week expectations three times, and her work was inconsistent. The University stated that the Student missed 11 of 40 team meetings; presented either no or very limited work progress in 26 of 40 meetings; and presented information that was applicable to the project in only 11 of 40 meetings. In response to OCR's request for further information about how XXXXX team members documented their and each other's contributions, the University stated that, "Members contributions are evaluated retrospectively because what constitutes a contribution cannot be determined on a weekly basis", because the projects change frequently such that something "that is of value during week two may no longer be valuable during week ten." The University stated that the Student received a X in the class during Spring 2021.

The Student disputed that she did not attend meetings and did not work necessary hours, and told OCR that by the end of Spring 2021, she was working up to 20 hours/week on the XXXXX project in addition to her other coursework. The University, however, provided OCR with copies of two emails from the Student to the Director during May 2021 requesting extensions of time to turn in assignments because she was involved in an ongoing issue that had affected her work "since week nine." The Student further stated in the email that she felt like she "had let the team down." In addition, the Student provided OCR with a copy of a May X, 2021 email to the Director documenting her work during weeks nine and ten which indicated that she had performed less than four hours of work on four tasks; she also stated in the email that she did not keep detailed records of her time.

Equity Shares

According to the University, in late Spring 2021, the Director and project team decided to incorporate XXXXX and create a company. As part of the incorporation process, XXXXX team members were issued "equity shares." The University stated that the equity shares had no monetary value at that time (or currently), but "were discussed in case the project [became] successful in the future so that everyone would be compensated in proportion to their effort and contribution relative to their team members." The University told OCR that all equity shares, including the Student's share, were "determined by the majority of the team." More specifically, the University stated that the Team Lead created the first draft of proposed equity shares, the team subsequently reviewed it, and then the Team Lead asked everyone for their opinion. The Student told OCR that she was not asked to provide input into the initial offer of equity shares for herself or other students.

The University provided evidence that the Director and Team Lead met on June XX, 2021, and determined the initial share allocation for every team member. The University provided further evidence that from June XX-XX, 2021, the Director and Team Lead together met with each team member individually and informed them of their individual equity shares, as well as those of their teammates. According to the University, the first person that the Team Lead and the Director met with was the Student, on June XX, 2021, and during the meeting they informed her that the equity shares were determined to be as follows: Director (29%); Team Lead (17.3%); Student 1 (17.3%); Student A (16.59%); Student B (14.12%); and the Student (6.2%). The University told OCR that during the individual meetings, all XXXXX team members except the Student approved their and each other's equity shares. Following the meeting, the Student emailed the Director and asked to further discuss how the equity shares were determined.

On June XX, 2021, the Director responded that he had already shared this information with her; he included in his email a graph illustrating the categories on which the equity share allocations were

based: Creativity; Business Plan; Industry Experience; Commitment & Risk; Strategic Value; Development; and C-Suite. Each category was weighted on a scale of 1-10. The three categories weighted the highest (“10”) were: Commitment & Risk (described as, “Time, money, and other level of investments provided towards the company”); Development (described as, “Technical skills required to develop the product itself”); and C-Suite (described as, “Involvement as a C-suite position.”). The University informed OCR that the equity share allocations were subject to vesting and that XXXXX team members needed to perform at a high level for two years to obtain their percentages. The University stated that, “This is common practice among startups.”

Also on June XX, 2021, the Student emailed the Team Lead and stated that her proposed equity share allocation was unacceptable. The Team Lead responded and asked the Student to provide information about what percentage she wanted and the reason for the percentage. On June XX, 2021, the Student emailed the Director and Team Lead together and asked to further discuss how she was scored in each category; the Team Lead responded that her score was an accumulation of lack of progress, communication, and applied contribution. The Team Lead further informed the Student that, “We valued your equity based on your potential, not really on your actual contribution. If we were to base your equity off your actual contribution, your share would be much lower. The point I want to elaborate is, just because you have a few examples of valuable/applied contribution won’t automatically increase your shares.”

On July X, 2021, the Student emailed the Director with her proposed equity share reallocation: Director (25.5%); Team Lead (14.8%); Student 1 (15.7%); Student B (15.3%); the Student (14.9%); Student A (13.8%). The Director responded that “we will go over these and everyone who is knowledgeable in the areas [of] your proposed contributions will make a joint decision.” On July X, 2021, the Student responded and asked if she would have the opportunity to make a joint decision about other team members’ scores; the Director replied that “everyone on the team is in agreement with each other’s contributions,” and that she was only student who was requesting more equity.

The University stated that the XXXXX team members other than the Student met on July X and July X, 2021 to discuss the Student’s equity share. The University stated that the outcome of the July X meeting was a decision to terminate the Student from the XXXXX project, and that the goal of the July X meeting was, to “vote on the immediate share percentage to be offered to Student in return for immediate separation.”

The Student told OCR that she was particularly upset by the original 6.13% allocation because she was an XXXXX project co-founder and had found a significant data set, but was receiving half as many equity shares as Students A and B, who didn’t join the XXXXX project team until February 2021. The University told OCR that, “there was not a discussion as a team regarding who was an official founder and the applicable criteria”, and that it was the Student who had “mentioned the term ‘founder’ in her email communication.” The Student, however, provided OCR with a copy of an August XX, 2021 email from the Team Lead to her in which he stated, “To be clear, you were not a co-founder of XXXXX and have no ownership rights or right to participate in the company. You were part of a student project, for which you received course credit, and you did some work as an employee of [the University] for which you were paid.” The Team Lead further stated that the co-founders of XXXXX were the students who accepted their equity share allocations: “When this group came together and decided to found XXXXX, there were opportunities for you to join us, but

unfortunately the two sides couldn't come to an agreement about a role and appropriate compensation for you to join the founding team.”

The University told OCR that on July XX, 2021, “after careful consideration of all listed contributions of Student, the [other XXXXX team members] decided that [the Student’s] contributions did not warrant [even] the initially proposed 6%” and that she should be separated from the Program and offered 1% in equity shares.” In exchange, the other team members asked the Student to sign a waiver releasing future claims. The basis of the team’s decision to separate the Student from the team, according to the University, was that the Student’s performance and contributions were minimal, including that she inflated her hours, missed important meetings, misrepresented as facts information that she was not certain of, did not communicate timely with team members.

The University stated that on August X, 2021, the Student refused the 1% equity share offer and that on August X, she counter-offered and asked for the original 6%. According to the University, on August XX, the other team members agreed to the 6% but the Student changed her mind and on August XX refused the 6% offer. The University stated that on August XX, the team rescinded the offer after consulting with its lawyer.

The Student stated that she currently has no equity shares, and that she is concerned that if the project comes to fruition, she will not be compensated for her work on the project. The Student also stated that she is uncertain of whether she can identify as a “co-founder” of the XXXXX project on her resume, as have other team members. OCR reviewed the Team Lead’s profile on an online networking platform. It states that he is currently the “COO and Co-founder of XXXXX.” Student A’s profile on the same networking website states that he is currently a “Co-founder and developer of XXXXX.”

The University stated that the XXXXX project did not result in the development of a marketable product because necessary data was too expensive, and that the project no longer exists. The University provided OCR with a “Certificate of Dissolution” from the State of Delaware dated June XX, 2022 stating that the corporation has no assets and has ceased transacting business.

Assistantship

The Student stated that the Director subjected her to further adverse treatment for not accepting the 6% equity share by terminating her paid assistantship in July 2021. The Student provided OCR with a copy of an August XX, 2021 email to her from a University Human Resources Department employee stating that “we have received notice from a manager to separate you since you are no longer working. Your supervisor informed us that you haven’t done any work since the beginning of July but are still charging hours. Has your supervisor communicated to you that you should not be working?”

The University told OCR that the assistantship concluded on July XX, 2021, at the end of the semester, and that Student 1’s assistantship concluded on the same day. The University provided OCR with a document signed by the Director on July XX, 2021 stating that the Student’s and Student 1’s assistantships had ended because the semester had concluded. The University stated that the Director later learned that the Student had been reporting hours that she was not working.

Analysis

On December 16, 2022, before OCR had completed its investigation of the allegation, the University expressed interest in Voluntary Resolution pursuant to CPM Section 302, and OCR determined it was appropriate. Based upon the evidence gathered to date, OCR is concerned that the University may have treated the Student differently on the basis of sex.

OCR is concerned that the evidence gathered to date indicates that the impermissible sex-based discrimination may have occurred in both the number of equity shares allocated to the Student, and the process by which the equity shares were determined.

With respect to the process, the University stated that the Student's equity allocation was made by the Team Lead and Director after consulting with the whole team. The evidence provided by the University, however, indicated that the Team Lead and the Director, alone, determined the initial equity shares allocations, and then in subsequent individual meetings asked each student to approve their own and the other team members' share allocations. Given that the Student's meeting was first, the three male team members were, in effect, asked to approve the Student's lower equity share in order to preserve their own higher shares. Additionally, the University stated that the male team members met without the Student on July X and July X, 2021 to determine the Student's share after she requested an allocation similar to that of the male team members (14%). The evidence provided by the University to date, however, does not include that at these meetings the male team members considered the Student's request with respect to certain criterion, or that they evaluated her and each other's contributions to the project. Instead, the evidence indicated that at the July X meeting the male students decided to terminate the Student from the project, and at the July X meeting, they voted on the share percentage to be offered to her in exchange for her immediate separation.

With respect to the number of equity shares, OCR is concerned that the University may have treated the Student differently based on sex by awarding her fewer equity shares than male members on the XXXXX project team. The evidence gathered to date showed that the Student was initially offered approximately 6% in equity shares, and that the three male team members who were not the Team Lead were offered equity shares more than twice that amount (between 14%-17%). Two of these male students had worked on the XXXXX project half as long as the Student. The University stated that the equity share disparity was due to the lesser quality and, ultimately, the lesser value of the Student's work. However, there was conflicting information regarding the value of the Student's work and how it was determined.

OCR was also concerned that the Student may have been treated differently based on sex with respect to being an XXXXX project "co-founder." Although the University stated there was no official discussion as to who was a co-founder, the evidence gathered to date showed that the Team Lead determined that XXXXX project founders were only those team members who accepted their equity share allocations, as determined by he and the Director, and that the Team Lead made this pronouncement retroactively after removing the Student from the project.

Finally, OCR was concerned that the University provided evidence that the Team Leader lowered the Student's equity share allocation from 6% to 1% and then to 0% for factors unrelated to her performance – namely, her refusal to accept a lower initial equity share than those offered to the male XXXXX project team members. This raises a concern that the University may have treated the

student differently based upon sex in contravention of Title IX and its implementing regulation at 34 C.F.R. § 106.31(a).

Overall Conclusion

This concludes the investigation of this complaint.

To address the complaint allegations and OCR's concerns identified in the investigation, the University, without admitting to any violation of law, entered into the enclosed resolution agreement. Pursuant to the Agreement, the University agrees to provide the Student with a favorable letter of recommendation regarding her participation in the Program including that she was among the original project co-founders; and to facilitate training for all faculty and students in the Program and issue to them a written guidance memorandum identifying the University's responsibilities under Title IX, including its prohibition of harassment and discrimination based upon sex, and its policies and procedures for reporting and responding to complaints of sex-based discrimination.

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 Student concurrently. When fully implemented, the resolution agreement is intended to address the evidence obtained and all of the allegations investigated. OCR will monitor the implementation of the resolution agreement until the University is in compliance with the terms of the resolution agreement and the statutes and regulations at issue in the case.

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

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact OCR staff attorney Matthew Wood at Matthew.Wood@ed.gov.

Sincerely,

/s/

Ava De Almeida Law
Team Leader