



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

50 BEALE ST., SUITE 7200
SAN FRANCISCO, CA 94105

REGION IX
CALIFORNIA

JUL 15 2015

(b)(6),(b)(7)(C)

(In reply, please refer to docket # 09-15-2392.)

Dear (b)(6),(b)(7)(C)

On (b)(6),(b)(7)(C) 2015, the U.S. Department of Education, Office for Civil Rights (OCR), received your complaint against the University of California, Berkeley (University). You alleged that the University discriminated against a student on the basis of sex. Specifically, you allege that the University failed to promptly and equitably respond to a sexual violence complaint that (b)(6),(b)(7)(C) filed with the University.

OCR enforces Title IX of the Education Amendments of 1972 and its implementing regulation at 34 C.F.R. Part 106 which prohibit discrimination on the basis of sex in programs and activities operated by recipients of Federal financial assistance. The University receives funds from the Department and is subject to the above laws and their regulations as enforced by OCR.

We have determined that the allegation is appropriate for investigation under the laws enforced by OCR. OCR will proceed with resolution of the complaint.

Please note that your allegation will be investigated at the same time as the open OCR investigation of the University's response to notice of sexual harassment/assault, under docket # 09-14-2232. This investigation includes the following classwide allegations: whether the University failed to promptly and equitably respond to sexual violence complaints, reports and/or other incidents of which it had notice and whether the University's failure to provide a prompt and equitable response to notice of sexual violence allows students to be subjected to a hostile environment on the basis of sex. In addition to the classwide allegations, OCR is investigating individual allegations regarding the University.

Because OCR has determined that it has jurisdiction and that the complaint was filed timely or qualified for a waiver of the timeliness requirement, it is opening this allegation for investigation. Please note that opening the allegation for investigation in no way implies that OCR has made a determination with regard to its merit. During the investigation, OCR is a neutral fact-finder, collecting and analyzing relevant evidence

from the complainant, the recipient, and other sources, as appropriate. OCR will ensure that its investigation is legally sufficient and is dispositive of the allegations, in accordance with the provisions of Article III of the *Case Processing Manual*.

We will contact you or your designated representative soon to discuss the allegation and complaint resolution process. OCR may close this complaint prior to making formal findings of compliance or non-compliance, provided that the circumstances or information gathered establishes an administrative or other basis for resolution in accordance with the *Case Processing Manual*.

Federal regulations prohibit the Recipient from retaliating against you or from intimidating, threatening, coercing, or harassing you or anyone else because you filed a complaint with OCR or because you or anyone else take part in the complaint resolution process. Contact OCR if you believe such actions occur.

Under the Freedom of Information Act, it may be necessary to release this document and related records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personal information that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

If you have any questions about this letter, please contact Ava De Almeida Law, Investigator, at (415) 486-5513 or Christina Medina, Attorney, at (415) 486-5548.

Sincerely,

A handwritten signature in black ink, appearing to read "Sara Berman", with a long horizontal flourish extending to the right.

Sara Berman
Team Leader



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JUL 15 2015

Nicholas B. Dirks
Chancellor
University of California, Berkeley
200 California Hall
Berkeley, California 94720-1520

Response requested by: August 14, 2015

(In reply, please refer to Docket # 09-15-2392.)

Dear Chancellor Dirks:


On March 25, 2014, the U.S. Department of Education, Office for Civil Rights (OCR), sent you notification of a complaint against the University of California, Berkeley (University). Subsequently, on (b)(6),(b)(7)(C) 2015, OCR received a second complaint against the University alleging discrimination on the basis of sex with respect to an individual claim. The complainant, (b)(6),(b)(7)(C) alleges that the University failed to promptly and equitably respond to a sexual violence complaint that (b)(6),(b)(7)(C) (b)(6),(b)(7)(C) filed with the University.

OCR enforces Title IX of the Education Amendments of 1972 and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in programs and activities operated by recipients of Federal financial assistance. The University receives funds from the Department and is subject to the above laws and their regulations as enforced by OCR.

We have determined that the allegation stated in the complaint received by OCR on (b)(6),(b)(7)(C) 2015 is appropriate for investigation under the laws enforced by OCR. OCR will proceed with resolution of the complaint. The complainant has been notified that her allegations will be investigated in addition to an open investigation in which OCR is reviewing overall University policies and procedures, in addition to investigating the University's response to individual sexual assault complaints.

On March 25, 2014, OCR sent the University an extensive data request and recently asked the University for documentation from the 2014-15 school year. In addition to the data items already requested, please include a response to the following request for data items, specific to the allegations raised by this complainant:

(b)(6),(b)(7)(A),(b)(7)(C)



Because OCR has determined that it has jurisdiction and that the complaint was filed timely or qualified for a waiver of the timeliness requirement, it is opening these allegations for investigation. Please note that opening the allegations for investigation in no way implies that OCR has made a determination with regard to their merits. During the investigation, OCR is a neutral fact-finder, collecting and analyzing relevant evidence from the complainant, the recipient, and other sources, as appropriate. OCR will ensure that its investigation is legally sufficient and is dispositive of the allegations, in accordance with the provisions of Article III of the *Case Processing Manual*.

OCR may close this complaint prior to making formal findings of compliance or non-compliance, provided that the circumstances or information gathered establishes an administrative or other basis for resolution in accordance with the *Case Processing Manual*.

OCR routinely advises recipients of Federal funds and public education entities that Federal regulations prohibit intimidation, harassment or retaliation against those filing complaints with OCR and those participating in the complaint resolution process. Complainants and participants who feel that such actions have occurred may file a separate complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personal information that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

If you have any questions about this letter, please contact Ava De Almeida Law, Investigator, at (415) 486-5513 or Suzanne Taylor, Attorney, at (415) 486-5561.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sara Berman', with a long, sweeping horizontal flourish extending to the right.

Sara Berman
Team Leader

Cc: Therese Leone, Associate Campus Counsel

OCR COMPLAINT PROCESSING PROCEDURES

LAWS ENFORCED BY OCR

OCR enforces the following laws:

- Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color or national origin;
- Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex;
- Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability;
- Age Discrimination Act of 1975, which prohibits discrimination on the basis of age;
- Title II of the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disability;
- Boy Scouts of America Equal Access Act, part of the No Child Left Behind Act of 2001, which prohibits denial of access to or other discrimination against the Boy Scouts or other Title 36 U.S.C. youth groups in public elementary schools, public secondary schools, local education agencies, and state education agencies that have a designated open forum or limited public forum.

EVALUATION OF THE COMPLAINT

OCR evaluates each complaint that it receives in order to determine whether it can investigate the complaint. OCR makes this determination with respect to each allegation in the complaint. For example, OCR must determine whether OCR has legal authority to investigate the complaint; that is, whether the complaint alleges a violation of one or more of the laws OCR enforces. OCR must also determine whether the complaint is filed on time. Generally, a complaint must be filed with OCR within 180 calendar days of the last act that the complainant believes was discriminatory.¹ If the complaint is not filed on time, the complainant should provide the reason for the delay and request a waiver of this filing requirement. OCR will decide whether to grant the waiver. In addition, OCR will determine whether the complaint contains enough information about the alleged discrimination to proceed to investigation. If OCR needs more information in order to clarify the complaint, it will contact the complainant; the complainant has 20 calendar days within which to respond to OCR's request for information.

OCR will dismiss a complaint if OCR determines that:

- OCR does not have legal authority to investigate the complaint;
- The complaint fails to state a violation of one of the laws OCR enforces;
- The complaint was not filed timely and that a waiver will not be granted;
- The complaint is unclear or incomplete and the complainant does not provide the information that OCR requests within 20 calendar days of OCR's request;
- The allegations raised by the complaint have been resolved;
- The complaint has been investigated by another Federal, state, or local civil rights agency or through a recipient's internal grievance procedures, including due process proceedings, and the resolution meets OCR regulatory standards or, if still pending, OCR anticipates that there will be a comparable resolution process under comparable legal standards;
- The same allegations have been filed by the complainant against the same recipient in state or Federal court;
- The allegations are foreclosed by previous decisions of the Federal courts, the U.S. Secretary of Education, the U.S. Department of Education's Civil Rights Reviewing Authority, or OCR policy determinations.

OPENING THE COMPLAINT FOR INVESTIGATION

If OCR determines that it will investigate the complaint, it will issue letters of notification to the complainant and the recipient. Opening a complaint for investigation in no way implies that OCR has made a determination with regard to the merits of the complaint. During the investigation, OCR is a neutral fact-finder. OCR will collect and analyze relevant evidence from the complainant, the recipient, and other sources as appropriate. OCR will ensure that investigations are legally sufficient and are dispositive of the allegations raised in the complaint.

INVESTIGATION OF THE COMPLAINT

OCR may use a variety of fact-finding techniques in its investigation of a complaint. These techniques may include reviewing documentary evidence submitted by both parties, conducting interviews with the complainant, recipient's personnel, and other witnesses, and/or site visits. At the conclusion of its investigation, OCR will determine with regard to each allegation that:

- There is insufficient evidence to support a conclusion that the recipient failed to comply with the law, or
- A preponderance of the evidence supports a conclusion that the recipient failed to comply with the law.

OCR's determination will be explained in a letter of findings sent to the complainant and recipient. Letters of findings issued by OCR address individual OCR cases. Letters of findings contain fact-specific investigative findings and dispositions of individual cases. Letters of findings are not formal statements of OCR policy and they 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.

RESOLUTION OF THE COMPLAINT AFTER A DETERMINATION OF NONCOMPLIANCE

If OCR determines that a recipient failed to comply with one of the civil rights laws that OCR enforces, OCR will contact the recipient and will attempt to secure the recipient's willingness to negotiate a voluntary resolution agreement. If the recipient agrees to resolve the complaint, the recipient will negotiate and sign a written resolution agreement that describes the specific remedial actions that the recipient will undertake to address the area(s) of noncompliance identified by OCR. The terms of the resolution agreement, if fully performed, will remedy the identified violation(s) in compliance with applicable civil rights laws. OCR will monitor the recipient's implementation of the terms of the resolution agreement to verify that the remedial actions agreed to by the recipient have been implemented consistent with the terms of the agreement and that the area(s) of noncompliance identified were resolved consistent with applicable civil rights laws.

If the recipient refuses to negotiate a voluntary resolution agreement or does not immediately indicate its willingness to negotiate, OCR will inform the recipient that it has 30 days to indicate its willingness to engage in negotiations to voluntarily resolve identified areas of noncompliance, or OCR will issue a Letter of Finding to the parties providing a factual and legal basis for a finding noncompliance.

If, after the issuance of the Letter of Finding of noncompliance, the recipient continues to refuse to negotiate a resolution agreement with OCR, OCR will issue a Letter of Impending Enforcement Action and will again attempt to obtain voluntary compliance. If the recipient remains unwilling to negotiate an agreement, OCR will either initiate administrative enforcement proceedings to suspend, terminate, or refuse to grant or continue Federal financial assistance to the recipient, or will refer the case to the Department of Justice. OCR may also move immediately to defer any new or additional Federal financial assistance to the institution.

RESOLUTION OF THE COMPLAINT PRIOR TO THE CONCLUSION OF THE INVESTIGATION

Early Complaint Resolution (ECR):

Early Complaint Resolution allows the parties (the complainant and the institution which is the subject of the complaint) an opportunity to resolve the complaint allegations quickly; generally, soon after the complaint has been opened for investigation. If both parties are willing to try this approach, and if OCR determines that Early Complaint Resolution is

¹ Complaints that allege discrimination based on age are timely if filed with OCR within 180 calendar days of the date the complainant first knew about the alleged discrimination.