

June 15, 2016

Dr. Jack Thomas  
President  
Western Illinois University  
Sherman Hall 209  
1 University Circle  
Macomb, Illinois 61455

Re: OCR Docket #05-16-2087

Dear Dr. Thomas:

This is to notify you of the disposition of the above-referenced complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Western Illinois University (University), alleging discrimination on the basis of sex.

The complaint alleged that in fall 2015 the University subjected a student (Student A) to discrimination based on sex when a professor in one of her courses did not excuse absences or permit her to make up assignments she missed while she was on medical leave after giving birth.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681, and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex by recipients of Federal financial assistance. As a recipient of Federal financial assistance from the Department, the University is subject to Title IX.

During the processing of this complaint, OCR reviewed data provided by the University and Student A. Prior to the completion of OCR's investigation, the University expressed an interest in voluntarily resolving the complaint. Discussions between OCR and the University resulted in the University's signing the enclosed Resolution Agreement (Agreement), which, when fully implemented, will resolve the issues raised in the complaint.

### **Legal Standards**

The implementing regulation, at 34 C.F.R. § 106.40(b)(1), states that a recipient shall not discriminate against any student, or exclude any student from its education program or

activity, including any class or extracurricular activity, on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient.

The Title IX implementing regulation, at 34 C.F.R. § 106.40(b)(5), states: "In the case of a recipient that does not maintain a leave policy for its students, or in the case of a student who does not otherwise qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as a justification for a leave of absence for so long a period of time as is deemed medically necessary by the student's physician, at the conclusion of which the student shall be reinstated to the status which she held when the leave began."<sup>1</sup>

### **Facts**

The complaint alleged that the University subjected Student A to discrimination based on sex when the professor (Professor A) in Methods of Teaching English, EDUC 439 (the Course), did not excuse absences or permit her to make up assignments she missed while she was on medical leave after giving birth on September 9, 2015. In particular, the complaint asserted Professor A notified Student A via email in late September that she would not accept one of her assignments that had been due earlier in the semester and that Professor A refused to accept an assignment due October 5 because Student A needed to be in class to fulfill all of the requirements for this assignment.

The University provided OCR a copy of its policy prohibiting discrimination based on sex, which is available on the University's website<sup>2</sup>; the policy indicates that prohibited discrimination includes discrimination based on pregnancy and parental status, which it defines as "excluding persons from, denying them the benefit of, or discriminating against them due to their pregnancy or status as a parent." The policy contains no language that specifies how arrangements are to be made for students who must miss class due to pregnancy or childbirth.

The Course syllabus states, in relevant part, "Attendance at all classes is mandatory. Missed classes cannot be made up. I do not differentiate between 'excused' and 'unexcused' absences. If you are not in class, you are absent. Students with perfect attendance will raise their grade by half letter (so a B will become a B+). You will receive two (2) absences before points are deducted from your grade. Each absence after 2 will receive a 5% reduction in your grade." The syllabus listed six components that would make up the final grade: course blogging (15%), a lesson plan (10%), attending

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<sup>1</sup> See also OCR's June 25, 2013, Dear Colleague Letter at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201306-title-ix.html> and a Pamphlet titled "Supporting the Academic Success of Pregnant and Parenting Students Under Title IX of the Education Amendments of 1972" at <http://www2.ed.gov/about/offices/list/ocr/docs/pregnancy.pdf>

<sup>2</sup> <http://www.wiu.edu/vpas/policies/titleIX.php>

and teaching at a junior high school (10%), a unit website (25%), readings and class discussions (10%), and “edTPA” (30%).

On September 8, 2015, Student A wrote an email to Professor A informing her that she needed to be on “maternity leave.” On September 24, 2015, Student A submitted to Professor A and other University personnel a letter from her doctor indicating that starting Monday September 28, 2015, Student A would be able to travel to a nearby town “to her 1 hour a day block teaching.” The note also stated that Student A would otherwise continue to be on “medically indicated maternity leave through” October 7, 2015.

According to the University, in early December, Professor A informed Student A that she had 10 absences and that while the four absences that occurred from September 24 to October 7 would be excused based on the doctor’s note previously provided, the six additional absences that occurred outside that timeframe could only be excused if she received medical documentation from Student A. Student A provided a note on December 18, 2015, indicating that she was on “medical necessary maternity leave” from September 1 through October 7, and Professor A excused Student A’s remaining six absences.

During the period from September 1 through October 7, Student A missed three assignments in the Course. Professor A informed Student A in December that she would be unable to make up the missed assignments. On December 12, Student A took the matter up with the Title IX Coordinator, who advised Professor A that Student A must be allowed to make up the missed assignments. Because one assignment involved an observation at a school that the Professor believed could not be replicated, she gave Student A full credit for this assignment. However, she did not adjust Student A’s grade with regard to the other two assignments missed or make other arrangements to allow Student A to submit these assignments.

The University indicated that Student A received a grade of C in the course and did not appeal the grade. A printout provided by the University showed that she received 760 points out of a possible 1000 points; it indicated that she received 0 points out of 50 on a lesson plan on September 8, and 0 points out of 50 on a class discussion on October 7, and that she received points on all other assignments.

Student A told OCR during the spring 2016 semester that an ACT score of 22 was required to be admitted to the University’s Teacher Education Program. She stated that she did not receive the minimum score when she originally took the ACT during high school, so she would need to take it again. She said that during the time when she was dealing with Professor A, she was also trying to study for the ACT. She asserted that if Professor A would have followed the law, she could have spent more time studying and obtained the required score; instead she missed the cut-off by one point.

## **Conclusion**

In accordance with Section 302 of OCR's *Case Processing Manual*, a complaint may be resolved at any time when, before the conclusion of an investigation, the recipient expresses an interest in resolving the complaint. Prior to the conclusion of OCR's investigation, the University expressed interest in resolving the complaint.

OCR determined that an Agreement is appropriate under the circumstances present in this particular case to resolve the issues. More specifically, the University agreed to offer Student A in writing the following options with regard to the Course: (a) to complete alternate assignments in place of two assignments she did not complete and was not permitted to make up in the Course; or (b) to have her Course grade re-calculated, excluding the two assignments she did not complete and was not permitted to make up; or (c) to have her Course grade stand. The Agreement specified that if Student A accepts option (a), the University would grade the assignments, re-calculate Student A's grade for the Course, and update Student A's transcript and that if Student A accepts option (b), the University would re-calculate Student A's grade for the Course and update Student A's transcript. The Agreement also required the University, following the implementation of the above item, to reconsider Student A's qualifications to enter into the Teacher Education Program to which she was not admitted for the fall 2016 semester. Further, the Agreement required the University to provide all University faculty and students with a copy of its written policies and procedures requiring faculty members to make necessary modifications for pregnant students in order to ensure that the University does not discriminate against students based on their pregnancy; this notice is to explain what individuals should do if they believe students have been subjected to discrimination based on pregnancy, including to whom to report such discrimination and the procedures the University will use to investigate a complaint of such discrimination. Finally, the Agreement required the University to provide all administrators and faculty in the Academic Affairs division with effective training on the University's policies and procedures requiring faculty members to make necessary modifications for pregnant students in order to ensure that the University does not discriminate against students based on their pregnancy.

The enclosed Agreement, when fully implemented, will address all of the issues in this case. The provisions of the Agreement are aligned with the complaint allegation and the information obtained during OCR's investigation, and are consistent with the applicable regulations. OCR will monitor the implementation of the Agreement until the University is in compliance with the Title IX regulations at issue in the case.

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, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the complainant may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, 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.

The complainant may file a private suit in Federal court, whether or not OCR finds a violation.

We wish to thank you and your staff for your cooperation and courtesy during our investigation. In particular, we would like to thank Ms. Rica Calhoun, University General Counsel. If you have any questions, please contact Geraldo Perez at 312-730-1646 or by email at [Geraldo.Perez@ed.gov](mailto:Geraldo.Perez@ed.gov).

Sincerely,

Jeffrey Turnbull  
Team Leader

Enclosure

cc: Ms. Rica Calhoun