



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION IX
CALIFORNIA

July 22, 2014

Ms. Devorah Lieberman
President
University of La Verne
1950 3rd St
La Verne, California 91750

(In reply, please refer to case no. 09-13-2063.)

Dear President Lieberman:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the University of La Verne (University). The complainant¹ alleged that the University discriminated against her on the basis of sex and disability. The issues OCR investigated were:

1. Whether the complainant was terminated from her student-teacher fieldwork position because of her pregnancy;
2. Whether the complainant was denied the accommodation of elevating her legs during the fieldwork, which was prescribed by her doctor to mitigate risks to her and her fetus from pregnancy-related medical conditions; and
3. Whether the University failed to adopt and implement procedures for the prompt and equitable resolution of complaints of discrimination on the basis of sex.

OCR investigated the complaint under the authority of Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and their implementing regulations. Title IX prohibits discrimination on the basis of sex in education programs and activities operated by recipients of Federal financial assistance. Section 504 prohibits discrimination on the basis of disability in programs or activities operated by recipients. The District receives funds from the Department and is subject to Title IX, Section 504, and the regulations.

OCR gathered evidence through interviews with the complainant, University faculty and administrators, and other witnesses identified by the complainant. OCR also reviewed documents and records submitted by the District and the complainant.

¹ OCR notified the District of the identities of the complainant when the investigation began. We are withholding the complainant's name from this letter to protect her privacy.

OCR found insufficient evidence to establish a violation of Title IX, Section 504 or the regulations with respect to the complainants' allegations that she was subjected to discrimination on the basis of sex or disability. OCR determined, however, that the University had not adopted procedures for the resolution of complaints of sex discrimination, as required by the regulations implementing Title IX. On May 29, 2014, the University provided OCR with a signed Resolution Agreement, in which it agreed to adopt and publish complaint procedures that met the requirements of Title IX. OCR has determined that this agreement, when implemented, will resolve the University's noncompliance with Title IX.

The facts gathered during the investigation, the applicable legal standards, and the reasons for our determination are summarized below.

Background

The complainant was enrolled in a teaching credential program at the University between September 2011 and October 2012. On October 2, 2012, she was removed from her student teaching assignment, and informed that she would be required to complete a remediation plan before she could be assigned to a new student teaching placement. She was approximately 30 weeks pregnant at the time, and alleged that the termination of her assignment was based on her pregnancy.

On March 5, 2013, before OCR had accepted this complaint for investigation, the complainant filed an internal complaint with the University, alleging that she had been subjected to discrimination on the basis of pregnancy and disability in connection with her student teaching assignment. The complainant's internal complaint was investigated by an Employee Relations Manager in the University Department of Human Resources. On July 11, 2013, she sent a letter to the complainant, explaining that, based on her investigation, she found insufficient facts to conclude that the decision to terminate the complainant's internship was based on her pregnancy, or that she was denied accommodations related to her pregnancy.

Under OCR's complaint investigation procedures, OCR may close a complaint if the same allegations have been filed through a recipient's internal grievance procedures and OCR anticipates that there will be a comparable resolution process under comparable legal standards. Under such circumstances, the complainant is given the opportunity to re-file his/her complaint within sixty days of the completion of the internal process. Where the complainant chooses to refile, OCR generally will not conduct its own investigation; instead, OCR reviews the results of the other entity's determination and determines whether the other entity provided a comparable process and met appropriate legal standards.

OCR learned of the complainant's internal grievance, and the University's response, after it had accepted the complaint for investigation, but before it had commenced its own investigation. We therefore reviewed the University's investigation, including the investigator's internal report and her interview notes. Because the University's notice to the complainant did not include details of the investigative process, OCR provided the complainant an opportunity to respond to

the internal investigative report, and to provide evidence that the investigation was inadequate. Based on the complainant's response, OCR interviewed the investigator and several of the witnesses identified in her report, as well as witnesses identified by the complainant.

Issue 1: Whether the complainant was terminated from her student-teacher fieldwork position because of her pregnancy

The Title IX regulations, at 34 C.F.R. §106.40 (b)(1) prohibits colleges from discriminating against students or excluding them from their educational programs or activities, on the basis of pregnancy, childbirth, or recovery therefrom.

To determine whether a student has been discriminated against on the basis of pregnancy under Title IX, OCR looks at whether there is evidence that the student was treated differently than non-pregnant students 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 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 pregnancy.

OCR's investigation showed the following:

- During the fall semester of 2012, the complainant enrolled in the final required course for the credential program, a ten-week student teaching internship. Students in the class are assigned to an elementary or secondary school classroom, and are expected to plan and teach an increasing number of lessons each day, until by the end of the ten week period, they are teaching full days. A University faculty member is expected to observe the student teaching on a regular basis.
- On October 2, 2012, during the third week of the internship, the complainant's University supervisor conducted her first teaching observation of the semester. The supervisor rated the complainant as "emerging" (defined as "The candidate's planning and teaching abilities were minimal, limited cursory, inconsistent, and/or ambiguous") in most areas. Her observation noted concerns about student engagement and interaction, inadequate preparation for an in-class science experiment, and a lack of follow-up to the experiment or closure to the lesson.
- After the classroom observation, the complainant met with the University supervisor and the classroom teacher in whose class she was teaching (the master teacher), and was informed that she would be removed from the student teaching assignment.
- The complainant met with her University supervisor and the director of the intern program on October 3, 2012, to discuss her removal from the student teaching internship. She was informed that she had not been removed permanently from the internship class,

but that, prior to being placed in another student teaching assignment, she would be required to complete a “remediation plan.” The remediation plan included substituting in upper grades, observing in upper elementary and middle school classes, and presenting two lessons to the Teacher Education Committee.

- The complainant informed the director that she would not complete the remediation plan as described. During subsequent discussions, she was offered a choice between completing the plan before May 31, 2014, and applying to the University for a late withdrawal from the course and a tuition refund. She chose to apply for a refund.
- The University investigator initiated her investigation by meeting with the complainant and discussing her complaints and concerns with her. She then reviewed the report of the University supervisor’s observation of the complainant’s lesson during her fall 2012 internship and interviewed the supervisor and other University faculty and administrators. She also visited the school where the complainant’s student teaching took place and interviewed the master teacher there.
- After completing her review, the University investigator concluded that the both the University supervisor and the master teacher had serious concerns about the complainant’s teaching performance, and recommended on that basis that the complainant’s internship should be terminated. She concluded that the complainant was removed from her student teaching assignment based on her teaching performance, rather than her pregnancy.
- The complainant had completed a five-week internship in a first grade classroom during the 2011-12 school year. The University investigator found that the mentor teacher in that classroom had recommended that she not move forward as a teacher, and that her University supervisor (the same professor who terminated the complainant’s fall student teaching assignment) had recommended that she engage in substitute teaching before continuing in the program. The complainant contested this conclusion, stating that both the mentor teacher and the University supervisor had praised her progress, and that neither had suggested that she engage in student teaching.
- OCR interviewed both the mentor teacher and the University supervisor, and was unable to corroborate the investigator’s findings that the mentor teacher had recommended that the complainant not continue in the program or that either teacher had suggested that the complainant engage in substitute teaching. However, both expressed concerns about the complainant’s classroom management skills. The University supervisor gave the complainant the lowest possible passing score on her evaluation at the end of the five week period.
- In her response to the University’s report, the complainant challenged several of the investigation’s other observations and findings. In particular, she contested the reported criticisms of her teaching, including her lack of preparation for class, the weakness of her

lesson plans, her encouragement to the class to “be good” when the University supervisor was scheduled to visit, and her lack of focus. She noted that the master teacher had not criticized her performance prior to the observation, and that both she and the University supervisor had approved her lesson plans.

- OCR reviewed the investigator’s interview notes and the University supervisor’s class observation, and interviewed both the supervisor and the master teacher. Both emphasized their concerns about the complainant’s preparation for the lessons she taught and her instructional delivery and classroom control. The master teacher informed OCR that she gave limited feedback to the complainant because the complainant was generally unavailable before and after school. While OCR did not find direct evidence either to confirm or to contradict this assertion, it is consistent with an observation made by the master teacher of her earlier five week internship.
- The complainant also alleged, both to OCR and to the University, that the University supervisor, the master teacher, and the director of the intern program made numerous remarks about her pregnancy, and expressed doubts about her ability to complete her internship while pregnant. The University investigator’s interviews, and those of OCR, indicated that numerous people remarked on the complainant’s pregnancy, and that some raised questions about her ability to complete her internship before giving birth. These questions were generally explained by reference to the cumulative nature of the student teaching experience and the consequent importance of enrollment in the full ten weeks of the program. OCR did not find evidence to confirm any derogatory remarks made to or about the complainant concerning her pregnancy.
- The complainant alleged that several of the University supervisor’s remarks, including one instructing the complainant to change doctors so that she could arrange appointments outside of school hours, were witnessed by another student. The supervisor denied making the remarks, and OCR’s own interviews did not corroborate the complainant’s account.

Because the issues raised in the complaint to OCR were the same as those considered through an internal complaint procedure, OCR’s review focused on the adequacy of the University’s investigation. In order to meet OCR’s standards, an internal investigation must be impartial and thorough, and must correctly apply Title IX legal standards.

OCR found that the University investigator conducted detailed interviews of the complainant, of the relevant University witnesses, and of the master teacher. OCR reviewed her interview notes and determined that she asked questions designed to determine whether the complainant was treated differently from other student teachers because of her pregnancy. Based on her review of the evidence, she concluded that the University’s explanation regarding the quality of the complainant’s teaching performance was credible, and that the evidence did not establish that she was removed from her student teaching assignment because of her pregnancy.

The complainant raised a number of concerns about the fairness and thoroughness of the University investigation. She objected first that the investigator did not follow up on several lines of inquiry that she had mentioned during her initial interview with the complainant, including interviews with professors who had previously recommended her, inquiries as to why the complainant was not provided more chances to succeed, and an examination of the reasons for each component of the complainant's remediation plan. Second, she raised concerns about the investigator's failure to verify some of the master teacher's claims by interviewing other teachers at the school or checking teacher sign-in logs. Finally, she disputes several of the observations of the master teacher and University supervisor about alleged problems with her teaching.

OCR concluded that the University investigation was, for the most part, sufficiently thorough to determine, by the preponderance of the evidence, whether the reason provided for the termination of the complainant's student teaching assignment was a pretext for discrimination. OCR recognizes that the purpose of this investigation was not to determine whether the complainant was, in fact, a competent teacher, but rather to assess whether the criticisms raised about her performance were in reality a pretext for discrimination. While the investigator did not interview every individual who might have had some knowledge of the complainant's performance, she did conduct enough interviews to obtain consistent information about the genuineness of the concerns of the master teacher and of the University's internship program faculty. She also determined that the reported comments indicating skepticism about the complainant's ability to perform adequately as a student teacher while pregnant could not be substantiated.² She reasonably concluded that the comments that could be confirmed (exclaiming on the complainant's pregnancy, asking about her due date, and other similar comments) were not sufficiently negative to establish either that the reasons provided for terminating the internship were pretextual or that the complainant was subjected to a hostile environment on the basis of pregnancy.

OCR was concerned that the University investigator reached conclusions about the complainant's performance during a previous student teaching experience without interviewing the master teacher for that internship, especially since the complainant denied being told that her performance was problematic. OCR interviewed the master teacher and the University supervisor and learned that the investigator's account of the five week internship contained some errors of fact. However, while the investigator's report overstated the complainant's earlier performance problems, OCR confirmed that both the master teacher and the University supervisor expressed concerns about that internship that were similar to those raised with respect to the student teaching assignment that was terminated. OCR concluded the investigator's errors regarding the five week internship did not undermine her finding that the preponderance of the evidence did not establish discrimination on the basis of pregnancy.

Based on the investigator's report, combined with its own investigation, OCR concluded that the complainant was treated differently from other students, in that her student teaching assignment

² OCR conducted further interviews in connection with some of these remarks and was unable to substantiate them.

was terminated prior to the conclusion of ten weeks.³ The University explained this different treatment by citing concerns about the complainant's performance, which led it to conclude that she needed remediation (further observation of upper grade levels and experience substituting) before she could successfully teach upper grade students. The preponderance of the evidence did not support a conclusion that this explanation was pretextual, or that the different treatment was based on the complainant's pregnancy. OCR therefore concluded that there was insufficient evidence to find that the University discriminated against the complainant on the basis of pregnancy in violation of Title IX in connection with this allegation.

Issue 2: Whether the complainant was an accommodation for a pregnancy-related disability during her student teaching internship

The regulations implementing Section 504, at 34 C.F.R. §104.43(a), provide that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any postsecondary education program of a recipient. In order to comply with this requirement, the regulations, at 34 C.F.R. §104.44, require colleges and universities to provide students with the academic adjustments and auxiliary aids they need in order to have an equal opportunity to participate in the educational program. In addition, 34 C.F.R. §104.12 requires recipients to make reasonable accommodations to the known physical or mental limitations of an otherwise qualified disabled employee.

The complainant alleged that, during her internship, she informed her master teacher that her doctor had advised her to elevate her legs in the classroom in order to accommodate pregnancy-related disabilities. She stated that the master teacher initially provided her with a chair to use for this purpose, but that she subsequently took the chair away.

The University investigator considered this allegation as part of her investigation, and visited the school in order to observe the conditions of the student teaching assignment. She stated that the master teacher confirmed the complainant's request to use a chair to elevate her feet, and denied that she had ever refused that request, removed the chair, or rescinded permission to use it. The master teacher made similar statements to OCR.

OCR concluded that the University investigator adequately investigated the complainant's allegations that she was denied an accommodation and determined that the evidence did not support the complainant claim. Because OCR concluded that the University's investigation met OCR's standards, we found no violation of Section 504 or the regulations in connection with this allegation.⁴

³ The evidence did not support a finding that the complainant was situated similarly to students whose student teaching assignments were terminated due to "personality conflicts," since no such conflict was at issue in her case.

⁴ Because the University found that the complainant was not denied the requested accommodation, OCR did not determine whether the complainant would be considered disabled and in need of an accommodation under Section 504.

Issue 3: Whether the University failed to adopt and implement procedures for the prompt and equitable resolution of complaints of discrimination on the basis of sex

The Title IX implementing regulations, at 34 C.F.R. §106.8(b), require a recipient to adopt and publish grievance procedures providing for a prompt and equitable resolution of student and employee complaints alleging sex discrimination.

As part of its review of the adequacy of the University investigation, OCR requested information on the University's procedures for the resolution of complaints of discrimination on the basis of sex. OCR was informed that the University had adopted a *Policy on Sexual and Other Unlawful Harassment*, but that no grievance procedures existed regarding other forms of discrimination, including discrimination on the basis of pregnancy. OCR concluded that the University had not complied with the requirements of Title IX in this respect.

On May 29, 2014, the University provided OCR with a signed Resolution Agreement in which it agreed to adopt grievance procedures that comply with Title IX requirements, and to provide notice and a summary of the procedures on its website and in student documents. OCR concluded that this Agreement, when implemented, will resolve the area of noncompliance identified during the investigation of this complaint. The University has submitted draft procedures, which OCR is currently reviewing.

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, 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.

If you have any questions about this letter or OCR's investigation, please contact Stanley Toledo, Equal Opportunity Specialist, at (415) 486-5562 or via email at Stanley.Toledo@ed.gov, or me at (415) 486-5537.

Sincerely,

/s/

Mary Beth McLeod
Team Leader