



REGION IX  
Old Federal Building  
50 United Nations Plaza, Room 239  
San Francisco, California 94102

UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

December 31, 1998

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Dr. John D. Niaguire  
President  
Claremont Graduate School  
160 E. 10<sup>th</sup> Street  
Claremont, California 91711

(In reply, please refer to Docket Number 09-98-2148.)

Dear President Niaguire:

This is to inform you that the U.S. Department of Education (Department), San Francisco Office for Civil Rights (OCR) has completed its resolution process regarding the complaint referenced above filed against Claremont Graduate University (University) by Mr. Samson Boganim. The Complainant alleged that the University discriminated against him on the basis of sex, and retaliated against him. Specifically, the Complainant alleged that a professor in the Economics Department sexually harassed him in the fall of 1997. The Complainant also alleged that, after he reported the sexual harassment, the University retaliated against him in the following ways: a) two other professors gave him grades that did not reflect his performance; and b) the University did not allow him to continue in his doctoral program. Finally, the Complainant alleged that the University failed to adequately address the internal grievance he filed raising these same allegations because the grievance committee was biased against him.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972, as amended, which prohibits a recipient of Department funding from discriminating against persons participating in its programs and activities on the basis of sex. The implementing regulations for Title IX are found at 34 Code of Federal Regulations (C.F.R.) Part 106. The University receives Department funds and is therefore subject to these requirements and to OCR jurisdiction.

The resolution process consisted of a review of data submitted by both the Complainant and the University, with primary focus on data gathered during the University's internal grievance process. In addition, OCR interviewed the Complainant and University administrators and staff involved in the internal grievance.

After a thorough review of the evidence, OCR determined that the University reached the appropriate conclusion in finding insufficient evidence of sexual harassment,

retaliatory grading, and retaliatory dismissal from the program. Finally, OCR found no evidence to indicate that the University selected a grievance committee that was biased against the Complainant. The following is a summary of the legal standards, relevant facts, and resolution of this complaint.

#### Legal Standards

The Title IX regulations provide at 34 C.F.R. §106.31(a) that no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity operated by a recipient. Section 106.31(b) prohibits recipients from denying or limiting, on the basis of sex, the benefits and services provided to students; providing them with different benefits, services, or treatment; or imposing different conditions upon the treatment, benefits, or services that students receive.

Under Department policy, a student who is sexually harassed is denied equal access to educational opportunity on the basis of sex. Sexual harassment in the educational setting includes unwelcome sexual advances, requests for sexual favors, or other sex-based verbal, non-verbal or physical conduct of a sexual nature. Sexual harassment occurs when: 1) submission to such conduct is explicitly or implicitly made a condition of participation in an education program or activity, or is used as the basis for educational decisions; or 2) the conduct is sufficiently severe, persistent, or pervasive to limit a student's ability to participate in or benefit from an education program or activity, or to create a hostile or abusive educational environment.

Recipients are also required under 34 C.F.R. §106.8(b) to adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints alleging any action that would be prohibited by Title IX, including sexual harassment. One of the elements examined by OCR in assessing compliance with this requirement is whether the grievance process provides an impartial investigation and resolution of the allegations.

The Title IX regulations, at 34 C.F.R. §106.71, incorporate by reference the procedural regulations implementing Title VI of the Civil Rights Act of 1964, 34 C.F.R. Part 100. Section 100.7(e), as incorporated by section 106.71, prohibits retaliation against any individual for the purpose of interfering with the assertion of a right protected by Title IX. This section further prohibits retaliation on the basis of an individual making a complaint or otherwise participating in an investigation, hearing, or other proceeding regarding an alleged violation of Title IX.

#### Factual Summary

At the beginning of the 1997-98 academic year, the Complainant was admitted on a provisional basis to the University's doctoral program in the School of Politics and

Economics (SPE). The University admitted the Complainant pending submission of acceptable scores on the Graduate Records Examination (GRE) by the end of the fall 1997 semester.

During the fall semester, the Complainant enrolled in the following courses: Economics 302, Economics 308, and Economics 316. The Complainant asserts that over a number of weeks the professor for Economics 302 (Professor A.) did various things in class to make the course more difficult for him. These included actions such as blocking the Complainant's view of diagrams or instructions on the white board, and presenting information in a certain way and signaling the opposite meaning when the Complainant was writing. In addition, the Complainant alleges that he raised these concerns with Professor A. on November 4, 1997, and during this conversation the professor made inappropriate statements. The Complainant alleges that Professor A. asked whether the Complainant found him sexually attractive, and stated that he and the Complainant could "go out and have a beer and have fun." The Complainant alleges that these actions constituted sexual harassment.

After the November 4, 1997, conversation with the complainant, Professor A. wrote a memorandum to the Dean of Students (Dean), expressing concern regarding the Complainant's statements during the above-referenced conversation. The professor stated that, prior to this conversation, he had no individualized contact with the Complainant. The professor expressed surprise that the Complainant accused him of doing various things in class to make it more difficult for the Complainant, and was concerned about the Complainant's behavior.

On November 10, 1997, the Complainant met with the Dean and the SPE Program Administrator and requested to withdraw from Economics 302. The Complainant states that he specifically raised the issue of sexual harassment at this meeting. However, the two other individuals present state that the Complainant discussed the problems that he was experiencing with Professor A. in class, and noted various possible reasons. One of the possibilities cited by the Complainant was that he wondered if the professor liked him. However, both the Dean and the Program Administrator confirmed that they inquired whether the Complainant was attempting to allege sexual harassment, and he said that he was not. They indicated that the Complainant made no mention of sexually harassing statements made by the professor. The Complainant also referenced financial difficulties as a basis for the withdrawal.

As a result of this meeting, the Complainant was allowed to withdraw from Economics 302. The form that he signed requesting a withdrawal, dated November 10, 1997, lists personal and financial difficulties as the basis. The Complainant continued to attend his remaining classes, Economics 308 and 316, throughout the fall 1997 semester. He received a grade of "B-" in Economics 308, and initially received an "Incomplete" in Economics 316. This grade was later converted to a "C."

The Complainant alleges that these grades were lower than his performance warranted, and that the professors assigned the low grades in retaliation for him complaining about sexual harassment by Professor A.

As of the beginning of January, the Complainant had not submitted GRE scores to the SPE, as required under his provisional admission to the program. By letter dated January 6, 1998, the SPE Director informed the Complainant that he must submit acceptable GRE scores in order to continue in the doctoral program. The Complainant thereafter took the GRE, and submitted his scores to the SPE. By letter dated January 22, 1998, the University advised the complainant that the SPE would be unable to accept him for admission to full graduate standing in the doctoral program. The letter noted that the Complainant had been admitted on a provisional basis, and that his GRE scores and academic performance during the fall 1997 semester did not meet the minimum standards for the doctoral program. However, the Complainant alleges that he was terminated from the program in retaliation for complaining about being sexually harassed by Professor A.

University administrators indicate that in late January 1998, following notice of his grades and termination from the SPE doctoral program, the Complainant specifically alleged that he had been sexually harassed by Professor A. The Dean reported that the Complainant raised this issue with her and that she and the Provost advised him to put it in writing. The Complainant then filed two complaints with the University dated February 2, 1998. First, the Complainant alleged that he had asked to withdraw from Economics 302 because of a sexually hostile environment created by Professor A. over a period of six to eight weeks. Second, the Complainant alleged that the low grades that he received in his remaining classes and the decision to terminate him from the program were in retaliation for his having filed a sexual harassment complaint in fall 1997.

In response to these complaints, the Dean and the Provost conducted an investigation of the alleged sexual harassment and retaliation. The investigation included a review of documents and interviews with the Complainant, each of the complainant's professors, and the SPE Program Director.

The University found insufficient evidence to support the allegation regarding sexual harassment. The investigation revealed that the incidents allegedly occurring in class in order to confuse the Complainant were not of a sexual nature, were denied by Professor A., and were not observed by others. With respect to the conversation between the Complainant and Professor A. on November 4, 1997, there were no other witnesses to the conversation, and the parties gave conflicting accounts regarding the substance of the conversation. The professor acknowledged suggesting that he and the Complainant go out for a beer, but stated that it was in the context of continuing their discussion of the Complainant's perceived problems in class. Professor A. firmly denied making any comments of a sexual nature during this

conversation. The Complainant provided no other examples of alleged sexual behavior or comments made to him by Professor A.

Regarding the Complainant's allegation of retaliatory grading, the University found that the grades assigned to the Complainant in both Economics 308 and 316 were consistent with grading standards applied to other students. With respect to Economics 308, the grade was based on points earned on midterm and final examinations, and the professor of that course was unaware of any problems between the Complainant and Professor A. at the time the grades were assigned. For Economics 316, student grades were based on homework, and midterm and final examinations. Taking into account the Complainant's examination scores, and the fact that he only turned in two of ten homework assignments, the professor would have been justified in assigning an even lower grade than the "C" that was assigned.

However, in investigating the allegation regarding the Complainant being terminated from the doctoral program, the Dean and the Provost found examples of other students who had been allowed to continue in the program on a conditional status with GRE scores and grades comparable to the Complainant's. Therefore, without finding that retaliation had occurred, the University offered to resolve this inconsistency by allowing the Complainant to continue on conditional status. However, the Complainant rejected this offer.

On March 23, 1998, the Complainant filed a formal grievance with the Student Grievance Committee, reiterating his allegations of sexual harassment and retaliation. The Dean, who normally staffs the Grievance Committee proceedings, recused herself from this role because of her previous involvement with the complaint. The Director of Development was asked to staff the process instead. Though the Dean testified at the hearing, she had no administrative involvement in the hearing process.

The Grievance Committee consisted of two faculty representatives selected from the faculty Equity and Grievance Committee and two student representatives from the Graduate Student Council. Consistent with University procedures, these four members had been selected at the beginning of the academic year. A fifth member was selected from the administration by the preceding four representatives. The Director of Development served as a non-voting member.

The Grievance Committee met on April 10, 1998, to initially consider the grievance, and conducted hearings on May 5 and 12, 1998. The Committee reviewed documents, and written statements prepared by all persons named in the grievances. The Committee also conducted interviews of relevant witnesses. The Committee issued its recommendation to the University President on May 22, 1998, and the President notified the Complainant of the decision by letter dated May 28, 1998. The University reaffirmed the earlier decision reached through the administrative investigation.

Resolution

If a complainant files allegations with OCR that have been previously addressed through a university's grievance procedures, OCR generally does not reinvestigate the allegations. Rather, OCR examines whether the University provided the complainant with a comparable resolution process, and reached conclusions that are consistent with OCR standards. In this instance, the University had previously investigated the first three allegations raised by the Complainant. The University process included several opportunities for the Complainant to present evidence and witnesses in support of his allegations. The University conducted both an administrative investigation and a formal hearing process that included review of relevant documents, written statements, and testimony from individuals with pertinent knowledge regarding the allegations of harassment and retaliation. Based on its review of the internal grievance, OCR determined that the Complainant was provided with a comparable process.

In addition, a thorough examination of the evidence did not raise concerns that the University reached an incorrect determination with respect to these three allegations. OCR concurs that there is insufficient evidence to conclude that the Complainant was subjected to sexual harassment, or that the University retaliated against him by lowering his grades and dismissing him from the doctoral program. With respect to the latter issue, OCR notes that the University appropriately identified a lack of consistency in the GRE score requirement initially applied, and resolved this issue by offering the Complainant conditional re-entry to the doctoral program.

The Complainant also presented an allegation that was not addressed by the University's internal procedure. As noted above, the Complainant alleged that the members of the Grievance Committee were selected in a manner so as to be biased against him. Specifically, the Complainant alleged that the Dean selected Grievance Committee members who would be sympathetic to Professor A. However, OCR found that the Grievance Committee was composed in accordance with established practice. The composition of the Grievance Committee was determined at the beginning of the 1997-98 academic year. In addition, the Dean recused herself from even staffing the Grievance Committee in this instance because of her previous involvement with the complaint. The facts do not support the allegation that the Grievance Committee was selected in a biased manner.

For the reasons outlined above, OCR finds the University in compliance with Title IX and its implementing regulations with respect to the allegations raised by this complaint. OCR is informing the Complainant of its determination by concurrent letter, and is closing this complaint as of the date of this letter.

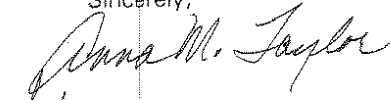
Under the Freedom of Information Act, it may be necessary to release this document and related records on request. If OCR receives such a request, it will seek to protect,

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to the extent provided by law, personal information which, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

If you have any questions, please contact Ms. Lolan Ho-Wong, the Equal Opportunity Specialist assigned to this case, at (415) 437-7770, or myself, at (415) 437-7815.

Sincerely,

  
for Alphas B. Scoggins  
Team Leader

cc: Betty Hagelbarger  
Dean of Students