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U.S. Department of Justice
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April 14, 2014

Re: Formal Complaint Regarding the U.S. Department of Education Office for Civil Rights failure to enforce the Title IX of the Education Amendments of 1972, 20 D.S.C. § 1681 et seq., and its implementing regulation, 34 C.F.R. Part 106; Sub-Part D § 106.41 (c)(1) specifically for the referenced in violate post-secondary institutions.

Dear Ms. Bhargava,

I. INTRODUCTION

This is a complaint of multiple violations of the Title IX of the Education Amendments of 1972 by post-secondary college institutions within the region of the Department of Education's OCR San Francisco (SF) office; and that OCR office's failure to investigate and enforce prima facie violations of 34 C.F.R. Part 106; Sub-Part D § 106.41 (c)(1) whereby OCR San Francisco received undisputed evidence of failure to meet any of the Three Part Test¹ for each and every one of these institutions for which complaints were filed with OCR San Francisco office for investigation.

II. JURISDICTION

The Department of Justice is the appropriate venue for this Complaint, as the DOJ Educational Opportunities Section has the ultimate responsibility for enforcing Title IX civil rights with respect to recipients of federal education funds. This Complaint is timely because the failure of policies and practices of DoE OCR and these post-secondary institutions are denying civil rights and unnecessarily causing a disparate impact on female students and are ongoing and continuing.

III. FACTUAL BACKGROUND

On January 10, 2014, OCR SF received 121 Title IX substantial female intercollegiate athletic disproportionality complaints for which the attached 10 complaint² were in part. February 10, 2014, OCR SF sent a letter of acknowledgement for these complaints, followed by a request for information (RFI)³ dated February 18, 2014. OCR SF office’s RFI required the complainant to produce proof of unmet interest as relates to Part 3 of the Three Part Test. The complainant responded on Feb. 14, 24, and 26th with the attached evidence of intercollegiate women’s sports cuts² at each of these institutions during the period of substantial female disproportionality – which undisputedly fails the Three Part Test evaluation of compliance under Sub-Part D § 106.41 (c)(1). OCR SF proffered an argument that the historical sports cuts articles were not “timely” which is categorically an erroneous finding given the Three Part Test requires examining such historical evidence to determine compliance.

March 11, 2014, OCR SF issued a dismissal⁴ of these complaints, and after a request for reconsideration sent that same day⁶, OCR then responded April 8, 2014, again ignoring the unmet interest evidence of female sports cuts and dismissed⁵. Further and more detailed background is presented in the original attached complaints for examination by the DOJ.

Each one of these complaints present irrefutable cases of failure to meet Parts 1,2, and 3 of the Three Part Test.

OCR REF NO	Recipient	2013 Disparity	Historically disproportionate	Women’s sports cuts
09142155	Point Loma College	9.23%	2007 - 2013	softball
09142144	Southwestern College	17.59%	2007 - 2013	tennis
09142164	Pasadena City College	9.85%	2007 - 2013	tennis
09142176	CSU – Bakersfield	5.81%	2012	golf, tennis
09142185	Oxnard College	3.48%	2007 - 2013	basketball, volleyball
09142073	El Camino College	37.17%	2007 - 2013	Several
09142129	Moor Park College	18.55%	2007 - 2013	golf
09142117	U of C Santa Barbara	4.25%	2007 - 2013	Rowing, swimming, etc.

09142165	U of C Berkeley	10.11%	2007 - 2013	Gymnastics, lacrosse
09142189	Pepperdine University	2.81%	2007 - 2013	Swimming, diving

IV. LEGAL CLAIMS

Title IX of the Education Amendments of 1972 (Title IX) prohibits discrimination on the basis of sex in education programs and activities by recipients of Federal financial assistance, which include schools, colleges and universities.

Title IX's athletic regulations, 34 C.F.R. § 106.41, provide:

*(a) General. **No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis include schools, colleges and universities.***

The U.S. Department of Education Office for Civil Rights has abdicated its responsibility and authority for failure to enforce the Title IX of the Education Amendments of 1972, 20 D.S.C. § 1681 et seq., and its implementing regulation, 34 C.F.R. Part 106; Sub-Part D § 106.41 (c)(1) specifically for the referenced in violate post-secondary institutions. OCR SF has deliberately refused to investigate these post-secondary institutions despite irrefutable evidence of Title IX violations by these recipient institutions, effectively aiding and abetting the continued discrimination and violation of the civil rights of women attending these colleges and universities. The DoE OCR provides no an avenue for appeal of the OCR SF office decision to the Deputy Secretary for Enforcement, the Assistant Secretary, Wash DC Office for Civil Rights, or the U.S. Secretary of Education, so this complaint to the U.S. Department of Justice is appropriate and timely.

V. CONCLUSION

Based on the foregoing, we request that the Department of Justice: (1) accept jurisdiction and fully investigate these claims; (2) direct the DoE OCR to perform investigations of these identified post-secondary institutions, including investigation of policies and practices to determine if they discriminate against female students for failure to provide equal opportunity athletic participation required by law; (3) compel OCR SF to align its complaint evaluation procedures with Title IX regulation, including proper implementation of the Three Part Test to determine compliance under 34 C.F.R. Sub-Part D § 106.41 (c)(1); and (4) develop policies and issue guidance that specifically requires the U.S. Department of Education OCR to investigate the

proven substantial disproportionality complaints⁷ against the remaining recipient institutions filed with the OCR SF region as the complainant met his burden of proof for OCR to proceed with those investigations.

VI. OTHER INFORMATION

This message has been sent with the following file or link attachments:

- (1) RE OCR case numbers 09-14-2073 09-14-2129 09-14-2117.msg
RE OCR case numbers 09-14-2144.msg
RE OCR case numbers 09-14-2155.msg
RE OCR case numbers 09-14-2164.msg
RE OCR case numbers 09-14-2165.msg
RE OCR case numbers 09-14-2176.msg
RE OCR case numbers 09-14-2185.msg
RE OCR case numbers 09-14-2189.msg
- (2) SANFRANCISCO_OCR_RFI.pdf
- (3) Reconsideration of complaints
09142189091421550914214409142164091421760914218509142073091421290914211709142165.msg
- (4) OCRSANFRANCISCO_DENIAL_CUTS.pdf
- (5) RE Reconsideration of complaints
09142189091421550914214409142164091421760914218509142073091421290914211709142165 -
addendum info.msg
- (6) OCR Case Numbers 09-14-2070 through 09-14-2190.msg

Respectfully submitted, please acknowledge,