

997 Bradford Street
Pomona, California 91767
March 12, 2007

Office of the Registrar
California State Polytechnic University, Pomona
3801 West Temple Avenue
Pomona, California 91768

Dear Registrar:

After denying me a name change in May, June, and July of 2005, and then denying me a name and in part a gender change in February 2007, the most recent response by you, the university, has been that a change in my gender marker throughout the university records is perfectly doable, but that the *only* things left now which keep you from denying me a *name* change are Sections § 668.32 and § 668.36 of Title 34 of the Code of Federal Regulations. At issue is that Sections § 668.32 and § 668.36 of Title 34 of the Code of Federal Regulations, actually govern disbursement of funds and the accuracy of social security numbers, not in any way the accuracy or determination of a person's name, thus your denying me of a name change is in the wrong.

Hence, this letter is to request once again that my name and gender be changed from Jared Clifford Tveter to Olympia Tveter, and my gender marker be changed from male to female throughout the university's records. By common law, by California statutory law, and by state and federal case law you are required to make these changes in accordance with my at-will request (see California Civil Code § 1279.5, California Family Code § 2082, Lindon v. First National Bank 10 F. 894, Coppage v. Kansas 236 US 1, In re McUlta 189 F. 250, Christianson v. King County 196 F. 791, United States v. McKay 2 F.2d 257, California Packing Corp. v. Kandarian 62 Cal. App. 729, Jech v. Burch 466 F.Supp. 714, Abdul-Jabbar v. General Motors Corporation, 85 F.3rd 407, Touchton v. Dover Corp./Rotary Lift Div., 319 F.Supp2d 1290, California Student Safety and Violence Prevention Act of 2000, Education Code § 200 and § 220, and Government Code § 12926 (l) and § 12926 (p), Penal Code § 422.55, § 422.56, and § 422.6).

Additionally in this letter, I briefly review the events that have transpired during the months of January and February of 2007 as they relate to my name and gender change with the university, I present a review and analysis of how codes § 668.32 and § 668.36 of Title 34 function as written and illustrate several key judicial rulings related to these codes, I then explain how my situation applies to these two codes, revealing how your refusal was in the wrong, and what your proper response should have been and what it should be now.

Before reviewing the codes and related court cases, for historical context I will briefly review the events that have occurred during the months of January and February of 2007:

- January 3 – I sent a name and gender change request to Maria Martinez (an Assistant Registrar) and a copy

to David Johnson (Director of Judicial Affairs for the campus). It was sent by certified mail through the U.S. Postal Service. The letter to David Johnson was signed for on January 5, 2007. The letter to Maria Martinez was lost in the mail, or at least I never received any receipt of its delivery.

- January 10 – As the letter appeared not to arrive, I hand delivered my request letter to Maria Martinez.
- February 5 – I received a letter of denial through the U.S. Postal Service.
- February 6 – I sought an audience with Ms. Martinez regarding the denial, and over the course of that week a meeting time was negotiated.
- February 12 – I met with Maria Martinez and David Johnson, with Fernando Estrada (Director of the Pride Center) present also. The meeting resulted in clarifying that nothing was keeping them from changing my gender in the records, but that one thing was keeping them from changing my name and that was some specific federal codes governing the university’s financial aid records. The meeting ended by Ms. Martinez committing to find out and contact me in those following two weeks, regarding which specific federal codes prevented them from changing my name.
- February 28 – Shortly overdue, I received an email from Ms. Martinez which quoted the specific code sections mentioned above which the university believes keeps them from changing my name unless I have a social security card bearing my new name.

In summary, you, the university, claims that according to the federal codes quoted to me in the email of February 28 (§ 668.32 and § 668.36 of Title 34), the only thing keeping you from changing my name is me showing you a social security card bearing my new name.

Below I explain in detail these passages of code, exhibit several judicial rulings which specifically relate to and clarify this matter, and review how my case applies to all of these.

When one examines these codes, sections § 668.32 and § 668.36, one finds that they are part of the larger section titled “Subpart C—Student Eligibility.” The opening section after this title, and which immediately precedes § 668.32, reads:

§ 668.31 Scope.

This subpart contains rules by which a student establishes eligibility for assistance under the title IV, HEA programs. In order to qualify as an eligible student, a student must meet all applicable requirements in this subpart.

So, this code only tells you whether you can give money out to a student or not. It acts like a mathematical “if-then” function: if you meet the requirements (of this Subpart C), then we give you money for school, if you do not, then you do not receive money. This is its function.

The next section is one of the ones quoted to me. The parts that apply to social security numbers read:

§ 668.32 Student Eligibility—general.

A student is eligible to receive title IV, HEA program assistance if the student—

...

- (i) Has a correct social security number as determined under Sec. 668.36, except that this requirement does not apply to students who are residents of the Federated States of Micronesia, Republic of the Marshall Islands, or the Republic of Palau;

Here, is the requirement that to grant funds, it must be ensured that a student’s social security

number is correct. Clearly this code exempts students who are residents of the three specific entities above, but, generally, the social security number itself needs to be provided and needs to be correct.

The next section quoted unto me, § 668.36, is rather lengthy, but it is important to go through thoroughly. Part (a)(1) opens by saying that the Secretary of Education will seek to verify with the Social Security Administration the social security number of everyone who applies for aid, except those from the three lands mentioned. Part (a)(2) continues by saying that if the Secretary finds a number to be accurate, and the school itself has no reason to believe it is inaccurate, then school should consider it as a correct number.

The next part, (a)(3), describes what should happen if the Secretary does not receive verification of the social security number from the SSA:

If the Social Security Administration does not verify the student's social security number on the FAFSA, or the institution has reason to believe that the verified social security number is inaccurate, the student can provide evidence to the institution, such as the student's social security card, indicating the accuracy of the student's social security number. An institution must give a student at least 30 days, or until the end of the award year, whichever is later, to produce that evidence.

So, if a student's number is not verified or the school believes that the "number is inaccurate," the student "can" provide evidence "such as" their card as evidence—the "can" indicating not only that it is merely optional for the student to provide evidence of the number, but also the "such as" implies that one can show *something else* other than one's card as evidence. When one looks up the word "can" in Black's Law Dictionary, 8th ed., it reads, "**can**, *vb.* **1.** To be able to do something <you can lift 500 pounds>. **2.** To have permission (as often interpreted by courts); MAY <no appeal can be filed until the fee is paid>." Here, if either the SSA cannot verify a number and the thus a red flag is pulled on someone's application, or if an educational institution suspects an inaccurate number and they pull a red flag, the student "can" or has the ability to or has permission to show their card as evidence. Note that it does not say that the student *must* or is required to. It is an option or choice for the student. And even if they do show a card, the only thing that a school is to do, according to this passage, is to examine the integrity of the number itself. Note that *only* the number itself is spoken of here. A time limit is also attached in which the student has to provide such evidence.

In the next portions of this code, (a)(4) and (b)(1), it essentially says that eligibility cannot be diminished while verification is pending, but that funds are not to be granted until the number is verified.

In (b)(2), it sets forth *when* an institution should communicate with the Secretary about a social security number:

The institution shall ensure that the Secretary is notified of the student's accurate social security number if the student demonstrates the accuracy of a social security number that is not the number the student included on the FAFSA.

Firstly, the student may demonstrate the accuracy of their number by showing their card, or

something else (§ 668.36 (a)(3)). The institution may be able to tell that the card belongs to the student in that the card bears the name or one of the names which they are or have been known by (see *California Packing Corp. v. Kandarian* 62 Cal. App. 729 and *Abdul-Jabbar v. General Motors Corporation*, 85 F.3rd 407). Additionally, no mention is made here of verifying if a social security number is the *same* as on the FAFSA; explicitly it says that the school should *only* be concerned with seeing a card and reporting a number if the student's card *number* is *different* than on the FAFSA. This portion of code is also the first and only place where instructions are given about communications from the institution to the Secretary regarding a student's number. From this, one must conclude that the school *only* verifies numbers that are *different* than that which is on the FAFSA. If the student shows the school a card that has the *same* number as on the FAFSA, then the school reports nothing.

I will briefly exodus from the codes now to explain the case law just mentioned above which relates to the name on a card. The case law reveals several things. First, that one may have multiple names and identities in which one conducts one's life. Secondly, as such, all records of one's name and names do not need to be in perfect alignment in one's life and dealings with others. Thirdly, it is the right of each individual to control the use of these their names and identities, chosen or otherwise, in their personal and business lives. As these things are true, one may have a social security card and birth certificate in one name, but conduct their business and personal lives in any number of other names. In my letter of January 10, 2007, I did not feel it productive to mention more recent cases as the older cases had not been overturned. One of the cases below is older, the other two are very recent.

The first case is *California Packing Corp. v. Kandarian* (1923) 62 Cal. App. 729. In it, a person had signed a contract for some goods using a name that did not appear to be his own. The court ruled that the contract was valid. "Without abandoning his real name, a person may adopt any name, style, or signature wholly different from his own by which he may transact business, execute contracts, issue negotiable paper, and sue and be sued." From this, one can completely live their life, especially financially, in any name or names they chose.

The second case is *Abdul-Jabbar v. General Motors Corporation*, 85 F.3rd 407 (9th Cir. 1996), in which the basketball star Kareem Abdul-Jabbar sued the GMC for using his former name in one of their commercials. This case particularly reveals that the common law right to control one's name and identity is very much alive and well in California. Frequent references are made to the common law rights of Abdul-Jabbar throughout this case. In this case the court ruled in Abdul-Jabbar's favor saying that just because he ceased using his birth name for 10 years to that point, did not mean that he had abandoned control over it and its use. Specifically the court said:

An individual's decision to use a name other than their birth name—whether the decision rests on religious, marital, or other personal considerations—does not therefore imply intent to set aside the birth name, or the identity associated with that name.

Lucidly here, one may have control over the use of multiple names and identities that they have and have had. Furthermore, the case explicitly speaks of injury, both economic and emotional, that others *do not* have the right to use aspects of one's identity such as one of their names

without their permission, as such non-approved use by another may cause the person injury. And “injury ... is not limited to present or future economic loss, but ‘may induce humiliation, embarrassment, and mental distress.’ *Waits*, 978 F.2d at 1103 (quotations omitted).” And as the issue of financial aid is an economic matter, the student has control of their identities and how they are used. The institution does not have the right to publically choose which identity they will use in any aspects of their economic and social life, but especially their economic life. I include “social life” in the last sentence in that “humiliation” and “embarrassment” are aspects which are very much a part of one’s social life. And so as one may have and be in control of the use of multiple names and associated identities, all records in all places cannot be and will not be in perfect alignment with each other.

In the next case of *Touchton v. Dover Corp./Rotary Lift Div.*, 319 F.Supp2d 1290 (N.D.Ala. 2004), Chris Touchton sued a company for recovery of his attorney’s fees. Of significance here in that Mr. Touchton, a single person, sued using the name “Chris Touchton d/b/a Touchton Enterprises Inc.” and the court ruled that this was fine: “Absent a statute to the contrary, an individual has the right to be known by any name that he chooses, and a judgement entered for or against that individual in either an assumed or a trade name is valid.” Hence, a person may be known by multiple chosen names and that choice of names is theirs to make, and neither the courts nor anyone else can force them otherwise, unless a statute deems so. Statutory restrictions are discussed in length in my letter of January 10. So if a person is within those statutory provisions and has assumed a new or different name, it is valid, and they have the right to use it throughout their life.

Now returning more immediately to § 668.36 (b)(2), if the student shows an institution a card that bears a certain name, and the school can identify that student by that name, there is nothing in this code that prohibits the school from honoring the student’s right to interact and do business (in this case apply for financial aid) in whatever other name or names they choose. The duty of the university is merely to report, as clarified earlier, a number that must be different than on their FAFSA application.

So, to review what the codes say thus far, if the Secretary does not receive verification from the SSA, and the school cannot provide a *new* number that *will* give the Secretary verification through the SSA, then no funds will be dispatched to the student. These codes, most specifically (b)(2), are about providing a social security number with which the Secretary of Education will get verification. If for whatever reason the Secretary cannot receive verification from the SSA, then no funds are to be given. Funding rests purely and ultimately in the Secretary’s verification of the number (also see USC, Title 20, § 1091 (p)(2-3)).

It is also noteworthy to mention that throughout these codes, § 668.32 and § 668.36, and in USC, Title 20, § 1091 (p)(1-4) (the guiding US code), no reference at all is made of any other indica of the person, their name, age/birth-date, gender, home address, parents names, etc.—only the social security number is spoken of, so it is not made precisely clear what other indica that the Secretary might use to confirm with the Social Security Administration what a person’s correct number is.

Moving on in this analysis, in the next portion, § 668.36 (c), if the student has somehow or for some reason gotten a loan, the educational institution is to immediately inform the agency

making the loan to stop dispatching the funds until the number is verified.

The final parts of § 668.36 ensure that no one is held accountable for any incorrect numbers, unless some kind of fraud is involved:

(d) Nothing in this section permits the Secretary to take any compliance, disallowance, penalty or other regulatory action against—

(1) Any institution of higher education with respect to any error in a social security number, unless the error was the result of fraud on the part of the institution; or

(2) Any student with respect to any error in a social security number, unless the error was the result of fraud on the part of the student.

So, unless fraud is involved, the Secretary of Education cannot do anything to punish, penalize or otherwise the university or the student if the recorded numbers are in error. “Fraud” is used here as the grounds for any retaliatory measures that could be taken by the Secretary. To refer to Black’s Law Dictionary once again, it reads:

fraud, *n.* **1.** A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. ● Fraud is usu. a tort, but in some cases (esp. when the conduct is willful) it may be a crime. — Also termed *intentional fraud*. [Cases: Fraud Key1, 3, 16.] **2.** A misrepresentation made recklessly without belief in its truth to induce another person to act. [Cases: Fraud Key31.] **3.** A tort arising from a knowing misrepresentation, concealment of material fact, or reckless misrepresentation made to induce another to act to his or her detriment. [Cases: Fraud Key13(3).] **4.** Unconscionable dealing, esp., in contract law, the unfair use of the power arising out of the parties’ relative positions and resulting in an unconscionable bargain. [Cases: Contacts Key1. C.J.C. Contacts §§ 2-3, 9, 12.]

Simply, fraud is about willfully or recklessly being deceptive to force another to act to their detriment or commit a crime, or also it can mean to most unfairly take advantage of another. So if the institution or the student are *not* involved in any sort of deceptions as such (not taking advantage of another by stealing their money, etc.), in their straightforwardness, neither can be held accountable for any incorrect numbers in the records.

Returning for a moment to an instance in which a student might have a card or birth certificate that does not bear a name which they use in their personal and financial life, there is actually a good amount of case law which speaks of fraud in such instances. The cases quoted below are explained in my letter of January 10, 2007, but below I will explain the aspects of them which are applicable here. Clearly sections § 668.32 and § 668.36 of Title 34 of the Code of Federal Regulations straightforwardly relate to the accuracy of the number itself, but as it might be tempting for an educational institution to get caught up in the perception that somehow these regulations cover more than the number, but somehow also the accuracy of one’s name on their card or other paperwork; this is yet another reason to quote these, so that a school might feel assured that if they were to change and allow a student to go by a different name in the records and the Secretary of Education came after them, they could veritably quote these cases as

revealing that the change of one's name had nothing to do with fraud, and thus the school is absolved of responsibility of any of "inaccuracy" possibly perceived by them. As well of note, none of the cases below have been overruled. These rulings still stand.

In the case of *In re McUIta* (1911), 189 F. 250, a certain person moved from New York State to Pennsylvania, by common law, at will, assumed the name of "J. D. McUIta," and then went bankrupt after several years of doing business in that new name. In his bankruptcy, he was charged with "fraud," "in that he did not inform his creditors of his right name," but the court ruled that because, under his new name, he had been completely honest in all his dealings, that because of that honesty, his accuser's claim of fraud was false:

This exception charges the bankrupt with fraud in obtaining the goods and merchandise purchased, in that he did not inform his creditors of his right name, and therefore he did not obtain title to the goods which he claims as exempt. We dismiss this exemption. A name is used merely to designate a person or thing. It is the mark or indica to distinguish him from other persons, and that is as far as the law looks. *In re Snook*, supra; *Rich v. Mayer* (City Ct. N. Y.) 7 N. Y. Sup. 69, 70. They are merely used as means of indicating identity of persons. *Meyer v. Indiana National Bank* 27 Ind. App. 354, 61 N. E. 596. There is nothing in the evidence to show that any fraud was committed by the bankrupt in purchasing the goods. They were sold to him under his assumed name (the creditors never knew until after the institution of bankruptcy proceedings and the adjudication, that the bankrupt was doing business under an assumed name;) and he took title of the goods and could have disposed of them under his assumed name and given a good title to the same. Credit in this case was given to the man—not the name—and that man was J. D. McUIta.

This very much helps one to understand the nature of fraud in relation to a common law name change. Like J. D. McUIta, one can change their name at will as long as they are honest and have integrity in their dealings with others. And even no mention of the old name or names is really necessary, only to act without fraud in all of one's dealings.

To further clarify the meaning of fraud in relation to common law name change, in the next case, *United States v. McKay* (1924), 2 F.2d 257, a couple who had assumed different names than their birth names were illegally selling liquor out of their home during the Prohibition. The warrant issued to search their premises was made out using their new name of McKay, but the accused tried to get out of being prosecuted due to that the warrant was issued under their assumed names. In response, the court affirmed:

Under the common law a man can change his name at will, provided it is not done with a fraudulent purpose; he may sue and be sued by such adopted name, and will be bound by any contract into which he enters in his adopted name. [And this] is not abrogated by the fact that a procedure is provided by statute for the change of one's name.

Here again, some persons changed their name at will, but in this case "a fraudulent purpose" was involved. Thus, as long as one is being honest in their dealings with others, no matter the name

they are using, they cannot be charged with fraud.

From the case law and codes above, if an institution *already knows* a person by their birth name or another name, and that person openly and transparently requests that their name be changed, there is no room for misunderstanding and no sight of deception regarding whom the new name belongs to. Fraud has to do with deception for unjust gain.

Returning now to the code, specifically § 668.36 (d)(1-2), if one's name (beyond simply one's number), is somehow, some way, construed as being under the umbrella of these ordinances, then as "errors" in the number are acknowledgeable as long as fraud is not involved, then name must be also. As long as all actors are behaving in honesty and integrity under such an umbrella interpretation, there is nothing keeping an educational institution from honoring a student's personal control over the indicators of their person. No one is punished or censured for discrepancies in the records.

Still, reasonably, this is a false interpretation. These specific federal regulations, § 668.32 and § 668.36, speak nothing at all of a student's name as a qualifier for aid. If the student's name were a qualifier for aid, it would explicitly set this forth. If name was important, it would explicitly say, "The institution shall ensure that the Secretary is notified of the student's accurate **name and** social security number." Currently it only reads, "...the student's accurate social security number" (§ 668.36 (b)(2)). The institution is only stipulated to relay a number for the Secretary to verify with the SSA.

To summarize, these codes act as a formula for granting financial aid — in the end, that is the only thing they do. Specifically though they set forth the actions and duties of the Secretary of Education, the educational institution, and the student. The Secretary seeks verification of a number, the educational institution provides an alternate number if the student provides one, and if the Secretary cannot for whatever reason get verification of that number with the Social Security Administration, then no funds are released to the student. And if everyone is being straightforward in their dealings, then no one is penalized or censured.

Now that these codes have been read through, analyzed, and clarified, how do they pertain to my case with this university? I am requesting a name and gender change and you, this university, but you are refusing to change particularly my name in your records because you say that you need to see a social security card in my new name in order to grant my request.

First of all, according to § 668.31, the section explaining "Scope," these codes are functions for determining eligibility for assistance. If you meet the requirements, then you receive financial aid. I did file a FAFSA for the 2006-2007 academic year in my accurate new name and I did include my accurate social security number on the forms. One of the requirements to receive financial assistance is to "Ha[ve] a correct social security number" (§ 668.32 (i)). But I am asking for a name change, not a change in my social security number. These codes appear to not apply to me.

Still, in agreement with § 668.36 (a)(1-3), in my case, I am told, from the meeting on February 12, that because my social security card does not bear my new name, that the Secretary of Education was not able to verify my number with the SSA and so a red flag was placed on my application in accordance with § 668.36 (a)(3). Also at that meeting I was told that because of that red flag the school could not grant my request for a name change, and so, to correct the flag,

the university needs to see, from me, a social security card in my new name. The codes quoted to me do not deal with such situations at all.

My social security card, though it has my old name on it, it has the same *number* that the Secretary already has, so it would do me no good at all to show it to you, the university, as I “can” do (see § 668.36 (a)(3)), because, according to these codes, you are *only* to report corrections to my social security *number*, not my name. And as the code suggests that I could also show you some *other* evidence than my card, and I do have many personal and business documents that bear my accurate number and my new name—once again you are still *only* to report a different *number* to the Secretary than that which on the FAFSA—and so again it would do me no good toward receiving funds or otherwise, to show you such evidence. And to show you such evidence for the purpose of a name change, nothing is mentioned in the code about this as you claim, only that you are to report changes in the number itself. Thus, the using of these codes as a rationale for denying a name change, truly, is a work of faulty logic. There is nothing in these codes requiring you to see a social security card in my new name in order for you to change my name in your records.

Okay, so it would do no good to show you any evidence related to these codes as the only peep that the Secretary hears from you is regarding the number alone. But if you did change my name in your records as it is my at will right to control, do business, and conduct my life in any name I choose (see *California Packing Corp. v. Kandarian*, 62 Cal. App. 729, *Abdul-Jabbar v. General Motors Corporation*, 85 F.3rd 407, and *Touchton v. Dover Corp./Rotary Lift Div.*, 319 F.Supp2d 1290) unless fraud is involved (see *In re McUita*, 189 F. 250 and *United States v. McKay*, 2 F.2d 257), then if I were to indeed show my card—because you *already* knew me by my old name and/or because I *can* provide you with documents that do show my number to be associated with both the old and new names, you, the university, would be able to rightly tell by seeing that *number* on my card that it is indeed correct. Also, for ease, you might make a very small notation in your records that at one time I went by a different name, so that such verification (though not required or needed in my case in relation to these codes) might go more smoothly. And in your honesty and integrity in honoring and applying identity law concerning my control over my own names and associated identities (used and unused) (see cases immediately above)—in such honesty, you could not be held accountable for any “errors” perceived by the Secretary (§ 668.36 (d)(1-2)). As well, because one may very well have control over multiple personal indica and identities, no records can thus be required to be kept in perfect alignment with each other by any reasonable means.

It is also important to note that when you do not change my name and gender to conform to my personal choosing for my life and interactions, it absolutely, many times “induce[s] humiliation, embarrassment, and mental distress.” (See *Abdul-Jabbar v. General Motors Corporation*, 85 F.3rd 407). With integrity and without fraud, the names and other indica by which I choose to live my life are mine to govern and control concerning who will use them and how they will be used. I choose that you will use “Olympia Tveter” and the indica of “female” in the records of this university.

And so, as these codes do not hold you accountable for the recorded accuracy of a student’s name, and really not even their number, unless perhaps you, the university, are personally involved in fraud, and as they relate in no way to the changing of one’s name, then you have nothing to fear by changing mine. Still, past refusals to change my name and gender were against a mountain of laws, future refusals would be as well.

I will expect a written reply within the two weeks following your receipt of this letter. I hope that the clarifications of this letter will help you to better understand your responsibilities and duties, and empower you with knowledge, courage, and wisdom to honor my rights, correct your policies, and obey the law.

Many thanks,

Olympia Tveter