



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVENUE, SW
WASHINGTON, DC 20202-1475

REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, DC

August 14, 2015

Dr. Tony Zeiss, President
Central Piedmont Community College
P.O. Box 35009
Charlotte, North Carolina 28235-5009

Re: OCR Complaint No. 11-14-2265
Letter of Findings

Dear Dr. Zeiss:

This letter is to notify you of the disposition of the complaint that was filed with the District of Columbia Office for Civil Rights (OCR), within the U.S. Department of Education (the Department), on May 13, 2014, against Central Piedmont Community College (the College). The complaint alleged that:

1. The College discriminated against the Student based on her gender when:
 - a. College personnel requested the Student provide identification and medical documentation to verify her sex;
 - b. The College suspended the Student and escorted her off campus;
 - c. College personnel refused to allow the Student to make up work missed while she was suspended;
 - d. College personnel instructed the Student to use gender-neutral restrooms; and
 - e. College personnel discouraged the Student from filing a complaint and ultimately did not allow her to file a complaint under the College's Title IX grievance procedures.
2. The College's Title IX grievance procedures, as applied, do not provide for equitable resolution of complaints because they do not cover XXXX students.

With regard to Allegation 2, OCR found that the College's grievance procedures, as written, did not comply with Title IX. With regard to Allegation 1, the College indicated a desire to resolve the allegation prior to the conclusion of OCR's investigation, pursuant to Section 302 of OCR's case processing manual. Therefore, the College entered into the attached Resolution Agreement to resolve both allegations. OCR's legal authority, findings, and investigative analysis are explained in detail below.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

Legal Authority

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX) and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any program or activity receiving Federal financial assistance from the Department. Because the College receives Federal financial assistance from the Department, OCR has jurisdiction over it pursuant to Title IX. Under the Title IX regulations, at 34 C.F.R. §106.31(a) and (b), a college may not treat individuals differently on the basis of sex with regard to any aspect of services, benefits, or opportunities it provides. Section (b) states that a college may not, on the basis of sex, provide different aid, benefits, or services or provide aid, benefits, or services in a different manner.

All students, including XXXX students and students who do not conform to stereotypical notions of XXXX, are protected from sex-based discrimination under Title IX.

Harassment of a student on the basis of sex can result in the denial or limitation of the student's ability to participate in or receive education benefits, services, or opportunities. Title IX prohibits discrimination resulting from harassment that is sexual in nature and/or gender-based harassment. Gender-based harassment may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex stereotyping. Thus, harassment of students for failing to conform to stereotypical notions of XXXX constitutes sex discrimination.

Under Title IX and its regulations, once a college has notice of possible harassment between students, it is responsible for determining what occurred and responding appropriately. The college is not responsible for the actions of a harassing student, but rather for its own discrimination in failing to respond adequately. A college may violate Title IX and the regulations if: (1) the harassing conduct is sufficiently serious to deny or limit the student's ability to participate in or benefit from the educational program; (2) the college knew or reasonably should have known about the harassment; and (3) the college failed to take appropriate responsive action. These steps are the college's responsibility whether or not the student who was harassed makes a complaint or otherwise asks the college to take action.

When a college knows or reasonably should know of possible harassment, it must take immediate and appropriate steps to investigate or otherwise determine what occurred. If an investigation reveals that the harassment created a hostile environment, the college must then take prompt and effective steps reasonably calculated to end the harassment, eliminate the hostile environment, prevent its recurrence and, as appropriate, remedy its effects.

Additionally, a college must comply with the procedural requirements outlined in the Title IX implementing regulations, at 34 C.F.R. § 106.8 and 106.9. Specifically, a college must adopt and publish grievance procedures providing for prompt and equitable resolution of sex discrimination complaints.

Summary of Investigation

The Student attended the College and has XXXX. She went into the women's restroom to fix her hair between classes on XXXX. The Student alleges that when she exited the restroom she was confronted by campus security who asked her for identification to ascertain her sex. The Student turned over a campus identification card, which does not designate her sex, and she was told by security that she was to leave campus and that she was suspended until further notice. Security allegedly escorted the Student off campus. The interim suspension was lifted the following day, but the Student missed one class as a result.

The Student also alleges that when she spoke to a dean (the Dean) at the College the next day she was told that if she wanted to be "protected" at the College she had to use the gender neutral (single stall) restrooms. Additionally, the Dean requested documentation proving the Student's XXXX in order to change the College's records for the Student. The Student also alleges that she was not permitted to make up the work missed due to the interim suspension. After speaking with the Dean, the Student met with the Title IX Coordinator who she alleges told her that she had no right to file a complaint as a XXXX student and that she should think carefully about what she was doing as it could result in staff losing their jobs.

Allegation 1

OCR reviewed documentation from the College and the Student and identified preliminary concerns relating to the requirement that the Student use the gender-neutral restrooms, produce documentation confirming that she has transitioned to a different sex, and receive a suspension and the subsequent refusal to allow her to make up work missed as a result of the suspension. OCR found evidence to support that the Student was required to produce identification upon exiting the women's restroom in order to determine her gender because the security guard did not feel that her appearance conformed with that of a stereotypical female.

Prior to the completion of OCR's investigation, the College requested to resolve the complaint voluntarily. The attached resolution agreement, when fully implemented, will fully address the allegation raised to OCR.

Allegation 2

The Student also alleged that she was not provided with an opportunity to file a grievance under Title IX. Specifically, the Student alleged that the Title IX Coordinator indicated that transgender students had no right to file complaints alleging violations of Title IX. The Student also provided OCR with information indicating that she was discouraged from filing a Title IX complaint by the College's Title IX Coordinator, who instructed her to consider the potential impact a complaint could have on College staff.

OCR reviewed the College's Title IX grievance procedure in place at the time of the incidents that were alleged in the complaint and determined that it did not comply with Title IX. Specifically, the procedure did not state reasonably prompt timeframes¹ for the major stage

¹ The grievance procedure stated that the parties "may" receive a response to the complaint within thirty working days, and that the President may extend the period, but it did not provide a clear timeframe for when the parties will

stages of the investigation and it allowed for mediation in all cases in which a complainant filed a “waiver of complaint” form. It appeared on the face of the policy that a “waiver of complaint” waived a complainant’s right to file a complaint under the College’s formal process, in favor of participating in a less formal process. The College’s Title IX grievance procedure also did not state that both parties will be provided with written notice of the outcome of the investigation. Finally, the definition of harassment contained in the procedures was not correct. Specifically, the College’s definition of verbal harassment required that such verbal conduct must “convey[] a threat of violence or is likely to provoke immediate, physical retaliation.”

During OCR’s negotiation with the College, the College revised its Title IX procedure. The current Title IX procedure resolves most of OCR’s concerns with the procedure in place at the time of the incidents alleged in the complaint. However, the current procedure does not state reasonably prompt timeframes for the major stages of the investigation and fails to provide both parties with an equitable right to appeal as the complainant is not afforded a right to appeal a determination that there are no reasonable grounds to warrant proceeding with an investigation or with a hearing, while the respondent is afforded the right to appeal any dispositive finding that is adverse to the respondent. The attached resolution agreement, when fully implemented, will ensure that the College’s procedures will comply with Title IX.

Conclusion

This concludes OCR’s investigation of the complaint. This letter should not be interpreted to address the College’s compliance with any other regulatory provision or to address any issues other than those addressed in this letter. 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. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the College may not retaliate against an individual who asserts a right or privilege under a law enforced by OCR or who files a complaint, testifies, or participates in an OCR proceeding. If this happens, the individual may file a retaliation complaint with OCR. Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

We appreciate the College’s cooperation during the resolution of this complaint, and particularly the assistance of the College’s attorney, Stephen J. Dunn. If you have any questions, you may contact Sebastian Amar at (202) 453-6023 or via e-mail at sebastian.amar@ed.gov or Samantha Shofar at (202) 453-5829 or via e-mail at samantha.shofar@ed.gov.

Sincerely,

receive notice of the outcome nor did it state that parties will be notified of any delay if a decision is not reached within thirty days.

/S/
Kay Bhagat
Team Leader, Team III
District of Columbia Office
Office for Civil Rights

cc: Stephen J. Dunn, Esq. (via e-mail)