

# UNITED STATES DEPARTMENT OF EDUCATION OFFICE FOR CIVIL RIGHTS, REGION I 5 POST OFFICE SQUARE, 8th FLOOR BOSTON, MASSACHUSETTS 02109-3921

February 25, 2019

Katherine Bergeron
President
Office of the President
Connecticut College
President@ConnColl.edu

Re: Complaint No. 01-17-2303

Connecticut College

Dear President Bergeron:

This letter is to advise you of the outcome of the complaint that the U.S. Department of Education (Department), Office for Civil Rights (OCR) received against Connecticut College (the College). The Complainant alleged that the College discriminated against her on the basis of sex. Specifically, the complaint alleged that the College failed to respond promptly and equitably to allegations of sexual harassment filed by and against the Complainant by, *inter alia*, failing to consider the other student's retaliatory intent in filing, and including statements in the report of investigatory findings that evidenced bias. As explained further below, before OCR completed its investigation, the College expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement (Agreement).

OCR enforces 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.

Because OCR determined that it had jurisdiction and that the complaint was timely filed, OCR opened the following allegation for investigation:

Whether the University failed to respond promptly and equitably to complaints, reports, and/or incidents involving the Complainant of harassment based on sex, including sexual harassment, of which it had notice, and if so, whether the Complainant was subjected to a sexually hostile environment, in violation of 34 C.F.R. Sections 106.8(b), 106.31(a) and (b).

#### **Background**

The Complainant enrolled in the College in the XXXXXXX. During the XXXXXX school year, she began a relationship with another student (Student B). The relationship ended in XXXXXX.

In responding to these complaints, the College interviewed both parties with their chosen support persons, interviewed ten other witnesses, provided the parties with its investigative report, allowed both parties an opportunity to respond, issued its final findings, and allowed an appeal of those final findings. Both parties were ultimately found not responsible.

# **Legal Standard**

Title IX prohibits discrimination on the basis of sex in education programs or activities operated by recipients of Federal financial assistance. The Title IX regulation, at 34 C.F.R. § 106.31(a), states 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 of Federal financial assistance. Sexual harassment that creates a hostile environment can be a form of sex discrimination prohibited by Title IX.

The Title IX regulation, at 34 C.F.R. § 106.8(b), requires recipients to adopt and publish grievance procedures that provide for the prompt and equitable resolution of student and employee complaints of Title IX violations. In response to a complaint of sexual harassment, a recipient must take prompt and equitable action. OCR evaluates on a case-by-case basis whether the resolution of a sexual harassment complaint is prompt and equitable.

#### **Analysis**

# 1. The College's Grievance Procedures

OCR determined the Investigators looked to three policies/procedures for the investigation of the complaints filed by the Complainant and Student B: (i) the two handbooks that covered the time period of the relationship, to assess whether the conduct had violated the policies in existence at that time (i.e., the Connecticut College January 2015 Student Handbook and the Connecticut College 2015-2016 Student Handbook), and (ii) the handbook in effect at the time of the complaints, to determine the procedures and process to be followed in investigating the complaints (i.e., the Connecticut College 2016-2017 Student Handbook). Specifically, OCR determined that the Investigators applied the procedure set forth in the 2016-2017 Student Handbook for responding to complaints of sexual misconduct (2016-2017 Procedure) in investigating the complaints.

OCR determined that the 2016-2017 Procedure appeared to be consistent with the requirements of Title IX. Since the College requested to voluntarily resolve the complaint, OCR did not complete its investigation regarding the 2016-2017 Procedure and its implementation. OCR also reviewed the College's current "Title IX Policy", and found there were no material differences between the policy contained in the 2016-2017 Student Handbook and the current policy. In addition, because the College requested a voluntary resolution, and OCR deemed such a resolution appropriate, OCR has not fully evaluated the College's current procedure. The Agreement will ensure that the College's current grievance policy/procedure meets the requirements of Title IX.

# 2. <u>Implementation of the College's Grievance Procedures</u>

The College's Title IX process features three main stages: (i) a preliminary inquiry during which the College decides whether to fully investigate the complaint, (ii) the investigation, and (iii) any discipline deemed appropriate in light of the investigation. Based on its investigation to date, OCR finds that the College's process provided equal rights and opportunities to the Complainant and Student B during all three stages of processing Student B's complaint. Specifically, (i) both parties were provided information about their ability to have a support person and their support persons were able to be present equally, (ii) both parties were asked for witnesses who could support their statements, (iii) both parties were given equal access to the draft findings, with an equal opportunity to respond, and (iv) both parties were given an equal opportunity to appeal the findings.

<sup>&</sup>lt;sup>2</sup> https://www.conncoll.edu/media/new-media/title-ix/Title-IX-Policy.pdf, last accessed 12/17/18.

<sup>&</sup>lt;sup>3</sup> However, the College's current policy is bifurcated. The publicly available "Title IX policy" includes information about what conduct could constitute a violation of Title IX, information about how to report, and additional resources for students subjected to discrimination. It does not include details about the procedure for processing complaints. That information is contained in the student and faculty handbooks, which are only available through a login.

Based on OCR's investigation to date, however, it appears the College may have processed the complaint filed by the Complainant as a combination of the first two stages, which may have been intended to streamline the process in light of the evidence already gathered in the investigation of Student B's complaint, but may have resulted in Student B not receiving notice about or the investigation of Complainant's allegations, nor an opportunity to provide witnesses.

Because the College expressed a willingness to voluntarily resolve this complaint, OCR has not completed its investigation into the equity of the processing of the complaints. However, because the concerns noted above would have affected Student B, who was ultimately found not responsible and who was given the opportunity later in the process to provide additional information, OCR determined that no individual remedy is necessary.

In her complaint to OCR, the Complainant also expressed concern with the thoroughness of the College's investigation, including whether it adequately considered her allegation that Student B's XXXXXX filing was retaliatory. OCR determined that the Investigators obtained evidence relevant to each of the allegations raised by the Complainant and Student B, and that each of these allegations was analyzed by the Investigators and addressed in their findings, including Student B's alleged retaliatory motives. Therefore, OCR determined that the evidence does not indicate that the College failed to appropriately consider the Complainant's assertion that Student B subjected her to retaliation, and OCR did not find anything inequitable about the thoroughness of the investigation overall, except for the concern noted above that Student B may not have been provided notice nor an opportunity to provide witnesses in response to the Complainant's allegations.

# Conclusion

Prior to the conclusion of OCR's investigation and pursuant to Section 302 of OCR's *Case Processing Manual*, the College expressed an interest in resolving this complaint and OCR determined that a voluntary resolution is appropriate. Subsequent discussions between OCR and the College resulted in the College signing the enclosed Agreement which, when fully implemented, will address all of the allegations raised in the complaint. OCR will monitor the College's implementation of the Agreement.

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.

<sup>&</sup>lt;sup>4</sup> Student B had the opportunity to comment on the draft findings and could have appealed the findings if found responsible.

Please be advised that the College must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. 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.

If you have any questions, you may contact Civil Rights Attorney Catherine Deneke at (617) 289-0080 or by e-mail at <a href="mailto:Catherine.Deneke@ed.gov">Catherine.Deneke@ed.gov</a>.

Sincerely,

/s/

Adrienne M. Mundy-Shephard Acting Regional Director

Enclosure