



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

January 31, 2022

James Bologna, President and Chief Executive Officer
By email: jbologna@porterchester.com

Re: Complaint No. 01-21-2215
Porter and Chester Institute

Dear President Bologna:

This letter is to advise you of the outcome of the complaint that the U.S. Department of Education, Office for Civil Rights (OCR) received against Porter and Chester Institute. The Complainant alleged that the Institute discriminated against her on the bases of sex and disability. As explained further below, before OCR completed its investigation, the Institute expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement.

OCR enforces Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. Section 1681 *et seq.*, 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 U.S. Department of Education. OCR also enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. Section 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in any program or activity receiving federal financial assistance from the U.S. Department of Education. Because the Institute receives federal financial assistance from the U.S. Department of Education, OCR has jurisdiction over it pursuant to Title IX and Section 504.

OCR opened the following legal issues for investigation:

1. Whether the Institute treated the Complainant differently based on sex when an instructor made discriminatory comments about her, and women in general, and did not make such comments about men, in violation of 34 C.F.R. Section 106.31(a) and (b);
2. Whether the Institute failed to promptly and equitably resolve the Complainant's complaint about an instructor's discriminatory comments about women, in violation of 34 C.F.R. Sections 106.8(c) and 106.31(a) and (b); and
3. Whether the Institute failed to reasonably modify its attendance requirements as necessary to avoid discriminating against the Complainant based on her disability, in violation of 34 C.F.R. Sections 104.4(a) and (b) and 104.43(a).

Legal Standards

The Title IX regulation, at 34 C.F.R. § 106.31(a), provides that no person shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under the Institute’s education programs or activities on the basis of sex. When investigating an allegation of different treatment, OCR first determines whether there is sufficient evidence to establish an initial, or prima facie, case of discrimination. Specifically, OCR determines whether the recipient treated an individual less favorably than similarly situated individuals of a different sex. If so, OCR then determines whether the recipient had a legitimate, nondiscriminatory reason for the different treatment. Finally, OCR determines whether the reason given by the recipient is a pretext, or excuse, for unlawful discrimination.

The Title IX regulation, at 34 C.F.R. § 106.8(c), 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 other than formal complaints of sexual harassment. A recipient must provide notice to required persons of the recipient’s grievance procedures, including how to report or file a complaint of sex discrimination and how the recipient will respond. OCR evaluates on a case-by-case basis whether the resolution of such a complaint is prompt and equitable. Whether OCR considers an investigation to be prompt as required by Title IX will vary depending on the complexity of the investigation and the severity and extent of the alleged conduct.

The Title IX regulation, at 34 C.F.R. § 106.8(a), requires recipients to designate and authorize at least one employee to coordinate its efforts to comply with its Title IX responsibilities, which employee must be referred to as the “Title IX Coordinator.” The regulation requires recipients to notify required persons of the name or title, office address, electronic mail address, and telephone number of the employee or employees designated as the Title IX Coordinator.

The Section 504 regulation, at 34 C.F.R. § 104.7, requires recipients that employ fifteen or more persons to designate at least one employee to coordinate its efforts to comply with its Section 504 responsibilities. The Section 504 regulation, at 34 C.F.R. § 104.8(a), requires such recipients to notify required persons of the designated employee(s).

The Section 504 regulations, at 34 C.F.R. §§ 104.4(a) and (b) and 104.43(a), provide that a qualified person with a disability may not be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in a recipient’s aids, benefits, or services on the basis of disability. OCR interprets these regulations to require a recipient to modify its requirements as necessary to ensure that such requirements do not discriminate or have the effect of discriminating on the basis of disability against a qualified student with a disability. A recipient may establish reasonable requirements and procedures for students to provide documentation of their disability and request reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability. Students are responsible for obtaining disability documentation and for knowing and following the procedures established by the recipient. Once the student has provided adequate notice and documentation of his/her disability and the need for modifications due to the disability, the recipient must provide

the student with appropriate modifications that are necessary to afford the student an equal opportunity to participate in the recipient’s program. However, the recipient is not required to provide modifications that would result in a fundamental alteration of the recipient’s program or impose an undue burden.

Summary of Preliminary Investigation

Background

The Complainant was a full-time student enrolled in the Institute’s XXXXXXXXXXXX program from XXXXXXXXXXXX through XXXXXXXXXXXX. She informed OCR that she was the XXXX XXXXXXX student and that one of her instructors routinely made sex-based comments in class. For example, when students were given a heavy box of books and tools, the Instructor allegedly told the Complainant “you’re not going to be able to carry all that” and she “couldn’t handle it as a woman.” The Complainant said she asked the Instructor if he was calling her weak, to which he replied that he “just want[ed] the boys to step up and help” her. She also remembered the Instructor telling other students to “stop whining like a little girl.” The Complainant said that the Instructor would make it sound like it was bad to be a woman. She could not remember the specific days on which the Instructor made such comments, but noted that they occurred in about two thirds of his classes. The Complainant said that the Instructor was very sexist toward her and said that people at the Institute acted like they didn’t want a female student in their program. She informed OCR that they acted like her being there “ruined their macho.”

The Complainant explained that the Instructor would also hang around her which made her uncomfortable. The Complainant said that the Instructor would stand too close to her but did not stand that close to the male students when he was helping them. The Complainant also said that he was the kind of guy who would look her up and down.

The Complainant informed OCR that she first brought these issues up with the Institute on XXXXXXXXXXXX, when she emailed the Institute’s then-Campus Director of Operations and Education (former CDOE). The Complainant wrote that while she was used to the way women are treated in the field, the Instructor had made a sexist remark to her that she was not comfortable with. The former CDOE thanked the Complainant for expressing her concern and asked to schedule a meeting with the Complainant. The Complainant also shared screen shots of text messages she exchanged with the former CDOE from XXXXXXXXXXXX in which the two discussed arranging a meeting for the following day. The next text message between the Complainant and the former CDOE, concerning a different matter, was not until XXXXXXXXXXXX. The Complainant informed OCR that the former CDOE ultimately never made the time to meet with her.

In XXXXXXXXXXXX, the Complainant suffered a XXXXXXXXXXXXXXXXXXXX which left her unable to XXXXXXXXXXXX and XXXXXXXXXXXXXXXXXXXXXXXXXXXX and her XXXXXXXXXXXX off for XXXXXXXXXXXXXXXXXXXX after the accident. On XXXXXXXXXXXX, the Complainant texted the XXXXXXXXXXXX Program Coordinator (Program Coordinator) that she had XXXXXXXXXXXXXXXXXXXX into the XXXXXXXXXXXX, XXXXXXXXXXXXXXXXXXXX, and

XXXXXXXXXX XXXXXXXXXXXX. She added that she XXXXXXXXXXXXXXXXXXXXXXXXXXXX but could XXXXXXXXXXXX contact the Program Coordinator if needed. The Program Coordinator replied that the Complainant should rest up so she could return to school the following week.

On XXXXXXXXXXXX, the Complainant texted the Program Coordinator that she had XXXXXXXXXXXXXXXXXXXXXXXXXXXX and would not be back to school for a while. She added that her XXXXXXXXXXXX had asked what type of note she needed to give the school. The Program Coordinator replied that the Complainant should take all the time she needed and that he would mark her as “incomplete” so she had the option to make up missed work. He also said that she needed to provide a regular doctor’s note, and the Complainant responded that she would do so.

On XXXXXXXXXXXX, the Complainant texted the Program Coordinator that she had tried returning his call but got his voicemail. She noted that she was at a doctor’s appointment because she had XXXXXXXXXXXXXXXXXXXXXXXXXXXX the previous week and was going for XXXXXXXXXXXXXXXXXXXXXXXX that night. She informed the Program Coordinator that she was still XXXXXXXXXXXX, could still not do much XXXXXXXX, had not been able to check her school emails, and was not sure when she could return to school. She added that she was able to get a doctor’s note from her XXXXXXXXXXXX but did not know how specific he needed her to be about XXXXXXXXXXXXXXXX or how she could get the note to the Program Coordinator, as she did not want to do things wrong. She concluded that she was XXXXXXXXXXXXXXXXXXXXXXXX and apologized for her questions. The Program Coordinator responded that she should call the former CDOE and provided her telephone number. The Complainant replied that she would do so.

On XXXXXXXXXXXX, the Complainant texted the former CDOE that she sustained a XXXXXXXXXXXXXXXXXXXXXXXX the previous month and had a few XXXXXXXXXXXXXXXX since then. She noted that she wrote to the Program Coordinator but he told her to get in contact with the former CDOE, and that she would have preferred to call but was having a hard time XXXXXXXX still. The Complainant noted that she had only been allowed minimal XXXXXXXXXXXX due to her XXXXXXXXXXXXXXXX, so even doing the online work had been impossible for her. She informed the former CDOE that she could get doctors’ notes from her XXXXXXXXXXXXXXXX and primary care provider, but that they needed to know what the school required and how the notes needed to be phrased. On XXXXXXXXXXXX, after receiving no response from the former CDOE, the Complainant texted her again to inquire if she received her message. There is no evidence in the record of a response from the former CDOE.

On XXXXXXXXXXXX, the Complainant texted the Program Coordinator that she wrote to the former CDOE twice because phone calls weren’t as good for her, but she received no response and was panicking because she didn’t know what to do. The Program Coordinator responded that the former CDOE had been expecting the Complainant’s call the day he gave her the former CDOE’s telephone number. He added that, because the Complainant missed XXX courses in a row and due to her lack of communication and “nonexistence” online, she would be withdrawn

from the program soon.¹ The Program Coordinator wrote that paperwork from the doctor and communication to the former CDOE “would have saved” the Complainant, but that she had done none of that. He noted that she needed to get hold of the former CDOE to try to reenroll, but that she was XXXXXXXXXXXXXXXXXXXX so the reenrollment process would be “a total nightmare.” The Complainant responded that she had been trying to communicate as best she could after a XXXXXXXXXXXXXXXXXXXX and had asked per her doctor’s request to know what the notes needed to say and who to give them to, but she never received an answer. The Program Coordinator then inquired if the Complainant had called the former CDOE when he told her to, to which the Complainant responded that she was about to have an XXX when she received the message and had messaged her the next day. The Program Coordinator then replied that he would call the former CDOE.

There is no evidence in the record of any other relevant communications between the Complainant, the Program Coordinator, and the former CDOE other than those described above during the relevant time period. The Institute informed OCR that it had no documentation or correspondence related to the Complainant’s allegations. It said that the complaint was first reported to the Institute through an email from the Complainant on XXXXXXXXXXXX regarding a XXXXXXXX dispute following the Complainant’s withdrawal.²

The Institute provided OCR notes from a XXXXXXXXXXXX meeting between the Instructor and the Institute’s current CDOE and Vice President of Human Resources. The Instructor was asked if he or his students “ever use ‘guy talk’ or joked around using ‘guy talk’ in the lab.” According to the notes, the Instructor responded “I’m sure. In our trade. Yes.” When asked if he allowed this, he responded that “he doesn’t always hear it,” but “[i]f he does hear it [he] pulls them aside and says, ‘[w]e need to act like adults.’” The Instructor was also asked whether he remembered any issues with “guy talk” in the lab while the Complainant was a student. The Instructor responded that he had heard some students use “inappropriate ‘crude’ language” and speak of “old girlfriends or similar topics,” and he noted that “[m]ost of the guys were married, so it was crude sexual talk.” He explained that “[u]sually, it was an issue of dropping the f-bomb” and he would tell the students that it was not appropriate language when he heard it.

According to the meeting notes, the Instructor said he never “teased, picked on or sexually harassed” the Complainant, even as “a joke.” He also said that “no one ever teased [the Complainant] in [his] presence.” The Instructor similarly refuted ever having made statements such as “[d]on’t be such a girl” or commenting that she needed help because of her gender. When asked whether the former CDOE ever came to him regarding a complaint from the Complainant, the Instructor said no. He said that the first time he ever heard about a complaint

¹ The Institute’s Catalog states that it “will assume [a] student has withdrawn if the student has been absent for fourteen consecutive calendar days and has not arranged for a Leave of Absence.” See <https://porterchester.edu/upload/PCI-catalog.pdf#page=20>. The Complainant’s Unofficial Transcript states that she had already been withdrawn from the Institute on XXXXXXXXXXXX.

² The Complainant’s Unofficial Transcript states that she received an X for XXX courses and a X for a XXXXX course for which she had enrolled during the relevant term. The Transcript states that she earned XXXXXXXXXXXXXXXXXXXX for these courses.

from the Complainant was from another CDOE who was covering after the former CDOE left the Institute.

The Institute also provided OCR with notes from a meeting held the same day between the Program Coordinator and the current CDOE and Vice President of Human Resources. According to the notes, the Program Coordinator stated that the former CDOE told him that there was a complaint of “sexual harassment” from the Complainant about the Instructor. The Program Coordinator did not remember the date of this conversation but said that his best estimate was that it was sometime in XXXX. The Program Coordinator said in the meeting that he did not speak with the Instructor about it and that he did not know if the former CDOE ever spoke with the Instructor.

The Institute informed OCR that “the CDOE is available to provide guidance to all students regarding requests for accommodations (referral to student services) and/or [the] complaint/grievance process.” The Institute’s policy regarding requests for reasonable modifications on the basis of disability states that “[s]tudents with physical or learning disabilities who may require accommodations are encouraged to contact the . . . CDOE[] to document the disability and begin the accommodations request process.”

In response to OCR’s inquiry, the Institute identified its Director of Learning Resources and Student Services (Director of Learning Resources) and Vice President of Regulatory Compliance as its Section 504 and Title IX Coordinators. OCR was unable to locate any reference to the Director of Learning Resources, the Vice President of Regulatory Compliance, or a Section 504 or Title IX Coordinator on the Institute’s website.

The Director of Learning Resources told OCR that she was just made aware that any of the events described above had happened, and she had no documentation to review until just before her interview with OCR in January of 2022. She informed OCR that students should contact her with requests for reasonable accommodations, but it was also permissible for students to contact the CDOE, who would then contact her. She noted that the CDOE was frequently the first person a student would reach out to. When asked whether the former CDOE would have been the correct person for a student to contact if they had a question about a disability accommodation in XXXXXXXX, the Director of Learning Resources said yes. She explained that students often reach out to the CDOE first because they might not know her contact information. She said that the CDOE is responsible for the daily educational operations on each Institute campus, and as a result the CDOE is often the first to find out about incidents on campus. The Director of Learning Resources said she never worked very closely with the former CDOE, who rarely reached out to her for anything. After viewing the text message screenshots provided by the Complainant, the Director of Learning Resources said that the fact that the former CDOE did not respond to the Complainant was “concerning.”

Analysis

With respect to Allegation 1, the Complainant alleged that approximately two thirds of the time in class the Instructor would make disparaging sex-based comments, including telling the

Complainant that she would need to make multiple trips carrying books and tools to her car because she “couldn’t handle it as a woman” and telling male students “not to be ‘such a girl’” and to “stop whining like a little girl.” While the Institute informed OCR that the Instructor denied making these specific comments, he said he was “sure” that students “joked around using ‘guy talk’ in the lab,” including by using “inappropriate ‘crude’ language.” OCR has not yet determined whether the Instructor or any of his students engaged in discriminatory conduct.

With respect to Allegation 2, the Complainant informed OCR that she complained to the former CDOE about the conduct alleged in Allegation 1, but the former CDOE never made time to meet with her in person about the concerns. The Institute informed OCR that the Program Coordinator said that the former CDOE had told him that there was a complaint of “sexual harassment” involving the Instructor, but there is no indication that the Institute took any action to resolve the allegations. OCR is also preliminarily concerned that employees at the Institute may not understand the difference between sexual harassment and other forms of sex discrimination.

With respect to Allegation 3, it appears that the Complainant was told to contact the former CDOE about questions regarding her XXXXXXXXXXXX and the type of doctor’s note she needed, and the former CDOE appears to have not responded to the Complainant or contacted the Director of Learning Resources about the Complainant’s questions, which may have resulted in the Complainant’s involuntary withdrawal from the Institute. OCR shares the Director of Learning Resources’ concern regarding the way the situation was handled by the Institute.

In addition, OCR is concerned that the Institute’s Section 504 and Title IX Coordinator told OCR that she was not made aware of these allegations until shortly before her interview with OCR. OCR is further concerned that the Institute may not have notified required persons of the identity of, and appropriate contact information for, the Section 504 and Title IX Coordinator.

Conclusion

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

This concludes OCR’s investigation of the complaint. This letter should not be interpreted to address the Institute’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. OCR would like to make you aware that individuals who file complaints with OCR may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the Institute 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.

Sincerely,

Paul Easton
Compliance Team Leader

Enclosure

cc: Vicki Kane, Ed.D., Vice President of Academics (*By email*: Vicki.Kane@yti.edu)