



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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RACHEL POMERANTZ
DIRECTOR
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May 5, 2022

Sent via email only to dschejbal@excelsior.edu

Dr. David Schejbal, Ph.D.
President
Excelsior College
7 Columbia Circle
Albany, New York 12203

Re: Case No. 02-20-2062
Excelsior College

Dear President Schejbal:

This letter is to notify you of the determination made by the U.S. Department of Education (Department), Office for Civil Rights (OCR), with respect to the complaint filed against Excelsior College on December 16, 2019.

The Complainant alleged that the College discriminated on the basis of sex by sponsoring a Women in Cybersecurity (WiCyS) program (Allegation 1).

The Complainant also alleged that the College discriminated on the basis of sex by offering two technology-related scholarships that give preferential consideration to female students: (a) the Dr. Jane LeClair '94 '95 Scholarship Fund for Students in Technology (scholarship 1), and (b) the Stephen Pribyl Scholarship Fund (scholarship 2) (Allegation 2).

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), as amended, 20 U.S.C. § 1681 *et seq.*, and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in education programs and activities of recipients of financial assistance from the Department. Because the College is a recipient of financial assistance from the Department, OCR has jurisdictional authority to investigate this complaint under Title IX.

The regulation implementing Title IX, at 34 C.F.R. § 106.37(a), states that, in providing financial assistance to any of its students, a recipient generally may not (1) on the basis of sex, provide different amounts or types of such assistance, limit eligibility for such assistance, apply different criteria, or otherwise discriminate; and (2) through solicitation, listing, approval, provision of facilities or other services, assist any foundation, trust, agency, organization, or person that provides assistance to any of the recipient's students in a manner which discriminates on the basis of sex.

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The regulation implementing Title IX, at 34 C.F.R. § 106.37(b), nevertheless allows a recipient to administer or assist in the administration of certain sex-based scholarships, fellowships, or other forms of financial assistance established pursuant to domestic or foreign wills, trusts, bequests, or similar legal instruments; provided that the overall effect of the award of such scholarships, fellowships, and other forms of financial assistance does not discriminate on the basis of sex. In addition, under 34 C.F.R. § 106.3(b), a recipient may take affirmative action to overcome the effects of conditions which resulted in limited participation in one of its education programs or activities by persons of a particular sex.

The regulation implementing Title IX, at 34 C.F.R. § 106.31(a), provides 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 program or activity operated by a recipient of federal financial assistance. Additionally, the regulation implementing Title IX, at 34 C.F.R. § 106.31(b)(1), (6), and (7), states that in providing any aid, benefit, or service to a student, a recipient shall not, on the basis of sex, treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service; aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person which discriminates on the basis of sex in providing any aid, benefit, or service to students; or otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity. The regulation further states, at 34 C.F.R. § 106.34, that except as provided in that section, a recipient shall not provide or otherwise carry out any of its education programs or activities separately on the basis of sex, or refuse participation therein by any students on the basis of sex.

In its investigation, OCR reviewed documentation that the Complainant and the College submitted. OCR also interviewed College staff.

With respect to Allegation 1, the Complainant alleged that the College discriminates on the basis of sex, by sponsoring a Women in Cybersecurity (WiCyS) program.¹ The Complainant asserted that the College provides “cybersecurity-related programs for female students, but none for males.”

The College acknowledged that its website previously indicated that the College sponsored the WiCyS Mid-Atlantic Affiliate. The College also acknowledged that until May 20, 2020, the Executive Director of the College’s National Cybersecurity Institute provided use of the College’s web conferencing technology to the WiCyS Mid-Atlantic Affiliate to host its virtual meetings and webinars, which occurred every two months. The College advised OCR that it ceased sponsoring the WiCyS Mid-Atlantic Affiliate as of May 29, 2020, and ended its practice of using College technology to host WiCyS Mid-Atlantic Affiliate meetings. OCR reviewed the College’s website and confirmed that the website no longer indicates any affiliation with WiCyS or its Mid-Atlantic Affiliate.²

¹ According to its website, WiCyS is an external, non-profit, membership organization dedicated to “bringing together women in cybersecurity from academia, research and industry to share knowledge, experience, networking and mentoring.”

² See <https://www.excelsior.edu/page/national-cybersecurity-institute/> (last visited May 5, 2022).

Pursuant to OCR's *Case Processing Manual*,³ OCR will dismiss a complaint allegation when OCR obtains credible information indicating that the allegation raised by the Complainant is currently resolved and is therefore no longer appropriate for investigation. Based on the above, OCR determined that the Complainant's allegation that the College discriminates on the basis of sex by sponsoring the WiCyS program was resolved. Accordingly, OCR is dismissing Allegation 1.

With respect to Allegation 2, the Complainant alleged that the College discriminates on the basis of sex by offering scholarships 1 and 2, which give preferential consideration to female students.

As of academic year 2019-2020, scholarship 1 was described on the College's website as having been established by an alumna and former employee to support scholarships for students in any technology program, matching the scholarship, where possible, to female and/or minority students. OCR determined that scholarship 1 was established as a gift pursuant to an agreement with a donor, dated April 11, 2012 (Donor 1). According to the agreement, scholarship 1 was established to "support the periodic award of scholarship money to women entering or continuing in any of [the College's] programs in technology within the School of Business & Technology." The agreement was amended on July 29, 2015, to state that scholarship 1 would be awarded "with priority given to women entering the cybersecurity field." The agreement was again amended on August 26, 2019, to acknowledge Donor 1's desire that the College award scholarship 1, "where feasible," to "eligible female and/or minority students." OCR determined that the College's website currently describes scholarship 1 as having been established "to support scholarships for students in any technology program. All students engaged in any technology program offered by Excelsior College, whether at the graduate or undergraduate level shall be eligible for a scholarship award with monies derived from the fund."⁴

As of academic year 2019-2020, scholarship 2 was described on the College's website as having been established by a retired employee "to support scholarships for students with financial need with preference given to women and members of racial or ethnic minority groups underrepresented in higher education and pursuing careers in higher education technology." The description previously stated that "[i]f no appropriate applicants fit these criteria, preference would be given to any students with financial need pursuing a career in higher education technology." OCR determined that scholarship 2 was established as a gift pursuant to an agreement with a donor, dated December 21, 2011 (Donor 2). The College's website currently describes scholarship 2 as having been established "to support scholarships for students with financial need pursuing careers in higher education technology."⁵

The College asserted that all students with financial need and a minimum grade point average of 2.7 in any of the College's technology programs are eligible for scholarships 1 and 2; however, the College stated that, in light of the prior preferences of Donors 1 and 2, as of academic year 2019-2020, scholarships 1 and 2 had not been awarded to a male student because there were qualified female students. The College informed OCR that as of academic year 2019-2020, scholarships 1 and 2 were the only sex-preferred or sex-specific scholarships that the College offered and/or administered.

³ *Case Processing Manual* (Aug. 26, 2020), <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.

⁴ See <https://www.excelsior.edu/giving/scholarship-endowment-funds/> (last visited May 5, 2022).

⁵ See <https://www.excelsior.edu/giving/scholarship-endowment-funds/> (last visited May 5, 2022).

Prior to the completion of OCR's investigation, the College expressed an interest in resolving Allegation 2 and OCR determined resolution was appropriate. Accordingly, pursuant to Section 302 of OCR's *Case Processing Manual*, on February 3, 2021, the College signed the enclosed resolution agreement to voluntarily resolve Allegation 2 without further investigation.

The College provided information to OCR in accordance with the monitoring provisions of the agreement. Based on its review of the information provided, OCR determined that the College satisfied the provisions of the agreement. Accordingly, OCR has concluded its monitoring of the agreement and is closing Allegation 2 and this complaint as of the date of this letter.

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 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 against the College 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, it will seek to protect, to the extent provided by law, personally identifiable information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions, please contact Tiffany Lyttle, Compliance Team Attorney, at (646) 428-3754 or tiffany.lyttle@ed.gov; or Lauren Numeroff, Compliance Team Attorney, at (646) 428-3895 or lauren.numeroff@ed.gov.

Sincerely,

/s/

Rachel Pomerantz

Enclosure

cc: Michael DiSiena, Esq.