



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS, REGION IV

61 FORSYTH ST., SOUTHWEST, SUITE 19T10  
ATLANTA, GA 30303-8927

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September 30, 2019

Ms. LaRae Moore, Esq.  
Page Scrantom Sprouse Tucker Ford  
Attorneys and Counselors of Law  
Synovous Center  
1111 Bay Avenue, Third Floor  
Columbus, Georgia 31901

OCR Complaint #04-15-2363  
Resolution Letter

Dear Ms. Moore:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed on May 14, 2015, against the Rivertown School of Beauty (School) alleging discrimination on the basis of sex. Specifically, the Complainant alleged that the School subjected female students to different treatment in the application of its pregnancy and child birth policy in the cosmetology program (Program), which permits the dismissal of female students when they are seven (7) months pregnant. She alleged that she enrolled at the School in December 2014 and that in May 2015 the School told her to withdraw

As a recipient of Federal financial assistance from the Department, the School is subject to the requirements of Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C §1681 et seq. and its implementing regulation, 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex by recipients of Federal financial assistance. Accordingly, OCR has jurisdiction over this complaint.

OCR proceeded with an investigation of the following legal issue:

Whether the School discriminates against female students in the Program, on the basis of sex, in the application of its policy that dismisses female students for being seven (7) month pregnant, in noncompliance with the Title IX regulation at 34 C.F.R. §106.40.

During its investigation, OCR reviewed and analyzed relevant documents submitted by both the Complainant and the School. OCR also interviewed the Complainant and the School's Director (Director). In reaching a determination, OCR reviewed the evidence under a preponderance of the evidence standard.

After a thorough review of all of the available evidence, OCR determined that there is sufficient evidence to establish that the School violated Title IX with respect to its policy. We set forth below the factual and legal bases for our determination.

### **Legal Standard**

The regulation implementing Title IX at 34 C.F.R. §106.40 (a) & (b)(1), requires that a recipient shall not apply any rule concerning a student's actual or potential parental, family or marital status which treats students differently on the basis of sex. The recipient shall not discriminate against any student, or exclude any student from its education program or activity, including any class or extracurricular activity, on the basis of such student's pregnancy, termination of pregnancy or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient. The recipient may require such a student to obtain the certification of a physician that the student is physically and emotionally able to continue participation so long as such certification is required for all students for other physical or emotional conditions requiring the attention of a physician.

### **Findings of Fact**

The School has a written Pregnancy and Child Birth Policy (Policy) that excludes all pregnant students from the Esthetician Program, regardless of the stage of pregnancy. Pregnant students may attend classes and activities in other programs subject to the requirements that they provide a medical release stating that they can stand on their feet all day to perform tasks related to the program, and officially withdraw upon reaching the seventh month of pregnancy or having medical restrictions, whichever comes first. Moreover, the School "reserves the right" to prohibit a pregnant student's enrollment or class attendance if it has evidence that such activities might harm the student or fetus, or unduly disrupt school operations.

Also, the Policy requires that pregnant students schedule their medical appointments after 3:00 pm., or on unscheduled school days. The School's general policy concerning leave and excused absences does not include a restriction on the timing of appointments. Also, while there is a policy specifying Fridays as "mandatory days" and that all necessary appointments should be made on Tuesday through Thursday, that policy does not generally preclude scheduling of appointments during the school day on days other than Friday.

The Complainant enrolled at the School in late December of 2014 and was pregnant at that time. On approximately May 5, 2015 the Complainant presented a medical note for a May 4, 2015 physician's appointment; the note stated that her estimated delivery date was July 12, 2015. School staff required the Complainant to bring in a doctor's note providing an assurance that continuing in the program would not harm the Complainant or the unborn child. The Complainant submitted a doctor's note that was dated May 8, 2015 and stated that there was no medical reason that she should not be able to continue in her course. On approximately May 14, 2015 the Complainant was required to withdraw from the and she submitted an appeal dated May 15, 2015. After the appeal was submitted, the Complainant was allowed to return with a new required withdrawal date of June 15, 2015. As of June 2, 2015 the Complainant had voluntarily withdrawn from the program.

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The School's Pregnancy and Child Birth Policy also requires pregnant students to bring in a certification that they are medically able to participate in the program, and also requires that if they are absent for the purpose of a medical appointment, they must bring in a medical release to continue in the program. The School's general policy concerning excused or unexcused absences does not require submission of a release following physician's appointments and the School's general admissions requirements make no reference to submission of a medical release to participate in classes or other activities.

### **Analysis**

Pursuant to the Title IX implementing regulation, at 34 C.F.R. §106.40 (b)(1) a recipient is prohibited from excluding a student from an education program or activity on the basis of the student's pregnancy. On its face, the School's Pregnancy and Childbirth Policy excludes pregnant students from the Esthetician Program. It also excludes pregnant students from other programs once they reach the seventh month of pregnancy, if they fail to bring in a release or if the School has evidence that attending class or other activities may harm the student or the fetus or disrupt normal operations. Finally, the Policy treats pregnant students differently than other students with respect to the timing of medical appointments for which an excused absence will be granted.

The regulation implementing Title IX at 34 C.F.R. §106.40 (b)(2) provides that a recipient may require a pregnant student to obtain a physician's certification of her ability to continue participation if such a certification is required of all students for other physical or emotional conditions requiring the attention of a physician. The School's Policy requires a medical release for pregnant students; such a release is required upon initial notification that the student is pregnant and after each excused leave for a medical appointment. The School's leave policy does not require a release following other medical appointments.

### **Conclusion**

Based on the foregoing, OCR found sufficient evidence to establish that the School violated Title IX and its implementing regulations as alleged. During the course of the investigation, the School informed OCR that the School provided the Complainant with a full refund and OCR confirmed this with the Student. To resolve the complaint allegations, the School also entered into the enclosed Resolution Agreement. At the time the School executed the Agreement, the School also provided documentation to demonstrate its implementation of the Agreement, including copies of the School Handbook which reflects that the School rescinded its Policy.

This concludes OCR's investigation of the complaint and should not be interpreted to address the School'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.

Please be advised that the School may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the Complainant may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records, upon request. In the event that OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy. A complainant may file a private suit in Federal court whether or not OCR finds a violation.

This concludes OCR's consideration of your complaint, which we are closing effective the date of this letter. If you have any questions regarding this letter, please contact Michelle Vaughan, at (404) 974-9398.

Sincerely,

Vahn Wagner  
Acting Compliance Team Leader

Enclosure