



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

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VIA EMAIL ONLY TO jhawkins@troy.edu

January 26, 2023

Jack Hawkins, Jr., Ph.D.
Chancellor
Troy University
216 Adams Administration Building
Troy, AL 36082

Re: OCR Complaint # 04-21-2060

Dear Chancellor Hawkins:

This letter is to advise you of the outcome of the complaint filed by Complainant [redacted content] on December 2, 2020, with the U.S. Department of Education, Office for Civil Rights (OCR) against Troy University. The Complainant alleged discrimination on the basis of pregnancy.

OCR enforces 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. Title IX prohibits discrimination on the basis of sex in any education program or activity receiving Federal financial assistance. As a recipient of Federal financial assistance from the Department of Education, the University is subject to Title IX and to OCR's jurisdiction.

OCR opened an investigation into whether the University discriminated against the Complainant on the basis of pregnancy in violation of Title IX and its implementing regulation at 34 C.F.R. § 106.40(b).

During its investigation, OCR reviewed information provided by the Complainant and the University, including email correspondence between the Complainant and University personnel, the University's Title IX policies, and the Complainant's grades in her courses. OCR interviewed the Complainant's [redacted content] professor as well as the University's Dean of Student Services, who serves as the Title IX Coordinator.

Prior to OCR completing its investigation, the University expressed an interest in resolving the complaint pursuant to Section 302 of OCR's *Case Processing Manual*. Section 302 states that allegations under investigation may be resolved at any time when, prior to the completion of the investigation, the recipient expresses an interest in resolving the allegation and OCR determines that it is appropriate to resolve it because OCR's

investigation has identified concerns that can be addressed through a resolution agreement. Following are the relevant legal standards and OCR's summary of the investigation.

Legal Standards

The Title IX regulation, at 34 C.F.R. § 106.31(a), states as follows: Except as provided elsewhere in this part, 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 academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives Federal financial assistance.

The Title IX regulation, at 34 C.F.R. § 106.40(b)(1), prohibits discrimination against a student based on pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery from any of these conditions. To ensure a pregnant student's access to its educational program, when necessary, a school must make adjustments to the regular program that are reasonable and responsive to the student's temporary pregnancy status. Title IX requires a school to provide the same special services to a pregnant student that it provides to students with temporary medical conditions. 34 C.F.R. § 106.40(b)(4).

Further, under 34 C.F.R. § 106.40(b)(5), in the case of a recipient which does not maintain a leave policy for its students, or in the case of a student who does not otherwise qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as a justification for a leave of absence for so long a period of time as is deemed medically necessary by the student's physician, at the conclusion of which the student shall be reinstated to the status which the student held when the leave began.

Facts

The University's 2020-2021 Title IX policy is located in its 2020-2021 Student Handbook. The policy identifies and provides contact information for the Title IX Coordinator and Title IX points of contact for the University's campuses, as well as the members of the University's Title IX Committee. The Title IX policy outlines the responsibilities of the Title IX Coordinator. These responsibilities include that "[t]he Title IX coordinator shall work with the University on its obligation not to discriminate against students based on their parental, family, or marital status, or exclude pregnant or parenting students from participating in any educational program, including extracurricular activities." This is the sole mention in the 2020-2021 Student Handbook of the University's obligation toward pregnant students.

In 2020, the Complainant was a student at the University. On [redacted content] 2020, prior to the start of the Fall 2020 semester, the Complainant emailed the University's Adaptive Needs office, part of the University's Office of Student Development in the John W. Schmidt Center for Student Success, regarding her pregnancy. That office forwarded her email to the Dean of Student Services, who was also the Title IX Coordinator for the

University. On [redacted content] 2020, the Title IX Coordinator responded to the Complainant and asked what accommodations she needed.¹

Classes for the Fall 2020 semester began on August 10, 2020. The Complainant was enrolled in [redacted content]. In advance of the Complainant's first [redacted content] class on August 13, 2020, the Complainant emailed the professor, stating that she was not feeling well and would not be in class that day. In that email, the Complainant did not mention she was pregnant.

In an [redacted content]2020, email, the Complainant requested a table for her [redacted content] class from the Title IX Coordinator because, due to her pregnancy, she could not fit into the smaller desks in the classroom. The Title IX Coordinator responded that he would speak with the Department Chair about this request. Also, on [redacted content] 2020, the [redacted content] professor emailed the Complainant to ask if she would be able to attend class and gave her the option to sign into Teams instead. On [redacted content], 2020, the Complainant emailed her [redacted content] professor, stating that she was experiencing [redacted content] and was pregnant, so she would not be able to be in class. The [redacted content] professor replied that day and told the Complainant that she could attend via Teams.

On [redacted content] 2020, the Complainant emailed the Title IX Coordinator that she had been unable to attend class due to [redacted content] and now had an F in her [redacted content] class due to that professor's policy of giving a grade for attendance. She also noted that the table had not yet been installed in her [redacted content] classroom. That same day, the Title IX Coordinator replied that he would follow up on the table that day and that he would reach out to the Complainant's professors about her absences and allowing her to make up missed work.

On [redacted content] 2020, the [redacted content] professor emailed the Complaint to notify her there had been an update to the University's attendance policy. The professor stated that the Complainant's absences would need to be excused by the Title IX Coordinator if she was unable to attend class in person, or that she might be able to drop the class and enroll in an online class. On [redacted content], 2020, the Complainant replied that she would be coming to class that day, and that she had consulted with her physician, who had advised that this would be okay. She also replied that she had emailed the Title IX Coordinator about her absences and that he was supposed to have sent an email to her professors.

On [redacted content] 2020, the Complainant emailed her [redacted content] professor that she had been hospitalized due to pregnancy complications. She also reported that she had been working on her discussion questions and asked if she could make up the first test. The

¹ The Complainant and the Title IX Coordinator differ about when the Complainant first responded to the Title IX Coordinator's [redacted content] 2020, inquiry. The Title IX Coordinator alleges that the Complainant responded with several requests on [redacted content] 2020. The Complainant recalls making a request to the Title IX Coordinator on [redacted content] 2020, and the email correspondence provided to OCR supports the Complainant's recollection.

[redacted content] professor responded that same day, stating that she was able to re-open questions and tests for the Complainant. In a later email that same day, the [redacted content] professor stated that she had discussed the Complainant's situation with her Department Chair and that he had given permission for the Complainant to make up the work and to attend via Teams temporarily. The professor also added that she was worried that other students noticed the Complainant's absences and that questions of fairness may arise. She again asked the Complainant to reach out to the Title IX Coordinator so that he could excuse her absences.

On [redacted content] 2020, the Complainant emailed the Title IX Coordinator that she had been admitted to the hospital related to her pregnancy. She stated that she had already emailed most of her professors but asked the Title IX Coordinator to also follow up with them. She also noted that one of her professors had told her that other students had noticed her absences and that she was still being docked for absences and late assignments related to her pregnancy. She also asked for an extension on assignments and tests that she would be missing.

On [redacted content] 2020, the Title IX Coordinator replied to the Complainant, telling her that he would email her professors that morning and that she should take care of herself and her child. Three days later, the Title IX Coordinator emailed the Complainant's professors and told them that the Complainant would be out of class for non-COVID-related medical issues and that she should have deadlines extended and be allowed to make up work. On [redacted content] 2020, the [redacted content] professor sent the Complainant an email expressing concern that the Complainant was not attending classes. She warned the Complainant she would not allow her to submit all of her work after Thanksgiving but would give her a one-week extension on each assignment.

On [redacted content] 2020, the [redacted content] professor emailed stating that she could see that Test 1 did not deploy for the Complainant and that the Complainant was not able to upload her discussion work. The [redacted content] professor indicated that she would reopen both items until October 11 for the Complainant to complete. On [redacted content] 2020, the Complainant emailed the [redacted content] professor to let her know that she went into early labor and had been admitted to the hospital to stop the labor. She asked if she could turn in her discussion questions the following Friday. The [redacted content] professor replied on [redacted content] asking which questions the Complainant needed to have opened. The Complainant emailed the [redacted content] professor on [redacted content], 2020, stating that the baby had been born on [redacted content]; noting that she had tried to access Test 1 on October 13, but that it would not open for her; and asking to have access to some discussion questions.

On [redacted content] 2020, the Complainant's [redacted content] professor emailed the Title IX Coordinator to ask for guidance on how to handle the Complainant's grades. She also let him know that the Complainant had not returned to class, taken any exams, or made up any projects, but had turned in some assignments. On [redacted content] 2020, the Title IX Coordinator responded to the [redacted content] professor that he would follow up with the Complainant that day and get back to the [redacted content] professor. On November

24, 2020 - the Tuesday before Thanksgiving 2020, when the University was closed for students - the Title IX Coordinator attempted to call the Complainant but got no answer. He did not attempt to follow up with her again at any point during that semester. Nothing in the records provided to OCR indicates that the Title IX Coordinator further responded to the [redacted content] professor's request for guidance, or that he had any additional involvement with the Complainant that semester.

On [redacted content], 2020, the Complainant emailed the [redacted content] professor to request that she be allowed to turn in all of her discussion posts that evening. The [redacted content] professor replied that she would not accept the assignments so late and that she had given the Complainant an extra week on each assignment. She also noted that the Complainant almost never attended class in person or on Teams, and that she had taken none of the tests. She informed the Complainant that even if she turned in all of the discussion questions, she could not pass the class at this point. Finally, she told the Complainant that it just was not her semester to take [redacted content]. The Complainant received an F in [redacted content] for the semester.

The Complainant told OCR that she never received a table for her [redacted content] class. By contrast, the Title IX Coordinator told OCR that he received confirmation from the [redacted content] Department Chair that the table was put in place on or about August 29, 2020, and the University provided a photo of an installed table in an email dated [redacted content], 2021.

The Complainant received a D in the [redacted content] class for Fall 2020. In what appears to be an email statement that the University provided to OCR, the [redacted content] professor stated that during Fall 2020, the Complainant only attended a handful of classes in person and the professor had met with the Complainant in person prior to the last class she had attended to discuss her pregnancy and complications. The [redacted content] professor recalled that she told the Complainant that she would work with her, but the Complainant needed to stay in communication with her so that they could make arrangements for the Complainant's work. The [redacted content] professor stated that the Complainant attended class once thereafter and she did not hear from the Complainant again.

During his interview with OCR, the Title IX Coordinator said he was unaware of any written University policy that prohibited discrimination against pregnant students or that outlined the process for addressing requests from pregnant students. He also stated that the Complainant was the first pregnant student with whom he had worked. The Title IX Coordinator did not remember giving any guidance to the Complainant's professors regarding how to work with her to make up her work in light of the Complainant's pregnancy, nor did he speak with them about the possibility of letting the Complainant have an incomplete or a late withdrawal from classes. He told OCR that the Complainant did not request these things, but these are the types of accommodations that he has provided to students at the University with temporary disabilities when they have asked. In addition, when asked, the Complainant's [redacted content] professor stated that she was unaware

of any University policy pertaining to accommodating pregnant students and that she had never received any training on this issue through the University.

During the course of this investigation, the University updated its Title IX web page to include a section on pregnancy and parenting.² The new webpage states that pregnant or parenting students have certain rights, including the right to have excused absences when medically necessary, the ability to make up work missed, and the right to be protected from pregnancy harassment. The webpage also outlines a process by which a pregnant student may ask for reasonable adjustments or medically necessary accommodations or file a complaint if they have been discriminated against or harassed. The webpage also provides the contact information for the University's Title IX Coordinator, as well as for OCR.

Analysis

OCR has a concern that the University did not make reasonable and responsive adjustments in response to the Complainant's pregnancy-related requests. At the time of the incidents at issue here, the University provided pregnant students no information, either in its 2020-2021 Student Handbook or on its website about how students could seek adjustments related to pregnancy, and one professor interviewed by OCR had not received training regarding Title IX's application to pregnant students. The Complainant made various requests to the Title IX Coordinator as well as directly to professors, and in multiple instances, the request was not communicated to other staff or addressed.

Moreover, the Title IX Coordinator did not consistently intervene when the Complainant contacted him about issues with certain classes and, when he did so, he was not always prompt. It appears that the Title IX Coordinator's first and only documented communication with all of the Complainant's professors was a [redacted content] 2020, email that he sent after the Complainant advised she had been hospitalized due to pregnancy-related complications. The Title IX Coordinator sent his email a month after the Complainant first contacted him about her inability to attend certain classes due to pregnancy complications and her low, attendance-related [redacted content] grade. Further, the Complainant's [redacted content] professor sought the Title IX Coordinator's advice on how to handle the Complainant's absences and lack of class participation but received no answer.

The evidence to date also suggests that the University did not engage in an interactive process with the Complainant or otherwise attempt to determine what adjustments would be appropriate for each of her courses based on the information she provided about her pregnancy. Although the Complainant appears to have received some pregnancy adjustments from some professors, OCR is concerned that these efforts were ad hoc and uncoordinated and dependent on each professor's individual interpretation of the Title IX Coordinator's [redacted content] 2020, email.

² The webpage is located at: <https://www.troy.edu/about-us/leadership/student-services-administration/title-ix-save-act.html> and was last accessed by OCR on January 25, 2023.

Although the University has updated its Title IX webpage to include policies and information for pregnant students, it is unclear whether the University has provided faculty and staff training concerning its obligations under the Title IX regulations regarding pregnant students who request adjustments.

As noted above, the University expressed an interest in resolving the complaint with a resolution agreement pursuant to Section 302 of OCR's *Case Processing Manual*. Based on the investigation to date, OCR has concerns that warrant entering into a resolution agreement. The attached Resolution Agreement (Agreement), when fully implemented, will resolve the issues identified above. The Agreement requires the University to take various steps with respect to the Complainant and to provide pertinent training to staff members. OCR will monitor the University's implementation of the Agreement until the University is in compliance with the terms of the Agreement and the statute and regulations at issue in this case.

This concludes OCR's investigation of the complaint and should not be interpreted to address the University'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 University 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, to the extent provided by law, personally identifiable information, that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

OCR would like to make you aware that the complainant may have a right to file a private suit in Federal court whether or not OCR finds a violation.

If you have any questions or concerns about the content of this letter, please contact OCR attorney Robyn Painter at 404-974-9345 or at robyn.painter@ed.gov.

Sincerely,

/s/

Scott R. Sausser
Supervisory General Attorney

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cc: Tom Davis, tomdavis@troy.edu
Ashley English, englisha@troy.edu