



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

1999 BRYAN STREET, SUITE 1620
DALLAS, TEXAS 75201-6831

June 12, 2017

Dr. Pamela Boehm, President
Hill College
112 Lamar
Hillsboro, TX 76645

RE: OCR Case No. 06152089
Hill College

Dear Dr. Boehm:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, has completed its investigation of the above-referenced complaint filed against Hill College (College), Hillsboro, Texas, which OCR received on xxxxxxxxxxxxxxxxxxxx. The complaint alleged the College discriminated against the complainant on the basis of sex. Specifically, the complainant (the Student) alleged the College denied her access to xxxxxxxx xxxxxxxx xxxxxxxx Program based on her pregnancy and recovery from childbirth, failed to treat her childbirth as a temporary disability, and failed to reinstate her to the Program at the status she held prior to taking a leave of absence for childbirth.

This agency is responsible for determining whether organizations that receive or benefit from Federal financial assistance (recipients), either from the Department or from an agency that has delegated investigative authority to the Department, are in compliance with Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681, and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex. OCR has determined that the College is a recipient of Federal financial assistance from the Department; therefore, OCR has jurisdiction to process this complaint for resolution under Title IX.

Please be advised that a finding that a recipient has violated one of the laws that OCR enforces must be supported by a preponderance of the evidence (i.e., sufficient evidence to prove that it is more likely than not that unlawful discrimination or retaliation occurred). When there is a significant conflict in the evidence and OCR is unable to resolve that conflict, for example, due to the lack of corroborating witness statements or additional evidence, OCR generally must conclude that there is insufficient evidence to establish a violation of the law.

OCR's investigation of the complaint included review and analysis of documentation provided by the Student and the College and interviews with College faculty and staff and the Student. Based on our review and analysis of the information obtained during this investigation, OCR determined that there is sufficient evidence to support a conclusion of noncompliance with Title IX. Provided below is an explanation of how this determination was reached.

Issue:

Whether the College discriminated against the Student on the basis of her pregnancy, childbirth, and/or recovery from childbirth when it denied her access to clinical classes in the Program, failed to treat her recovery from childbirth as a temporary disability, and/or failed to reinstate her to the Program at the status she held prior to taking a leave of absence for childbirth, in violation of Title IX and its implementing regulation, at 34 C.F.R. § 106.40.

Legal Standard:

The Title IX implementing regulations, at 34 C.F.R. § 106.40, require that a recipient shall not apply any rule concerning a student's actual or potential parental, family, or marital status which treats a student differently on the basis of sex. Regarding pregnancy, a recipient shall not discriminate or exclude any student from its education program, including any class, on the basis of a student's pregnancy, childbirth, or recovery from pregnancy, unless the student requests voluntarily to participate in a separate portion of the program or activity. A 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 a certification is required of all students for other physical or emotional conditions requiring the attention of a physician. Section 106.40 further requires that a recipient shall treat pregnancy, childbirth, and recovery therefrom in the same manner and under the same policies as any other temporary disability with respect to any medical benefit, service, plan or policy which such recipient administers with respect to students admitted to the recipient's education program. A recipient shall also treat pregnancy, childbirth, and recovery therefrom as a justification for a leave of absence for so long a 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 she held when the leave began.

Findings of Fact:

The Student was accepted into the College's Program on xxxxxxxxxxxxxxxxxxxx, with classes beginning on xxxxxxxxxxxxxxxxxxxx. OCR's investigation revealed that, prior to enrolling in the Program, the Student met with the Dean of xxxxxxxxxxxxxxxxxxxx on xxxxxxxxxxxxxxxxxxxx, to discuss her pregnancy and to determine how that would affect completion of the Program to which the Student had been accepted. According to the Student, the Dean was informed xxx xxxxx xxxxxx delivery xxxxxxxxxxxx projected for xxxxxxxxxxxxxxxxxxxx. The College's records include documentation received on

xxxxxxxxxxxxxxxxxxxx, from the Student that showed the Student’s projected xxxxxxxx delivery to be xxxxxxxxxxxxxxxxxxxx.

The College’s Policy FA (LEGAL)-LJC, “Equal Education Opportunity,” contains a section titled “Discrimination On The Basis of Sex,” that includes a nondiscrimination statement regarding sex discrimination. The Policy states the College shall not apply any rule concerning a student’s actual or potential parental, family, or marital status that treats students differently on the basis of sex. This policy also includes guidance regarding discrimination on the basis of disability.

The College’s Policy FFD (LEGAL)-LJC, “Student Welfare, Freedom From Discrimination, Harassment, and Retaliation,” includes information that a recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of student complaints alleging any action prohibited by Title IX, and states that a recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities.

The College’s Policy FFD (LOCAL)-AJC, addresses discrimination, harassment, and retaliation involving College students and names an ADA/Section 504 Coordinator and Title IX Coordinator.

The College’s response to OCR’s Data Request describes the College’s Academic Advising & Success Center and names a contact person for each of its campuses. The instructive guidance states that students with qualified and documented disabilities may request accommodations which will enable them to participate in and benefit from educational programs and activities. Further, the guidance states students must provide appropriate documentation of the disability, complete an application for special accommodation/modification, and schedule and participate in an interview with a College academic advisor. The guidance indicates that every effort will be made to identify needs and provide any reasonable academic accommodation that a student needs due to his/her disability. In addition, the College’s Equal Opportunity Policy addresses disability and nondiscrimination and states, “To the extent reasonably appropriate, the College will provide special services and/or accommodations to qualified individuals with a disability in accordance with Section 504 of the Rehabilitation Act.”

Based on OCR’s review of the College’s policies and website information, none of the information specifically addresses student pregnancy or temporary disability. The College’s information under “Disability Services” advises students to contact the Academic Advising and Success Center to request an accommodation.

The Student asserts the Dean informed her that the College would offer clerical work during the Student’s xxxxxxxx xxxxxxxx to give her credits needed and they would find someone to assist with two-person lifts during Student’s xxxxxxxx xxxxxxxx. Based on this information, the Student enrolled in the Program.

OCR interviewed the Dean, who stated that the Student informed her that delivery would occur during the first week of xxxxxxxxxxxxxxxxxxxx and, based on that information, xxx

XXXX XXXXXX XXX XXXXX XX XXXXXXXXXXXXXXX XXX XXXXXXXXXXX XXXXXXXXXXXX XX XXXXX
XXXXXXXXXXXX and there “probably would not be an issue with making accommodations,
but that would depend on what the doctor requires.”

During a follow-up interview with the Dean, the Dean stated
XXXXX.....sentence.....XXXXX. The Dean said she told the Student that if the delivery was
prior to XXXXX.....sentence.....XXXXX she would have some excused absence time
available if she did not miss time previously. The Dean further stated that the last two
weeks of the semester involved testing and final exams and she told the Student she may
be able to meet expectations. The Student was informed the College would be able to
make accommodations dependent on what her doctor prescribed.

On XXXXXXXXXXXXXXXXXXXX, the Student sent an email to the XXXXXXXX Instructor
informing her that, XXX XX XXXXXXXXXXXXXXX, her XXXXXXXXXXXX delivery
XXXXX.....sentence.....XXXXX. The next day, XXXXXXXXXXXXXXXXXXXX, the Student sent an
email to the Dean informing her of the change in the delivery date. The Dean replied via
email that the College would work with her within reason, but it would depend on how
long she will be out and what her restrictions are when she returns; that she must be able
to meet the expectations and objectives of the course within her restrictions and must stay
within the attendance rules. The Dean stated that the Student’s
XXXXX.....sentence.....XXXXX. The Dean advised the Student to decide whether “to take a
chance” (and continue in the Program), or “withdraw before next XXXXXXXX,
XXXXXXXXXXXXXXXXXXXX.”

The Student had a XXXXXXXXXXXX delivery on XXXXXXXX, XXXXXXXXXXXXXXXXXXXXXXX XXX XXX XX
XXX XXXXXXXXXXX XXXXX XXXXX XXXX until released from the hospital on
XXXXXXXXXXXXXXXXXXXX. The Student’s hospital release stated the following restrictions,
“normal activity, no exercising, no lifting and no driving.” On XXXXXXXX,
XXXXXXXXXXXXXXXXXXXX, the Student informed the Nursing Instructor that her hospital
release papers, electronically signed by the doctor, stated she is under restriction for two
weeks not to drive or lift. The College’s XXXXX.....sentence.....XXXXX. The XXXXXXXXXXXX
Instructor gave the Student options - she could continue in the Program if her physician
allowed or she could withdraw.

On XXXXXXXXXXXXXXXXXXXX, the Dean sent an email stating the College “is not saying it
will not make accommodations, because it is within reason if the Student can meet course
objectives with restrictions.” The Dean stated that the Student will have to meet the
objectives with restrictions to be successful, as stated in the syllabus.
XXXXX.....sentence.....XXXXX. The Student must be able to meet the essential functions
with or without reasonable accommodations throughout the program of learning.
XXXXX.....sentence.....XXXXX.

OCR’s investigation revealed that the Program’s XXXXXXXXXXXX instructions, assignments
and orientation were given to students on XXXXXXXXXXXXXXXXXXXX. OCR’s analysis of the
class schedule shows the Student would have needed to attend
XXXXX.....sentence.....XXXXX. On XXXXXXXXXXXXXXXXXXXX, the Student arrived at class XX
XXXXX XXX XXXXXXXXXXX XXXXXXXX as scheduled and met with two instructors. The Student

showed the instructors the hospital's release form that stated normal activity (may be up to bathroom, may be up for meals, may shower) was permitted with the restrictions of no exercising, no lifting, and no driving (follow-up in two weeks). The Student informed OCR that she then went to the administrative assistant's office to provide her with the hospital's release form and to request accommodations. Because the administrative assistant was not there, the Student dropped the release form in the door's mail slot and returned to the classroom to join other classmates. Upon returning to the classroom, Instructor 1 informed the Student she could not stay in class because of her prescribed restrictions. The Student then met with Instructor 2 and was told she needed to speak with the Dean. The Student went to Student Services to meet with the campus' academic advisor and to apply for accommodations for her temporary disability, but the Student was told the academic advisor would not be there that day. The Student informed OCR that she left the campus at approximately 9:30 a.m. OCR's investigation confirmed that the Academic Advisor's time and attendance records showed she arrived at work at 9:51 a.m., after the Student had left the campus.

The Student subsequently attempted to contact the Academic Advisor at the College's xxxxxxxxx campus and Student Services representatives at the xxxxxxxxx Campus. OCR analyzed cell phone records provided by the Student and determined that the Student placed three telephone calls to the College on xxxxxxxxxxxxxxxxxxxx. The Student indicated that these calls were placed to initiate the process of applying for accommodations, due to pregnancy and its related conditions.

The investigation further revealed that the Dean sent an email to the Student on xxxxxxxxxxxxxxxxxxxx, stating: "When you are able to return you will need to take your physician's release to advising and apply for accommodations. Once the requested accommodations are sent to the program then we will work with you on meeting reasonable accommodations as long as you can meet the objectives of the course per policy for ALL xxxxxxxxx xxxxxxxxx students. As to your absences, they will be reviewed based on our written policies for All xxxxxxxxx xxxxxxxxx students." The xxxxx xx xxxxxxxxxxxx requires that each xxxxxxxxx student complete a minimum of xxx xxxxx xx xxxxxxxxx learning experiences. Accordingly, a student cannot miss more than xx xxxxxxxxx hours in the first semester and still be able to finish the program. Because the Student was not successful in obtaining accommodations, the Student's absences were not excused. The College asserts that had they received the necessary medical documentation, the absences would have been excused and it would have been possible for the Student to move forward in the Program.

The Student informed OCR that on xxxxxxxxxxxxxxxxxxxx, she called the administrative assistant at the xxxxxxxxx campus to verify that the Hospital's release form had been received and placed in the Student's file. The Student also stated that she attempted to contact the academic advisor on xxxxxxxxxxxxxxxxxxxx xx, xx, and xx, xxxx; however, the Academic Advisor's voice mail was full each time. Thus, she left messages with the Academic Advisor that she needed to apply for accommodations. The College's published protocol is to allow two days for a response to any inquiry. The Student's efforts to apply for accommodations were further complicated by xxxxx.....sentence.....xxxxx. On xxxxxxxxxxxxxxxxxxxx, the Student ultimately made

contact with the Academic Advisor to request the accommodation forms needed. After their conversation, the Academic Advisor sent an email to the Student indicating that the accommodations forms were attached, but the accommodations forms were not attached. The last day of class for the Program was xxxxxxxxxxxxxxxxxxxx. As such, the semester ended and no accommodations were made xxxxx.....sentence.....xxxxx. The Student was considered absent for all class days she missed and was assigned a failing grade.

OCR interviewed the Academic Advisor. The Academic Advisor informed OCR that she had no record of any inquiry from the Student until xxxxxxxxxxxxxxxxxxxx, that she does not recall a time when her voice mail box was full, and that she checks messages often.

On xxxxxxxxxxxxxxxxxxxx, the Academic Advisor emailed the Student the forms needed to apply for temporary disability accommodations. The Student completed the forms and returned them to the Academic Advisor on the same date. The Student requested excused absences for all days missed, reinstatement of grades, and admission back into the xxxxxxxxx Program as mandated in Texas Title IX, Chapter on “Pregnancy and Parenting.” On xxxxxxxxxxxxxxxxxxxx, the Vice President of Student Services sent a letter to the Student that stated in part: “After a careful review of your request, we have determined that we are unable to provide you with the requests listed on the accommodation request form submitted on xxxxxxxxxxxxxxxxxxxx, at this time because your accommodation request and medical documentation was submitted on xxxxxxxxxxxxxxxxxxxx, which was after the last day of the xxxxx xxxx semester (xxxxxxxxxxxxxxxxxxxxxxxx). Additionally, documentation provided was dated after the last date to withdraw from the xxxxx xxxx semester (xxxxxxxxxxxxxxxxxxxxxxxx) and just prior to the week of final exams (xxxxxxxxxxxxxxxxxxxxxxxx).”

After being notified on xxxxxxxxxxxxxxxxxxxx, xxxxx, that the requested accommodations were not approved, the Student requested placement in the Program that started in xxxxxxxxxxxx xxxx as an accommodation to allow her to complete her xxxxxxxx xxxxxxxx. The Dean and Vice President of Student Services informed the Student that the Program starts as a xxxxxxx xxxxxx xxxxx xxxxxxx xxxxxxxxxxx xxx xxxxx xxxxxxxx, but that the Student is eligible for the next class in xxxxxxxxxxxx xxxxx.

The Student had a grade average of xx on xxxxxxxxxxxxxxxxxxxx, prior to the clinical rotation that the College barred the Student from attending. The College did not excuse the Student’s absences after the xxxxxxxx delivery and issued a failing grade of xx for the Program because of the unexcused absences.

Analysis

Title IX regulations provide that a recipient must treat pregnancy and recovery therefrom as justification for a leave of absence and, following a student’s pregnancy leave, the student must be reinstated to the status she held when her pregnancy leave began. As noted above, OCR’s investigation revealed that the Student provided notification to the College that she would need accommodations for pregnancy xxxxx.....sentence.....xxxxx prior to enrolling in the Program in xxxxxxxxxxxxxxxxxxxx; kept the College informed about her status; made reasonable efforts to obtain accommodations for pregnancy-

related matters following the xxxxxxxx delivery; provided a hospital release form that stipulated the Student's restrictions; and attempted to return to class to begin a clinical rotation on xxxxxxxxxxxxxxxxxxxx. OCR's investigation indicated that the College did not consider any strategy to modify, adjust, or otherwise address the educational needs of the Student regarding her clinical program due to her temporary disability based on pregnancy, nor did the College excuse absences resulting from the Student's pregnancy or recovery therefrom, or allow the Student to retain her academic status. The College's Dean reported it was incumbent on the Student to meet the expectations and objectives of the course, to stay within the attendance rules for all Program students, or withdraw from the Program. While the College reported that Student did not apply for accommodations based on her pregnancy status, OCR's investigation indicated that the Student submitted documentation regarding her limitations post-pregnancy in xxxxxxxxxxxx xxxx and made several phone calls to the College attempting to obtain accommodations. Despite having ample notice of Student's pregnancy and recovery therefrom, the College did not excuse the Student's absences. Nor did the College reinstate her to the status which she held when the leave began. As noted above, the Student failed the xxxxxxxx xxxxxxxx based on her unexcused absences. Based on the above, OCR determined that there is sufficient evidence to support a conclusion of noncompliance by the College under Title IX with respect to the issue investigated.

To address this compliance concern, the College signed the attached Resolution Agreement (Agreement) on June 5, 2017. OCR has determined that the Agreement, when fully implemented, will resolve the issue investigated. OCR will monitor the implementation of the Agreement by the College to determine whether the commitments made by the College have been implemented consistent with the terms of the Agreement.

This concludes the investigation stage of the complaint and 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 Student 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 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.

OCR would like to thank you and your staff for your cooperation throughout its investigation of this matter. If you have any questions regarding this letter, you may contact Marvin Macicek, Investigator, at 214-661-9636, or by email at marvin.macicek@ed.gov. You may also contact me at 214-661-9648, or by email at timothy.caum@ed.gov.

Sincerely,

Timothy D. Caum
Supervisory Attorney/Team Leader
Dallas Office

Enclosure