



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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REGION VIII

ARIZONA  
COLORADO  
NEW MEXICO  
UTAH  
WYOMING

April 18, 2022

Dr. Andrea Backman  
President  
Strayer University

*By email only to XX*

Re: OCR Complaint No. 08-22-1033  
Hackbright Academy, Strayer University

Dear President Backman:

On October 20, 2021, the United States Department of Education (Department), Office for Civil Rights (OCR) received a complaint against the Hackbright Academy (Academy) within Strayer University (University). The Complainant alleged that the Academy operates a sex-specific, female-only program which discriminates against males by excluding them from the program.

Because OCR has jurisdiction and the complaint was filed timely, OCR initiated an investigation pursuant to Title IX of the Education Amendments of 1972 (Title IX), 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 any education program or activity operated by a recipient of federal financial assistance from the Department. Because the University receives Federal financial assistance from the Department, OCR has jurisdiction over it pursuant to Title IX.

### **Investigation Summary**

On December 17, 2021, OCR opened the allegations for investigation in accordance with OCR's *Case Processing Manual* (CPM). During its investigation, OCR reviewed documentation provided by the Complainant and the University.

### **Background**

The Academy was founded in 2012 and operated as an independent entity until July 31, 2021, when it was acquired by the University.<sup>1</sup> According to the University, at no time has the

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<sup>1</sup> OCR notes that it reviewed the Academy's website, including blog posts dating back to 2013. In a post titled "Why Does Hackbright Academy Only Accept Women Into The Engineering Fellowship Program?", dated September 13, 2013, the entry includes a link to a more expansive response on a faculty member's individual blog. The response explains that the "reason we only admit women is because as it stands, we put more women into software engineering in one semester than" other university programs. As referenced in this letter, the Academy was not

Academy been the recipient of federal funding. The Academy provides postsecondary courses under the University’s non-degree programs, including a five-week prep program and software engineering program.

The Academy describes itself on its online homepage as “The Engineering School for Gender Equality” and states that “1,000+ women & non-binary people have done it. You can too!” The homepage also features three student success stories, which are accompanied by photos of the students and whom all appear to be female. A “Frequently Asked Questions” (FAQs) link is available at the bottom of the homepage.

The FAQs page address fifty-six questions, a handful of which address the sex and/or gender of applicants and employees. The thirteenth question listed specifically addresses whether the Academy’s courses are only provided to women. In its response to this question, the University states that the courses are “designed specifically to support women and genders that are often underrepresented.” Further, the University explains that anyone “committed to keeping the environment safe” may attend. In additional questions, the University clarifies that the Academy’s instructors are “mixed gender;” that it anticipates its students will encounter “teams of mostly men after graduation;” and, that the program is “inclusive of all people who currently identify as women or for whom a female identity has been important in their life.”

The University indicated in its response to OCR that it does not prevent male applicants from being admitted or participating in the Academy’s program and that it does not require the submission of sex or gender in its application materials. While applicants do not provide their sex or gender in the application materials, the University discovered during its material collection in response to OCR’s investigation that its internal applicant and student database contains a field which auto-completes to “female.” The University further explained its process for admission which, in addition to the submission of application materials, includes a phone consultation with Academy staff and a technical performance assessment prior to admission. The University also distinguished the Academy’s five-week prep program as an “open enrollment” option, which is not subject to the same application process as the software engineering program.

The University provided OCR lists of past applicants and admittees, as well as a list of self-reported student gender. The University explained that it does not require students to provide their sex upon enrollment and that the only mechanism it currently has to collect the gender of the students after enrollment is through a voluntary, self-reported option in its learning management system. The University stated that this option is provided to ensure faculty use a student’s preferred pronouns. The University explained and the data demonstrates that the Academy’s enrolled cohorts between June 2019 and July 2022 included 1,207 students (679 students enrolled in the prep program; 528 students enrolled in the software engineering program), of which three students indicated a preference for male pronouns. The three students were enrolled in the Academy’s open enrollment prep program and the University explained that one of the students was admitted to the software engineering program, though he ultimately

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operating within the University at the time of this blog post entry; however, it was still available online via the Academy’s website at the time of this investigation.

elected not to enroll. None of the 528 students enrolled in the software engineering program indicated a preference for male pronouns, though OCR notes that seven students indicated a preference for the use of they/them or any/all pronouns.

### **Legal Standard**

Title IX and its implementing regulations, at 34 C.F.R. § 106.31(a)-(b), prohibit a recipient from excluding, denying benefits to, or otherwise treating any person differently on the basis of sex in its education programs or activities, unless expressly authorized to do so under Title IX or the regulations.

The regulations, at 34 C.F.R. § 106.34, further prohibit any recipient, including an elementary, secondary, or postsecondary institution, from carrying out its education programs or activities separately on the basis of sex, unless an exception applies.

### **Analysis**

Based on OCR’s review of the documentation available during this investigation, OCR has concerns about the University’s compliance with Title IX as it pertains to operating an education program which excludes students on the basis of sex.

First, the University acknowledges in its response to OCR that its internal applicant and student database defaults to “female.” Further, while a student’s sex is not obtained in the application materials, the Academy requires a phone interview as a part of the application process which may open the process up to the interviewer’s bias, whether intentional or not.<sup>2</sup>

Second, the Academy’s website includes current content that is unclear about the Academy’s stance on the exclusion of students based on sex. While the University asserts that it does not exclude students on the basis of sex and that it is open to all, the language on the homepage and in the FAQs leaves this question unresolved. There is not an explicit statement which indicates that sex is not considered in the application or availability of the program or which specifically indicates that the program is open to all, regardless of sex. Further, though OCR acknowledges that the University did not formally take over the operations of the Academy until July 31, 2021, the Academy’s website includes historical entries which are still publicly available and specifically indicate that the Academy excludes students on the basis of sex.

Finally, the data provided by the University does not explicitly support its assertion that it does not discriminate on the basis of sex in the operation of its program. Specifically, the University provided data from the learning management system which indicates only three of the 1,207

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<sup>2</sup> OCR notes that the Academy recognized that the way in which an applicant “presents over the phone is not necessarily indicative of how they define their own gender identity.”

students enrolled in the June 2019 through July 2022 cohorts preferred male pronouns.<sup>3</sup> However, the three students were enrolled in the Academy’s prep program, which is an open enrollment program and is not similarly subject to the admissions process for the software engineering program. As noted above, none of the students enrolled in the software engineering program indicated a preference for male pronouns.

Prior to the conclusion of the investigation, OCR discussed its concerns with the University regarding the University’s compliance with Title IX, including the concerns outlined above, whether the concerns may be addressed in a Section 302 resolution agreement, and the additional information OCR would need to complete the investigation. The University subsequently notified OCR that it was interested in resolving OCR’s compliance concerns through a Section 302 resolution agreement.<sup>4</sup> The University voluntarily agreed to address the complaint allegations by signing the enclosed Section 302 resolution agreement (Agreement) on April 15, 2022.

## **Conclusion**

Pursuant to Section 302 of the CPM, allegations under investigation may be resolved at any time when, prior to issuing a final determination under CPM Section 303, the recipient expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR’s investigation has identified issues that can be addressed through a resolution agreement. The provisions of the resolution agreement must be tied to the allegations and the evidence obtained during the investigation, and will be consistent with applicable regulations. Based on the allegations and the evidence provided, OCR determined that the allegations may be appropriately resolved through an agreement under Section 302 of the CPM.

As noted above, on April 15, 2022, OCR received the University’s signed Agreement (enclosed). The provisions of the enclosed Agreement are aligned with the complaint allegations and information obtained by OCR to date in its investigation, are consistent with the applicable regulations, and when fully implemented will address the compliance concerns described in this letter. Accordingly, this complaint is closed as of the date of this letter and OCR will monitor the Agreement to ensure compliance.

OCR is closing the investigative phase of this case effective the date of this letter. The case is now in the monitoring phase. OCR will closely monitor the recipient’s implementation of the Agreement to ensure that the commitments made are implemented timely and effectively and that the recipient’s policies and practices are administered in a nondiscriminatory manner. When

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<sup>3</sup> OCR notes that the preferred pronouns were voluntarily provided by students and were not confirmed by the Academy or University as a means of determining the enrolled student’s sex; however, given that the Academy does not otherwise collect the sex of enrolled students, the University voluntarily proffered the data in its response to OCR’s request for a list of the Academy’s past applicants and participants sorted by sex and whether male students have applied to and/or participated in the Academy in the past.

<sup>4</sup> OCR notes that the University indicated it was willing to enter into a Section 302 agreement to resolve OCR’s compliance concerns, but that the University expressly denies any liability, non-compliance, or wrongdoing.

the Agreement is fully implemented, the allegations will have been resolved consistent with the requirements of Title IX and the implementing regulations. If the University fails to implement the Agreement, OCR will take appropriate action, which may include enforcement actions, as described in the Agreement.

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 complainants may have the right to file a private suit in federal court whether or not OCR finds a violation.

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, it will seek to protect, to the extent provided by law, personal information, which if released, could constitute an unwarranted invasion of privacy.

Individuals filing a complaint or participating in our resolution process are protected from retaliation by Federal law.

If you have any questions, please contact XX, the attorney assigned to this complaint, at XX or by email at XX.

Sincerely,

/s/

Michael D. Todd  
Supervisory Attorney

Enclosure – Resolution Agreement

cc: Mr. Peter Stiteler, Esq.  
Attorney  
*By Email only to XX*