



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVENUE, SW
WASHINGTON, DC 20202-1475

REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, DC

XXXX DATE REDACTED XXXX

Glenn DuBois
Chancellor
Virginia's Community Colleges
300 Arboretum Place, Suite 200
Richmond, VA 23236

Re: OCR Complaint No. 11-17-4073
Resolution Letter

Dear Mr. DuBois:

The Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) has completed its investigation of the complaint we received on XXXX, filed against the Virginia Community Colleges System (the System). The complaint alleges that the System discriminates against applicants on the basis of sex, by requesting a prefix in its admission application with the option to select "Miss" or "Mrs."

Jurisdiction

OCR enforces Title IX of the Education Amendments of 1972 (Title IX) and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any program or activity receiving Federal financial assistance from the Department. Because the System receives Federal financial assistance from the Department, OCR has jurisdiction over it pursuant to Title IX.

In its investigation, OCR reviewed information and documentation submitted by the Complainant and the System. During the course of OCR's investigation, the System expressed a willingness to resolve this complaint prior to the conclusion of OCR's investigation, pursuant to Section 302 of OCR's *Case Processing Manual*.

Background

The Complainant asserted to OCR that the System discriminated based on sex by making an inquiry into marital status of an applicant. The Complainant contends that the application has an option to select "Miss" or "Mrs.," thereby inquiring into the marital status of female applicants. The admissions application is for all colleges in the System, and it can be accessed at <http://tcc.edu/admission> and by clicking "Apply Now." The application is also accessible at <http://tncc.edu/apply> as well as <https://www.nr.edu/admissions/>.

Legal Standards

The Title IX regulation, at 34 C.F.R. § 106.31(a), provides that no person shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under the Division’s education programs or activities on the basis of sex. Further, the Title IX regulation, at 34 C.F.R. § 106.21(a), provides that no person shall, on the basis of sex, be denied admission, or be subjected to discrimination in admission, by any recipient to which this subpart applies, except as provided elsewhere in the regulation. In addition, the Title IX regulation, at 34 C.F.R. § 106.21(c)(4), states that, in determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient shall not make pre-admission inquiry as to the marital status of an applicant for admission, including whether such applicant is “Miss” or “Mrs.”¹

Analysis

OCR reviewed the System’s application for admission and determined that it does include an inquiry as to the marital status of an applicant, as it requires an applicant to select “Miss” or “Mrs.” on the form as alleged by the Complainant. However, the System also informed OCR that it is an open admissions or enrollment institution and it makes no admissions decisions, including any which would be impacted by sex or marital status. In fact, the System maintained that it does not make any “decision” with respect to admissions, as every “applicant” is admitted at the time the application is submitted.² Therefore, the System asserted that although the option to select “Miss” or “Mrs.” was used when sending correspondence, it was not used to determine whether a person satisfies any policy or criterion for admission, or in making any offer of admission.

Nevertheless, during the course of OCR’s investigation, the System expressed an interest in voluntarily resolving this complaint, and stated that it is in the process of changing its online application to omit any perceived pre-marital inquiry, to be in effect for the Spring 2018 semester. In order to complete its investigation, OCR would need to conduct interviews with relevant System personnel and review whether any pre-marital inquiry on the application form influenced admissions decisions.

In accordance with Section 302 of the OCR *Case Processing Manual*, a complaint may be resolved at any time when, before the conclusion of an investigation, the recipient expresses an interest in resolving the complaint and OCR determines that it is appropriate to resolve the issues under investigation with an agreement during the course of an investigation. In light of the System’s willingness to address the concerns identified by OCR without further

¹ However, the Title IX regulation, at 34 C.F.R. § 106.21(c)(4), also states that a recipient may make pre-admission inquiry as to the sex of an applicant for admission, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by this part.

² The System stated that the only exception is in an instance where an applicant is found to be a threat to a campus community; in such cases, “admission” may be revoked.

investigation, OCR determined entering into a voluntary resolution agreement was appropriate.

Conclusion

On November 28, 2017, the System agreed to implement the enclosed Resolution Agreement (Agreement), which commits the System to take specific steps to address the identified areas of concern. The Agreement entered into by the System is designed to resolve the issue of concern. Under Section 302 of OCR's *Case Processing Manual*, a complaint will be considered resolved and the System deemed compliant if the System enters into an agreement that, when fully performed, will remedy the identified areas of concern.

OCR will monitor closely the System's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively. OCR may conduct additional visits and may request additional information as necessary to determine whether the System has fulfilled the terms of the Agreement and is in compliance with Title IX with regard to the issues raised.

As stated in the Agreement entered into the by the System on November 28, 2017, if the System fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings, including to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10) or judicial proceedings, including to enforce the Agreement, OCR shall give the System written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

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

OCR thanks the System for its cooperation during the investigation and resolution of this complaint. If you have any questions regarding this letter, please contact Jeanette Tejada Bustos, the OCR attorney assigned to this complaint, at 202-453-6084 or jeanette.tejadabustos@ed.gov.

Sincerely,

/s/

Letisha Morgan
Team Leader, Team II
District of Columbia Office
Office for Civil Rights

Encl.

cc: Greer Saunders