



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

January 11, 2022

By Email: XXXXX

Francis J. Fesler
President & Chief Executive Officer
c/o Jeff Thorud, Campus Director
XXXXX
XXXXX
XXXXX

Re: OCR Complaint No. 11-21-2210
Resolution Letter

Dear President Fesler:

This letter is to advise you of the outcome of the complaint that the Office for Civil Rights (OCR) of the U.S. Department of Education received on June 24, 2021 against Bryant & Stratton College, Virginia Beach Campus. The Complainant alleged that the College, particularly its XXXXX, discriminated against her on the basis of sex (pregnancy status) and subjected her to retaliation for her sex/pregnancy-related advocacy, between XXXXX and the present. Specifically, the complaint alleged that:

1. The College discriminated against the Complainant on the basis of sex, when:
 - a. The College denied the Complainant's request to finish her XXXXX early as a reasonable adjustment for her pregnancy, because her last scheduled day of XXXXX conflicted with her estimated due date; and
 - b. The College: (i) did not provide the Complainant with the Title IX Coordinator's contact information after she requested it and (ii) instead required her to provide a doctor's letter to the XXXXX stating any specific limitations or restrictions due to her pregnancy.
2. The College repeatedly informed the Complainant that she was required to provide a note from her doctor stating whether she had any specific limitations or restrictions due to her pregnancy which, per College policy, would have prohibited her from continuing to attend XXXXX, thereby:
 - a. Harassing her on the basis of sex; and
 - b. Subjecting her to retaliation for her prior sex-based advocacy.

OCR enforces 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 program or activity receiving federal financial assistance. The laws enforced by OCR prohibit retaliation against any individual who asserts rights or privileges under these laws or who files a complaint, testifies, assists, or participates in a proceeding under these laws. Because the College receives federal financial assistance from the Department of Education, OCR has jurisdiction over it pursuant to Title IX.

Summary of Investigation

During the investigation to date, OCR reviewed information provided by the Complainant and the College, and interviewed the Complainant and College staff.

Before OCR completed its investigation, the College expressed a willingness to resolve concerns raised with respect to Allegation 1(a) pursuant to Section 302 of OCR's *Case Processing Manual*. Section 302 states that allegations may be resolved prior to OCR making a determination, if a school expresses an interest in resolving the allegations, and OCR determines that it is appropriate to resolve them because OCR's investigation has identified concerns that can be addressed through a resolution agreement.

Further, after carefully considering all of the information obtained during the investigation, OCR found insufficient evidence to substantiate Allegations 1(b)(i), 1(b)(ii), 2(a), and 2(b), pursuant to Section 303(a) of OCR's *Case Processing Manual*.

Below is a summary of the evidence obtained to date by OCR regarding the concerns identified with respect to Allegation 1(a), as well as OCR's findings and conclusions regarding Allegations 1(b)(i), 1(b)(ii), 2(a), and 2(b).

Legal Standards

Marital or Parental Status

The Title IX regulation, at 34 C.F.R. § 106.40(a), provides that a school may 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 Title IX regulation, at 34 C.F.R. § 106.40(b)(1), also prohibits a school from discriminating against a student or excluding the student from its education program or activity on the basis of the student's pregnancy, childbirth, false 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 school. In addition, the Title IX regulation, at 34 C.F.R. § 106.40(b)(2), provides that a school 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.

Sex-Based Harassment

The regulation implementing Title IX, 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 [school] which receives Federal financial assistance.”

Sex-based harassment, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping, but not involving conduct of a sexual nature, is also a form of discrimination to which a school must respond if it rises to a level that denies or limits a student’s ability to participate in or benefit from the educational program. In cases of such harassment, a school has an obligation to respond promptly and equitably.

Retaliation

The Title IX regulation, at 34 C.F.R. § 106.71(a), prohibits retaliation against any individual who asserts rights or privileges under Title IX or who makes a report or complaint, testifies, assists, participates or refuses to participate in a proceeding under Title IX.

The following three elements must be satisfied to establish an initial, or prima facie, case of retaliation: 1) an individual engaged in a protected activity (e.g., filed a complaint or asserted a right under a law enforced by OCR); 2) an individual experienced an adverse action; and 3) there is some evidence of a causal connection between the protected activity and the adverse action. When these elements have been established, OCR then determines whether there is a legitimate, non-retaliatory reason for the adverse action; and if so, whether the reason is a pretext, or excuse, for retaliation.

An adverse action is something that could deter a reasonable person from engaging in protected activity. Petty slights, minor annoyances, and lack of good manners do not normally constitute adverse actions.

Findings of Fact

The Complainant was a student in the XXXXX (which we will refer to as the Program) at the College during the XXXXX-XXXXX academic year. The Complainant was enrolled in the XXXXX XXXXX Course for the XXXXX XXXXX semester. She was also pregnant during the XXXXX XXXXX and XXXXX XXXXX semesters, with an estimated due date of XXXXX.

On XXXXX, the Complainant wrote in an email to the Program’s XXXXX XXXXX Coordinator (whom we will refer to as the XXXXX XXXXX Coordinator) that her last scheduled class of XXXXX was on XXXXX, and that her estimated due date was on XXXXX. Given the close proximity in time between her last XXXXX class and her due date, the Complainant stated that she did not want to risk failing because of any inability to attend her last XXXXX class. The Complainant asked the XXXXX Coordinator if she could complete her last scheduled day of XXXXX a week early if her “circumstances change and it is indicated that I will deliver earlier.”

She stated that her intent was to avoid any last-minute coordination or “ultimately course dismissal,” and that she was seeking advice in this regard.

That same day, the XXXXX Coordinator responded that the XXXXX schedule cannot be “changed due to personal concerns” and it is “impossible to equitably accommodate the personal concerns of every student.” She added that if the Complainant was unable to attend XXXXX due to an excusable absence, then they could discuss it at that time. Additionally, the XXXXX Coordinator attached the Program’s Student Handbook to the email and directed the Complainant to reference pages 21 and 22, as well as page 28, of the Student Handbook.

OCR reviewed the Student Handbook. Pages 21 and 22 detail the Program’s attendance policy, including the procedures and consequences for excused and unexcused absences from XXXXX classes or activities. Page 28 includes a “XXXXX Policy,” which states that “[l]etters from health care providers regarding student illness, including pregnancy, must include specific limitations or restrictions, as well as a statement defining classroom and XXXXX activities allowed. Additionally, students are not permitted to attend XXXXX classes or activities with restrictions. Any restrictions or limitations must be followed up by a written release from the physician before returning to full activity.”

On XXXXX, the Complainant emailed her Academic Advisor asking for the name of the Title IX Coordinator for the College. Additionally, in her email, the Complainant stated that she has an issue because she is not allowed to complete her last scheduled XXXXX class early in order to ensure it does not conflict with her due date. That same day, the Academic Advisor responded by email and provided the name of the College’s Title IX Coordinator to the Complainant.

On XXXXX, the Director of XXXXX emailed the Complainant stating that page 28 of the Student Handbook is in place and the Complainant would need a letter from her doctor regarding any limitations. The Director also stated that the Complainant would not be able to attend XXXXX with any limitations, but that the College would give her an Incomplete in XXXXX and allow her to complete her remaining hours in that circumstance.

That same day, the Complainant responded to the Director by email and asked her whether the Program and the College require documentation from her doctor stating that she does not have any limitations due to her pregnancy. Later that day, the Director sent an email to the Complainant confirming that the College would need documentation from her doctor. In response, on XXXXX, the Complainant submitted to the College a letter from her doctor stating that the Complainant is pregnant with a due date of XXXXX, and she “is clear to attend school without any physical limitations until date of delivery.”

On XXXXX, the Complainant emailed the Director asking when she would be able to complete her last XXXXX day. She also stated that another student was able to complete one XXXXX class early because she had a conflicting appointment. That same day, the Director responded that the Complainant should not “compare another student’s situation/circumstances to justify your current situation.” The Director continued by stating, “[w]e did not mention we would not accommodate you. What was discussed is that we cannot give you exact dates for you to complete your XXXXX rotation early because of one or more of the following” issues: the XXXXX Coordinator may not

have the space available due to the limited number of students that can be assigned per facility policy; the Complainant may be able to complete all hours required prior to the expected due date, such that additional time may not be warranted; and, as a last resort, an Incomplete can be given.

After consultation with OCR, on XXXXX, the College offered the Complainant the opportunity to complete her last day of XXXXX scheduled for XXXXX, approximately one week early, on XXXXX, as the Complainant had originally proposed. The Complainant and the College provided OCR with documentation indicating that on XXXXX, the Complainant responded to the College that she will attend her last day of XXXXX on XXXXX, and she participated in her XXXXX on that date.

The College also stated that the previously described XXXXX Policy contained in the Student Handbook was revised in September 2021. The subsection pertaining to pregnancy now reads:

Any student being treated by a doctor with any other injury, illness, or condition (including a student in late pregnancy) will be required to furnish a clearance statement from a health care provider. Letters from health care providers must include specific limitations or restrictions as well as a statement defining classroom and XXXXX activities allowed. Students are not permitted to attend XXXXX with restrictions that could impede the student's ability to safely provide patient care. Any such restrictions or limitations must be followed up by a written release from the physician before returning to full activity.

Analysis

Allegation 1(a)

The Complainant alleged that the College discriminated against her on the basis of sex, when the College denied her request to finish her last XXXXX class early as a reasonable adjustment for her pregnancy, because her last scheduled day of XXXXX conflicted with her estimated due date. OCR determined that on XXXXX, after consultation with OCR, the College offered the Complainant the opportunity to complete her last day of XXXXX scheduled for XXXXX, approximately one week early, on XXXXX. OCR confirmed that the Complainant agreed to this arrangement, and ultimately completed her XXXXX on that date. Therefore, OCR found that during the course of OCR's investigation, the College resolved any individual concerns pertaining to the Complainant's request for a reasonable adjustment, and that no further individual relief is available to the Complainant.

However, despite the College's resolution of the Complainant's individual concerns, based on the College's response to the Complainant's request for a reasonable adjustment, OCR has broader concerns regarding the College's response to student requests for reasonable adjustments based on parental status, including pregnancy and related conditions, including its obligation to ensure that students are not excluded from their education programs or activities on the basis of that status.

Here, OCR found that when the Complainant initially approached the College about a reasonable adjustment for her pregnancy on XXXXX, the College stated that the XXXXX schedule cannot be "changed due to personal concerns" and it is "impossible to equitably accommodate the

personal concerns of every student.” It then referred the Complainant to the XXXXX Policy. OCR notes that in response to OCR’s information request asking for the College’s programs/policies pertaining to reasonable adjustments due to pregnancy, the College provided OCR only with its XXXXX Policy.

After the College told the Complainant that she was required to provide a letter from her doctor regarding any limitations or restrictions on XXXXX, pursuant to the XXXXX Policy, that same day, the Complainant provided a doctor’s letter attesting that she did not have any limitations. Thereafter, the Complainant indicated that she sought to make a request for a reasonable adjustment on XXXXX regarding her last day of XXXXX; however, she was told that dates for completing her XXXXX could not be provided at that time, even though she had already provided the doctor’s letter as requested. Therefore, despite the Complainant providing the documentation requested by the College pursuant to its XXXXX Policy, the College failed to process the Complainant’s request for a reasonable adjustment on XXXXX.

Given the above, OCR has concerns that the College may be relying on its XXXXX whenever there is a request for an adjustment to the regular program that is reasonable and responsive to a student’s temporary pregnancy status. The XXXXX Policy, even in its revised form, makes no reference to reasonable adjustments, and to date, the College has not provided, nor has OCR found, any evidence indicating that there is an alternative policy related to reasonable adjustments due to pregnancy status. Rather, the XXXXX Policy appears to be designed to assess whether students with illness, injuries, or medical conditions (including but not limited to pregnancy) have limitations or restrictions impacting whether they are able to safely participate in the College’s programs or activities. As such, OCR has concerns that staff may not have sufficient guidance to respond appropriately to a request for a reasonable adjustment due to pregnancy status.

OCR also notes that a school may require a student to obtain the certification of a physician that the student is physically and emotionally able to continue participation in the educational program so long as it is also applied to all students with other physical or emotional conditions requiring the attention of a physician. However, in doing so, the College must still ensure that students are not excluded, based on pregnancy status, from its education program or activity.

While the XXXXX Policy appears to apply to students with injuries, illnesses, or other conditions, in addition to pregnancy status, the language does not clearly indicate whether a pregnant student would be excluded from continued participation in XXXXX even after providing the required information. Particularly given the Director’s statement that the Complainant would not be able to attend XXXXX if she was found to have any limitations (ostensibly including situations in which a doctor cleared her or where the limitation could be accommodated through a reasonable adjustment), OCR has concerns with how the XXXXX Policy, as written, is being interpreted by College staff.

As stated above, the College requested to resolve OCR’s concerns regarding its compliance with Title IX, which OCR determined is appropriate. Therefore, OCR will resolve these concerns pursuant to Section 302 of OCR’s *Case Processing Manual*.

Allegation 1(b)(i)

Next, the Complainant alleged that the College discriminated against her on the basis of sex, when the College did not provide her with the Title IX Coordinator's contact information after she requested it. However, the evidence demonstrates that after the Complainant requested such information from her Academic Advisor on XXXXX, the Academic Advisor provided the information to the Complainant on the same day. OCR further notes that the Title IX Coordinator's name, title, address, email, and telephone number are included in the College's Official Catalog, which is available online.¹ Therefore, OCR found insufficient evidence to substantiate Allegation 1(b)(i).

Allegation 1(b)(ii)

The Complainant also alleged that the College discriminated against her on the basis of sex, when the College required her to provide a doctor's letter to the XXXXX Department outlining any specific limitations or restrictions due to her pregnancy. The Complainant provided the College with a doctor's note indicating that she did not have any limitations. The Complainant did not provide any evidence that the College restricted her from attending XXXXX. As previously noted, the College ultimately allowed the Student to finish her XXXXX early, and she received a grade of "Pass" under a "Pass/Fail" grading system for the course at issue. Therefore, OCR found insufficient evidence to conclude that the College excluded the Complainant from its education program or activity on the basis of the Complainant's pregnancy. Accordingly, OCR found insufficient evidence to substantiate Allegation 1(b)(ii).

Allegations 2(a) and 2(b)

Lastly, the Complainant alleged that the College harassed and retaliated against her, when the College repeatedly informed her that she was required to provide a note from her doctor stating whether she had any specific limitations or restrictions due to her pregnancy which, per College policy, would have prohibited her from continuing to attend her XXXXX class.

As described above, the Director informed the Complainant that she was required to provide a note from her doctor on two occasions, both on XXXXX. In response, on the same date, the Complainant provided the Director with a note from her doctor indicating that she had no limitations.

The Complainant could not provide, nor could OCR find, any evidence that the College harassed the Complainant on the basis of her sex, such that the College limited her ability to continue participation in the program, nor was there any evidence that the two emails otherwise had any impact aside from prompting her to contact her doctor. Accordingly, OCR found insufficient evidence to indicate that the Director's conduct constituted sex-based harassment or denied the Complainant the ability to participate in or benefit from the Program. Further, OCR found insufficient evidence to indicate that the Director's conduct constituted an adverse action, because without more, such conduct would not deter a reasonable person from engaging in protected

¹ See <https://catalog.bryantstratton.edu/content.php?catoid=9&navoid=246&hl=Title+IX+Coordinator&returnto=search>.

activity (i.e., advocacy). Therefore, OCR found insufficient evidence to substantiate Allegations 2(a) and 2(b).

Conclusion

On January 7, 2022, the College signed the enclosed Resolution Agreement which, when fully implemented, will address the allegations investigated. The provisions of the Resolution Agreement are aligned with the allegations and the information obtained during OCR's investigation and are consistent with applicable law and regulation. The Resolution Agreement requires the College to adopt appropriate policies and procedures that are sufficient to ensure that students are not unlawfully excluded from the College's educational programs or activities based on their pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom, including with respect to any student requests for reasonable adjustments on these bases. The Resolution Agreement also requires the College to provide training to relevant staff on the policies and procedures described above. Please review the enclosed Resolution Agreement for further details. OCR will monitor the College's implementation of the Resolution Agreement until the College has fulfilled the terms of the Resolution Agreement.

The Complainant has a right to appeal OCR's determination regarding Allegations 1(b)(i), 1(b)(ii), 2(a), and 2(b) within 60 calendar days of the date of this letter. The Complainant must submit an online appeal form (<https://ocrcas.ed.gov/content/ocr-electronic-appeals-form>) or a written statement of no more than 10 pages (double-spaced, if typed) by mail to the Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue SW, Washington, D.C. 20202; by email to OCR@ed.gov; or by fax to 202-245-8392. The filing date of an appeal is the date that the appeal is submitted online, postmarked, submitted by email, or submitted by fax. In the appeal, the Complainant must explain why she believes the factual information described here was incomplete or incorrect, the legal analysis was incorrect, or the appropriate legal standard was not applied, and how the correction of any error(s) would change the outcome. Failure to provide this information may result in denial of the appeal. OCR will forward a copy of the appeal to the College. The College has the option to submit a response to the appeal to OCR within 14 calendar days of the date that OCR forwarded a copy of the appeal to the College.

This concludes OCR's investigation of the complaint. This letter 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 complaint. 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. OCR would like to make you aware that individuals who file complaints with OCR 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 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 personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

We appreciate the College's cooperation in the resolution of this complaint. If you have any questions, please contact the OCR attorney assigned to this complaint, Arati Jain at arati.jain@ed.gov.

Sincerely,

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

Enclosure

cc (Via Email): XXXXX XXXXX, Counsel for the College
XXXXXX

XXXXXX, XXXXX and XXXXX
XXXXXX