



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

1350 EUCLID AVENUE, SUITE 325
CLEVELAND, OH 44115-1812

REGION XV
MICHIGAN
OHIO

September 28, 2023

Via e-mail only to: [\[redacted content\]](#)

Arcola Whatley, Esq.
Executive Director of Legal Services
Institutional Equity & Deputy General Counsel
Cuyahoga Community College
700 Carnegie Avenue
Cleveland, Ohio 44115

Re: OCR Docket No. 15-22-2065

Dear Ms. Whatley:

This letter is to notify you of the disposition of the above-referenced complaint filed on [redacted content], with the U.S. Department of Education, Office for Civil Rights (OCR), against Cuyahoga Community College (the College) alleging that the College discriminated against a student (the Student) on the basis of pregnancy and childbirth.

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 education program or activity operated by a recipient of federal financial assistance. As a recipient of federal financial assistance from the Department the District is subject to these laws. Therefore, OCR had jurisdiction to investigate this complaint.

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

During its investigation, OCR reviewed documents provided by the College and the Student. OCR also interviewed the Student and the College's [redacted content], who also served as the College's [redacted content].¹ Prior to OCR completing its investigation, the College 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.

¹ [redacted sentence] The current director for OIE also serves as the Title IX and Section 504 Coordinator. Despite the change in roles, the College's Title IX web page contains outdated information about [redacted content].

Background

During the [redacted content] school year, the Student was [redacted content] at the College in pursuit of [redacted content] degree. The Student told OCR that at the beginning of the [redacted content], specifically on [redacted content], she contacted [redacted content] to inform [redacted content] of [redacted content] and discuss support options and strategies for [redacted content]. The College ultimately granted all of the Student's requested accommodations on [redacted content], and the Student alleged to OCR that [redacted content] by the College impacted her participation in the College's program.

Legal Standard

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.

A recipient may require a student to obtain the certification of a physician that the student is physically able to continue participation so long as such a certification is required of all students for other physical conditions requiring the attention of a physician. 34 C.F.R. § 106.40(b)(2).

Facts

The College's Student Accessibility Services (SAS) program oversees provision of services to students with disabilities. The SAS website states that "students seeking assistance for temporary disabilities must follow the same procedures to receive their accommodations as students who have permanent disabilities. Services will be provided only for the duration of the disability, as stated by the licensed service provider who is treating the disability." The College does not have a student leave policy, including a leave policy specific to pregnancy and related conditions.

The College has a nondiscrimination policy that lists pregnancy as a prohibited basis of discrimination, as well as a Title IX website, but does not have written Title IX policies and procedures for addressing pregnant students' requests for leaves of absence related to pregnancy or requests for accommodations related to pregnancy, childbirth, or recovery therefrom. The SAS handbook and website do not state that pregnant students may qualify for accommodations similar to accommodations provided for students with temporary disabilities.

The [redacted content] confirmed to OCR that the College does not have any formal policy addressing requests for leaves or accommodations related to pregnancy and related conditions. She stated that the College has an informal policy for handling such requests. She stated that students with pregnancy-related requests often approach the SAS office. SAS then contacts her office, and both offices then work in partnership to determine accommodations. She said that there are other times when faculty or staff tell students with such requests to contact her office, and that faculty and staff have received training about this. The [redacted content] said the College asks the student to provide a letter from their doctor which should include the time needed for the absence and/or accommodations. OIE and SAS then send the accommodation information for the student to their instructor(s), copying the student, using a standard joint e-mail template. The [redacted content] stated that this process is similar to the process for obtaining accommodations for temporary disabilities, but the SAS office uses a more formal structure and system for handling requests related to temporary disabilities.

[redacted paragraph].

[redacted paragraph].

[redacted paragraph].

[redacted paragraph].

[redacted paragraph].

[redacted paragraph].

[redacted paragraph].

[redacted paragraph].

[redacted paragraph].

[redacted paragraph].

[redacted paragraph].

[redacted paragraph].

[redacted paragraph].

[redacted paragraph].

Analysis, Voluntary Resolution, and Conclusion

OCR has a concern that the University did not make reasonable and responsive adjustments in response to the Student's pregnancy-related requests. At the time of the incidents at issue here, as well as the present time, the College did not provide information to pregnant students on its Title IX website, or elsewhere, about how to seek adjustments related to pregnancy. Also, although the College has a policy for accommodating temporary disabilities, neither the SAS website, nor any other University web page, addresses pregnancy leave or academic adjustments. The [redacted content] stated that the College's informal policy for pregnancy-related requests is similar to its policy for temporary disabilities; however, the office that handles temporary disabilities, SAS, has a more formal structure and system.

The evidence also suggests that the College did not engage in an appropriate interactive process with students seeking pregnancy-related accommodations. [redacted content] and was not handled through an interactive process like the College uses for requests related to temporary disabilities. [redacted sentence]. Also, OCR discovered outdated information [redacted content] on the College's website.

[redacted sentence]. [redacted sentence]. [redacted sentence]. [redacted sentence]. [redacted content], this did not resolve the compliance concerns the evidence revealed concerning the College's general practices with respect to student pregnancy and childbirth.

As explained above, under Section 302 of OCR's Case Processing Manual allegations under investigation may be resolved at any time when, prior to the conclusion of the investigation, 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 concerns that can be addressed through a resolution agreement. In this case, the College expressed an interest in resolving the allegation prior to the conclusion of OCR's investigation and OCR determined resolution was appropriate. On September 27, 2023, the College signed the enclosed Resolution Agreement, which, when fully implemented, will address all of the allegations in the complaint. OCR will monitor the implementation of the Resolution 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. 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, it 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 looks forward to receiving the College's first monitoring report by October 2, 2023. For questions about implementation of the Agreement, please contact Ms. Allison Hite, who will be overseeing the monitoring and can be reached by telephone at (202) 987-1296 or by e-mail at Allison.Hite@ed.gov. If you have questions about this letter, please contact me by telephone at (216) 522-2672 or by e-mail at Nathaniel.McDonald@ed.gov.

Sincerely,

Nathaniel J. McDonald
Supervisory Attorney/Team Leader

Enclosure