



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, DC

May 15, 2024

By email only to Marilyn.Fore@hgtc.edu

Dr. Marilyn Murphy Fore
President
Horry Georgetown-Technical College
2050 Highway 501 East
Conway, SC 29526

Re: Case No. 11-19-2308
Horry-Georgetown Technical College

Dear Dr. Fore:

This letter is to advise you of the outcome of the investigation that the U.S. Department of Education, Office for Civil Rights (OCR) conducted of the complaint filed against Horry-Georgetown Technical College. The Complainant alleged that the College discriminated against him on the basis of his sex by failing to respond as required to a report of sexual misconduct made against him in [redacted content] (Allegation 1). The Complainant also alleged that the College discriminated against him on the bases of his race (Allegation 2) and age (Allegation 3) by treating him differently than [redacted content] with respect to its response to the report made against him in [redacted content].

OCR enforces Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §§ 2000d *et seq.*, and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin in any program or activity receiving federal financial assistance from the Department of Education. OCR also 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. In addition, OCR enforces the Age Discrimination Act of 1975 (the Age Act), 42 U.S.C. §§ 6101 *et seq.*, and its implementing regulation at 34 C.F.R. Part 110, which prohibit discrimination on the basis of age in any program or activity receiving federal financial assistance. The College receives federal financial assistance from the Department of Education, so OCR has jurisdiction over it pursuant to Title VI, Title IX, and the Age Act.

During its investigation, OCR reviewed documents provided by the Complainant and the College; interviewed the Complainant and College staff; and viewed a video recording of the College's Title IX committee hearing in the Complainant's case. Before OCR completed its investigation, the College expressed interest in resolving Allegation 1 pursuant to Section 302 of OCR's *Case Processing Manual*, which states that allegations may be resolved prior to OCR making a determination if the school expresses an interest in resolving the allegations and OCR determines

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

that it is appropriate to resolve them because OCR's investigation has identified concerns that can be addressed through a resolution agreement. OCR completed its investigation of Allegations 2 and 3. After carefully considering all of the information obtained during the investigation, OCR found insufficient evidence to support Allegations 2 and 3. OCR's findings and conclusions regarding Allegations 2 and 3 are discussed below, as well as a summary of the evidence obtained by OCR during the investigation to date regarding Allegation 1.

Facts

In [redacted content] the Complainant, who was [redacted content], was enrolled in the College's [redacted content] program. On [redacted content], the Complainant was [redacted content] with three students [redacted content] (Students 1, 2, and 3). While [redacted content], the Complainant emailed his class notes to Students 1, 2 and 3. Some minutes later, the Complainant asked all three students to delete the email because it included private material that the Complainant stated he had not intended to share. OCR reviewed the email, which included [redacted content]. The [redacted content] included the Complainant's experiences [redacted content]; academic and personal accomplishments; and several sexual experiences using explicit language. At the end [redacted content] the Complainant noted several items, which included [redacted content].

Student 1 [redacted content] reported the incident to a College public safety officer that same day. Student 1 acknowledged to the officer that the Complainant immediately asked her and Students 2 and 3 to delete the email and said he sent it by accident. However, Student 1 expressed concern to the officer regarding the [redacted content] sexual references; told the officer that she believed [redacted content] might refer to her; told the officer that the Complainant had made unwanted advances towards her a few weeks earlier but was responsive when she told him she was not interested and to keep things professional; and noted discomfort about going to classes with the Complainant. The following day, on [redacted content], the officer shared the report with the College's Title IX Coordinator.

The College's Investigation

At the time of Student 1's report, the College's grievance procedures provided that it would conduct a preliminary Title IX investigation within five weekdays and impose sanctions if it found a violation had occurred. Either party could then request review by a hearing committee where they could present evidence and witnesses, and any preliminary investigation decision and sanction could "be held in abeyance" pending the outcome of a hearing committee. A party could subsequently appeal a hearing committee's decision to the College's president for a decision within ten days. The procedures also provided for interim measures, informal resolution, and notice to each party of procedural rights in the hearing process, such as the right to present evidence and witnesses, to testify, to review evidence that may be presented at a hearing, to know the names of those bringing the charges and any witnesses who may be called, and to hear witnesses on behalf of those bringing the charges.¹

On [redacted content], a Title IX investigator (the Investigator) began a preliminary investigation of Student 1's report by interviewing Student 1 and reviewing a written statement from the

¹ The College significantly revised its Title IX grievance procedures in 2020.

Complainant claiming that he had inadvertently emailed private material with sexual comments to Students 1-3. Additionally, on [redacted content], the Investigator interviewed the Complainant and Students 2 and 3. Students 1, 2, and 3 each expressed discomfort to the Investigator with the Complainant's [redacted content] and reported that the Complainant previously flirted with Student 1 [redacted content]. All three students told the Investigator that the Complainant asked them to delete his email. The Complainant told the Investigator that his [redacted content] was meant to be private, he sent it inadvertently, repeatedly asked Students 1-3 to delete it and understood that they might be offended or scared by it. The Complainant told the Investigator that he once joked about having a crush on Student 1 and then told her he knew that made her uncomfortable. The Complainant also told the Investigator that [redacted content]. The Complainant also provided a written statement to the College noting many of these points.

At [redacted content], which was the same day the Investigator interviewed the Complainant and Students 2 and 3, the College's Title IX Coordinator sent the Complainant a disciplinary letter finding him responsible for violating College policies regarding unwelcome conduct, creating a hostile environment, and sexual violence. The letter noted that the Complainant had acknowledged sending an email to three students with violent and sexually graphic material and derogatory language about women. It also stated that the College was immediately suspending the Complainant until [redacted content] and putting in place a no trespass order. The letter informed the Complainant that he could appeal within two days and that the decision and sanction "may be held in abeyance" if the matter went to a hearing committee.²

The Title IX Coordinator told OCR that she found the Complainant responsible and suspended him based on the information obtained by the Investigator; the Complainant's inability to adequately explain how his [redacted content] was inadvertently shared; and Student 1's high level of discomfort being in proximity to the Complainant after receiving the email. The Coordinator decided suspension was the appropriate sanction due to the impact the Complainant's continued presence would have on Students 1-3, who were completing courses with the Complainant in the same program, and to reduce the likelihood that similar behavior would recur.

The Pre-Hearing and Hearing Process

In emails sent on [redacted content], the Complainant stated that he wished to appeal the results of the investigation. In the emails, the Complainant reiterated that he inadvertently sent the private [redacted content] and immediately asked the other students to delete it. He also stated that the [redacted content]'s sexual references were about consensual conduct [redacted content]; and that violent acts referenced in the [redacted content] related to his experiences [redacted content]. The College scheduled a hearing by a hearing committee but did not hold the Complainant's sanctions in abeyance pending the hearing; the Title IX Coordinator could not recall why the Complainant's sanctions were not held in abeyance pending the hearing.

² Based on the College's records, an administrative assistant emailed a draft of the letter to the Title IX Coordinator and the Investigator at [redacted content], the same day the Investigator interviewed the Complainant and Students 2 and 3. The Title IX Coordinator replied "good with me" at [redacted content] that same day. The Title IX Coordinator explained to OCR that by then the Complainant had admitted to sending the email, the College had evidence the email was sent, the investigation did not suggest added evidence need to be pursued, and what was shared in interviews conducted by then confirmed what had already been reported.

In [redacted content], the Title IX Coordinator communicated with the Complainant about the hearing process. She emailed him information about his procedural rights, provided a redacted incident report, and answered his questions about his right to provide evidence, testimony, and witnesses. The Complainant asked if his professors could serve as character witnesses and the Title IX Coordinator replied that it was up to each professor if they wanted to participate. The Coordinator also informed the Complainant that he would have to participate in the hearing by video or phone given the no trespass order, that he had copies of the College's evidence (i.e., his email and the incident report), and that the Title IX investigator would be at the hearing and Students 1-3 would not be there.³

The Complainant emailed three of his professors on [redacted content], asking for written or in-person statements on his behalf for the hearing, but did not receive responses from them. On [redacted content], the Complainant submitted evidence and questions for the hearing. The College then notified the Complainant, in a written notice with the charges, that the hearing would be on [redacted content].⁴ The notice provided information about witnesses, evidence, and the parties' procedural rights, and stated that all the Complainant's evidence was admissible. It also noted that it would not be necessary or relevant to call the Complainant's three instructors as witnesses, that calling the three students as witnesses was not required, and that the committee might call the Title IX investigator and public safety officer who reported the incident as witnesses.

A hearing was held on [redacted content]. During the hearing, the College's representative discussed the College's investigation and its determination, based on a preponderance of the evidence, that the Complainant violated Title IX. The Complainant spoke for an hour, during which he explained that the [redacted content] was his notes on his personal life for [redacted content]; only referenced past sexual experiences and his desire [redacted content]; and was inadvertently shared due to recurring computer glitches. The Complainant also raised procedural concerns about the investigation and hearing, including the College prejudging his responsibility, deeming his conduct unwelcome even though Students 1-3 chose to look at the email after he asked them to delete it, preventing him from questioning Students 1-3 or his professors as witnesses, and barring him from attending the hearing in person. The committee asked questions of both the Complainant and the College's representative, including asking the representative questions the Complainant submitted.⁵ The committee also noted that College faculty, who had not responded to the Complainant's request for written or in-person statements on his behalf, could not be compelled to attend the hearing.

On [redacted content], the hearing committee issued its decision letter. It found that the Complainant did not engage in sexual violence or unwelcome conduct but did engage in harassing conduct that created a hostile environment in violation of College policy. The committee deemed the Complainant's suspension inappropriate, recommended disciplinary probation until [redacted]

³ The Title IX Coordinator told OCR that it was and is the College's general practice when there is a no trespass order in place to have the respondent attend the hearing virtually.

⁴ The Title IX Coordinator tried to schedule the hearing for the weeks of [redacted content], but was unable to do so due to scheduling conflicts of committee hearing members and a family emergency of the College's Title IX representative.

⁵ The Complainant also gave the College questions for the public safety officer, which were answered in writing and shared with the Complainant in advance of the hearing as the officer could not attend the hearing.

content] with a written reprimand, directed the Complainant to have no contact with Students 1-3 but lifted the no trespass order, and indicated that the Complainant could return to campus and re-enroll at the College in [redacted content]. The letter provided ten days to appeal the decision to the College’s president.

The Parties’ Appeals and the College President’s Decision

The Complainant and the College’s Title IX office both appealed the committee’s decision. In the Complainant’s appeal, the Complainant asserted that his one inadvertent email was not serious enough to create a hostile environment and that Students 1-3 and his professors could have provided exculpatory information had they participated as witnesses. In the College’s appeal, the College contested the committee’s decision to allow the Complainant to return to campus in [redacted content] in light of safety concerns raised by Student 1.

The Title IX Coordinator informed OCR that while the Title IX office organized relevant materials, documents, and information for the College President to assist with decision-making on appeal, the President alone decided on appeal whether the Complainant committed violations of College policy and what sanctions to impose. On [redacted content], several days before issuing a decision regarding the appeals, the President emailed the Title IX Coordinator and the Investigator asking, “are you comfortable with our decision?” The Investigator replied, “Absolutely comfortable!” The Title IX Coordinator responded, “Yes. You have found him to be in violation of the Student Code and sanctions are being imposed” and “[l]ike we discussed on the conference call, we will include ‘no contact’ language in the letter from you regarding your decision.”

On [redacted content], the College’s President issued a written appeal decision. She found the Complainant did not commit sexual violence but did engage in unwelcome conduct and conduct that created a hostile environment, in violation of College policy. The President modified the Complainant’s sanction to a suspension effective immediately until the start of the [redacted content] semester, reinstated a no trespass order barring him from College property, imposed disciplinary probation until the end of [redacted content], and continued the no contact order with Students 1-3. The President’s decision stated her belief that the Complainant’s conduct required these added measures and stated that he could request to re-enroll after all the terms of his suspension were satisfied.

In [redacted content], the Complainant asked to re-enroll at the College for the [redacted content] semester and the College granted his request. He resumed taking classes at the College in [redacted content] and completed his [redacted content] degree in [redacted content].

The Complainant’s OCR Complaint and the College’s Revised Policies

The Complainant alleged to OCR that the College was biased against him in the Title IX process because he is an older white male, and presumed his guilt due to his race, sex, and age. The College denied these claims, asserting that it followed its Title IX procedures and afforded the Complainant his rights throughout the process, and that the Complainant failed to show that his admitted conduct did not warrant the sanctions imposed. The Title IX Coordinator told OCR that the Complainant’s race, sex, and age did not affect the College’s response and she did not recall any of those factors

coming up during the Title IX process. She also said that the Complainant was not treated differently from other Title IX respondents or in ways that deviated from its Title IX procedures at the time.

OCR did not find references to race in any documentation from the Complainant or the College. The only age-related reference OCR identified was in a letter the Title IX Coordinator received from Student 1 on [redacted content], expressing concerns that the hearing committee was allowing the Complainant to return to the College. Student 1 noted that if the committee had reviewed “[redacted content] they would not allow him to return to a campus [redacted content].” The Title IX office had already appealed the hearing committee’s decision when it received this letter.

The College amended its Title IX procedures in 2020 and most recently in 2023. Its current procedures provide for impartial investigations followed by live hearings with cross-examination, and written determinations that may be appealed by either party. The College’s current policy indicates that a respondent may not be suspended or expelled as an interim measure. It also states that emergency removal of a respondent is only allowable after the College conducts a safety and risk analysis and determines that there is an immediate physical health or safety threat that justifies removal. In addition, the policy does not permit the Title IX Coordinator or the decisionmaker to serve as the investigator or the appeal officer.

Legal Standards

The Title VI, Title IX, and Age Act regulations provide that no person shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under a school’s programs or activities on the basis of race, color, national origin, sex, or age, respectively. 34 C.F.R. §§ 100.3(a) (Title VI), 106.31(a) (Title IX), and 110.10(a) (Age Act).

OCR investigated this case based on the Title IX regulation that was in effect during the academic year when the alleged harassment occurred.⁶ That prior Title IX regulation required recipients to adopt and publish grievance procedures providing for the prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by Title IX. *See prior* 34 C.F.R. § 106.8(b). There is no fixed time frame to determine whether a resolution has been prompt; rather, OCR evaluates a recipient’s good faith efforts under the circumstances. An equitable response requires a trained investigator to analyze and document the available evidence to support reliable decisions, and any rights or opportunities that a recipient makes available to one party during an investigation should be made available to the other party on equal terms. OCR evaluates on a case-by-case basis whether the resolution of a sexual harassment complaint was prompt and equitable.

Sex-based harassment is covered by Title IX if the harassment is sufficiently serious to deny or limit the individual’s ability to participate in or benefit from the recipient’s education program or activity. In determining whether sex-based harassment exists and has created a hostile environment

⁶ An updated Title IX regulation was published on May 19, 2020, and took effect on August 14, 2020. The 2020 regulation can be found here: <https://www.ecfr.gov/current/title-34/subtitle-B/chapter-I/part-106?toc=1>. The previous regulation can be found here: <https://www.ecfr.gov/on/2020-01-01/title-34/subtitle-B/chapter-I/part-106>.

based on sex for students, OCR looks at the totality of the circumstances, and considers a variety of factors, including whether the conduct was unwelcome to the student; the degree to which the conduct affected one or more students' education; the type, frequency, and duration of the conduct; the identity of and relationship between the alleged harasser and the subject or subjects of the harassment; the number of individuals involved; the age and sex of the alleged harasser and the subject of the harassment; the size of the school, location of the incidents, and the context in which they occurred; and any other incidents at the school. OCR examines the conduct from an objective perspective and a subjective perspective.

If a school's investigation or other appropriate steps to determine what occurred identify student-on-student sex-based harassment that creates a hostile environment, schools are responsible for taking prompt and effective action to stop the harassment and prevent its recurrence. A school also may be responsible for remedying the effects of the harassment on the student who was harassed.

Analysis

OCR found that the College generally followed its Title IX policies and procedures during its investigation and adjudication of the sexual misconduct report made against the Complainant. The Complainant was given notice of the charges, provided a hearing, allowed to present evidence and witnesses, notified of the hearing decision, and afforded an appeal to the College's President. During the process, the Title IX Coordinator informed the Complainant of his procedural rights, answered his questions about the Title IX hearing and appeal, and facilitated the Complainant's participation.

With respect to Allegation 1, OCR has concerns, however, about the College's initial suspension of the Complainant until [redacted content], based on its preliminary determination and in effect until a hearing on [redacted content], after the [redacted content] semester had ended. Specifically, OCR is concerned that the College may have prepared the [redacted content] disciplinary letter before interviewing the Complainant and Students 2 and 3 and issued the sanction without giving the Complainant an adequate chance to provide relevant evidence; and, by not holding the initial sanctions in abeyance pending the hearing, the College may have deferred the Complainant's right to a thorough investigation in this case.⁷ OCR is also concerned, based on the email correspondence of [redacted content] between the President, Title IX Coordinator, and Investigator, that the Title IX Coordinator and the Investigator may have advised the College's President on the outcome of the appeals filed by the Complainant and Title IX Office prior to the President making a determination on the appeals, thereby affecting the impartiality of the appeal process in this case. Before OCR completed its investigation of Allegation 1, the College expressed interest in resolving the allegation pursuant to Section 302 of OCR's *Case Processing Manual*.

With respect to Allegations 2 and 3, OCR found insufficient evidence that the College discriminated against the Complainant based on his race or age in its response to the sexual misconduct report made against him in [redacted content]. OCR reviewed extensive documentation from the College and the Complainant and did not see indications that the Complainant's race or age had any bearing on the College's Title IX process. Although the

⁷ As a result of the initial suspension, the Complainant was unable to finish the final weeks of class and get course credits for the [redacted content] semester.

Complainant claimed that [redacted content] biased the College against him, the College's Title IX Coordinator denied this and OCR did not find evidence that any action by the College was affected by the Complainant's race or age. Additionally, as stated above, OCR found that the College generally followed its Title IX policies and procedures during its investigation and adjudication of the sexual misconduct report made against the Complainant. Accordingly, OCR will take no further action with respect to Allegations 2 and 3.

Conclusion

On May 15, 2024, the College agreed to implement the enclosed Resolution Agreement which, when fully implemented, will address OCR's compliance concerns regarding Allegation 1. OCR will monitor the College's implementation of the agreement until the College is in compliance with the terms of the agreement and the statute and regulation at issue.

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 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. 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.

The Complainant has a right to appeal OCR's determination regarding Allegations 2 and 3 within 60 calendar days of the date indicated on this letter. In the appeal, the Complainant must explain why the factual information described here was incomplete or incorrect, the legal analysis was incorrect, or the appropriate legal standard was not applied; and, how correction of any error(s) would change the outcome of the case. Failure to do so may result in dismissal of the appeal. If the Complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the College. The College has the option to submit, to OCR, a response to the appeal. The College must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the College.

The Complainant has the right, pursuant to the regulation at 34 C.F.R. § 110.39 implementing the Age Act, to file a civil action for injunctive relief in federal court following the exhaustion of administrative remedies. Administrative remedies are exhausted if: (1) 180 days have elapsed since the complainant filed the complaint with OCR, and OCR has made no finding, or (2) OCR issues a finding in favor of the school. A civil action can be brought only in a United States district court for the district in which the school is located or transacts business. A complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but these costs must be demanded in the complaint filed with the court. Before commencing the action, the complainant shall give 30 days notice by registered mail to the Secretary of the Department of Education, the Secretary of the Department of Health and Human Services, the Attorney General of the United States, and the College. The notice shall state the alleged violation of the Age Act, the relief requested, the court in which the action will be brought, and whether or not attorney's fees are demanded in the event the complainant prevails. The complainant may not

bring an action if the same alleged violation of the Age Act by the College is the subject of a pending action in any court of the United States.

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 against the College 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, OCR 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.

We appreciate the College's cooperation in the resolution of this complaint. If you have any questions, please contact me at 202-245-8014 or Dan.Greenspahn@ed.gov.

Sincerely,

Dan Greenspahn
Team Leader, Team 1
Office for Civil Rights
District of Columbia Office

Enclosure

cc: Dr. Melissa Batten, Vice President for Student Affairs, Melissa.Batten@hgtc.edu