



Opinion No. 2016-01

March 24, 2016

Meredith Canady
Deputy Compliance Officer/TITLE IX Investigator
University Compliance and HR
Prudential Bldg. 114

Dear Ms. Canady:

The Office of University Counsel received your request for a formal opinion concerning a proposed amendment to the University's non-discrimination policy. Per your request, the proposed amendment aims to expand Coastal Carolina University's policy on non-discrimination to specifically include non-discrimination in any University activities based on "sexual orientation," "gender expression," and "gender identity." You inquire as to whether Coastal Carolina University is authorized to adopt such an amendment without being in violation of state or federal laws, and whether Title VII applies to sexual orientation, gender expression, and gender identity.

Coastal Carolina University Policy Number UNIV-COMP 410 states "the administration, implementation, and enforcement of University policies is the responsibility of the appropriate Administration Area...the review, revision, and creation of policies is delegated to the appropriate Management Area." In regards to a proposed amendment to Title VII language in a policy, pursuant to UNIV-COMP 410, the office responsible for implementing such a policy is University Compliance and Human Resources. The appropriate management area is Human Resources and Equal Opportunity.

The Office of University Counsel has reviewed state and federal law and has not found a provision preventing Coastal Carolina University from adopting a policy stating that it will not discriminate based upon sexual orientation, gender expression, or gender identity.

Furthermore, South Carolina, as well as the Fourth Circuit, remain silent on the issue of whether Title VII applies to sexual orientation, gender expression and gender identity, while other circuit courts remain split on these issues. However, the United States Equal Employment Opportunity Commission (EEOC) has taken the position that existing sex discrimination provisions in Title VII protect discrimination against an employee on the basis of sexual orientation, gender expression, and gender identity. While Title VII of the Civil Rights Act of 1964 does not explicitly include sexual orientation, gender expression, or gender identity in the



scope of its protection, the EEOC holds discrimination of the above to be unlawful discrimination on the basis of sex. Other circuit court decisions agree with the EEOC and interpret Title VII as prohibiting discrimination against employees on the basis of sexual orientation and gender identity, however, those other court decisions are not binding upon South Carolina, or the Fourth Circuit.

In conclusion, it is the opinion of University Counsel, that Coastal Carolina University, acting through the University's Policy on Policies; UNIV-COMP 410, is authorized to amend the anti-discrimination policy. Furthermore, we find no state or federal law prohibiting the University from including in such a policy, a prohibition on discrimination based on sexual orientation, gender identity, and gender expression. Additionally, while the law of South Carolina and the 4th Circuit remain silent on whether such provisions are encompassed in the existing language of Title VII, it is allowable and consistent with public policy to exceed federal and state law should the institution decide to implement these proposed amendments.

Sincerely,

Timothy E. Meacham
University Counsel
Coastal Carolina University

Katherine M. Brooks
Legal Research Specialist
Coastal Carolina University