



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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DALLAS, TX 75201-6810

REGION VI
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TEXAS

July 21, 2014

Emma C. Johnson Hadley, Chancellor
Tarrant County College
1500 Houston Street
Fort Worth, Texas 76102

RE: OCR Case No. 06142032
Tarrant County College

Dear Chancellor Hadley:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, has completed its investigation of the above referenced complaint against Tarrant County College (TCC), Fort Worth, Texas, which was received by OCR on November 23, 2013. The complainant alleged that she was discriminated against, based on her age, by her XXXX XXXX (XXXX XXXX) instructor, who “verbally attacked” her work, spoke to her as if she could not read or comprehend what she was supposed to do, and was “very rude” to her during the 2013 XXXX semester. The complainant alleged that she complained to TCC about her instructor, but TCC failed to respond properly. In a letter dated February 13, 2014, OCR notified TCC that it was forwarding this allegation to the Federal Mediation and Conciliation Service (FMCS) for mediation. On May 1, 2014, OCR was informed that the complaint allegation was not resolved via FMCS mediation; therefore, OCR resumed its processing of this complaint.

OCR is responsible for determining whether entities that receive or benefit from Federal financial assistance from the Department or an agency that has delegated investigative authority to this Department are in compliance with the Age Discrimination Act of 1975, 42 U.S.C. § 6101 (Age Act), and its implementing regulation at 34 C.F.R. Part 110, which prohibit discrimination on the basis of age. TCC is a recipient of Federal financial assistance from the Department. Therefore, OCR has jurisdictional authority to resolve allegations of discrimination filed against TCC under the Age Act. Based on the complainant’s allegation, OCR investigated the following issue:

Whether TCC discriminated against the complainant on the basis of age by failing to take prompt and effective corrective action reasonably calculated to end age-based harassment directed toward her, which was sufficient to constitute a hostile environment, of which TCC had actual or constructive notice, during the 2013 XXXX semester, in violation of 34 C.F.R. Part 110.

During the course of its investigation, OCR reviewed TCC policies and procedures regarding age-based discrimination, the XXXX XXXX course syllabus, a record of the complainant’s grades for

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the XXXX XXXX course, correspondence between the complainant and TCC, statements written and signed by TCC employees, and written information from the complainant.

A finding that a recipient has violated one of the laws that OCR enforces must be supported by a preponderance of the evidence (i.e., sufficient evidence to prove that it is more likely than not that unlawful discrimination or retaliation occurred). When there is a significant conflict in the evidence and OCR is unable to resolve that conflict, for example, due to the lack of corroborating witness statements or additional evidence, OCR generally must conclude that there is insufficient evidence to establish a violation of the law. Based on OCR's careful review and analysis of the information obtained, we have determined that there is insufficient evidence to establish that TCC violated the Age Act, as alleged in the subject complaint; however, OCR's investigation did reveal compliance concerns with regard to TCC's policy and procedure requirements under the Age Act. The basis for this determination is set forth below.

Alleged Age Harassment

The regulation implementing the Age Act at 34 C.F.R. § 110.10(a), provides that no person shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal funds. Age-based harassment is a form of discrimination under the Age Act. Harassment is intimidation or abusive behavior toward an individual based on (i.e., because of) one's age that creates a hostile environment by interfering with or denying a complainant's participation in or receipt of benefits, services, or opportunities in the recipient's educational program. Harassing conduct may take many forms, including verbal acts and name-calling, as well as nonverbal behavior, such as graphic and written statements, or conduct that is physically threatening, harmful, or humiliating.

Whether a hostile environment existed must be determined from the totality of the circumstances, such as the frequency and/or severity of the discriminatory conduct, whether the conduct is physically threatening or humiliating, and what kind of psychological harm results from the conduct (psychological harm is not required, but is taken into account). If OCR finds that a hostile environment existed and the recipient had notice of its existence, OCR then determines whether the recipient responded appropriately by taking reasonable, timely, and effective steps to respond to the specific incidents of harassment. To be effective, a recipient's response must be reasonably calculated to end the harassment, prevent its recurrence, and make whole any victims of the harassment.

The complainant alleged that she was discriminated against, based on her age, by her XXXX XXXX instructor (Instructor), who "verbally attacked" her work, spoke to her as if she could not read or comprehend what she was supposed to do, and was "very rude" to her in XXXX 2013. The complainant alleged that the instructor said to the complainant, X---phrase redacted---X. The complainant also alleged that, in XXXX 2013, she complained to TCC about her Instructor, but TCC failed to respond properly.

OCR found that the complainant was enrolled in TCC's XXXX XXXX course (XXXX XXXX) during the 2013 XXXX XXXX (from late XXXX 2013 through early XXXX 2013). XXXX XXXX was an online course provided through TCC's Distance Learning section. Students were expected to interact with each other and the Instructor through an online Discussion Board and by

email. Additional interaction with the Instructor was available via telephone and student scheduled face-to-face appointments. The Instructor informed OCR that X---phrase redacted---X. The Instructor also informed OCR that X---phrase redacted---X. Further, the Instructor indicated that X---phrase redacted---X.

OCR reviewed records of the Discussion Board entries and emails between the complainant and the Instructor. OCR found that several of the complainant's assignments X---phrase redacted---X and most of the communication between the Instructor and the complainant were about X---phrase redacted---X. OCR found that the words and tone of the Instructor's written communications with the complainant appeared to be professional. OCR also found that the only mention of age was a XXXX XXXX, 2013 email from the complainant X---phrase redacted---X. The complainant's email read:

X---phrase redacted---X

OCR found no evidence that the Instructor communicated with the complainant inappropriately and no evidence that the Instructor said anything to the complainant regarding the complainant's age.

With regard to the complainant's allegation that TCC failed to respond to her complaint about her Instructor, OCR found that, on XXXX XXXX, 2013, via telephone, the complainant spoke about the XXXX XXXX XXXX XXXX XXXX; on XXXX XXXX, 2013, the complainant complained via email about the Instructor to the XXXX XXXX; and, on XXXX XXXX, 2013, the complainant complained via email about the XXXX XXXX XXXX XXXX XXXX XXXX. Based on the information contained in the complainant's email complaints and the XXXX written summary of the telephone call, OCR determined that the complainant did not raise an issue of discrimination based on age; rather, the subject of the complaints was about X---phrase redacted---X. The evidence indicates that the complainant did not allege that she was discriminated against by the Instructor based on her age. OCR attempted to get additional information from the complainant, but the complainant informed OCR that she was unavailable to speak with OCR and that her X---phrase redacted---X.

Accordingly, OCR determined that the evidence was insufficient to conclude that TCC discriminated against the complainant under the Age Discrimination Act as alleged in this complaint.

Age Discrimination Policy and Grievance Procedures

The Age Act regulation at 34 C.F.R. 110.25(a) requires recipients to designate at least one employee (Coordinator) to coordinate its efforts to comply with and carry out its responsibilities under the Age Act. The Age Act regulation at 34 C.F.R. 110.25(b) requires recipients to notify its beneficiaries, in a continuing manner, of information regarding the provisions of the Age Act. The notification (Notice of Non-Discrimination) must also identify the Coordinator by name or title, address, and telephone number. Further, the Age Act regulation at 34 C.F.R. 110.25(c) requires recipients to adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging discrimination on the basis of age.

OCR found that TCC's Associate Vice Chancellor for Human Resources is designated as the Age Act Coordinator; however, TCC's online and print publications do not adequately make this known. Rather, the Student Rights and Responsibilities section of TCC's website contains a statement that, "If students feel they have been discriminated against based on sex, race, color, national origin, veteran status, disability or age, they are to file a complaint with the College District compliance officer for Title IX, Section 504, and the Americans with Disabilities Act." This statement is found only in the Disability Support and Title IX sections of the website. Accordingly, a person looking for information about age discrimination or the Age Act Coordinator might not locate this statement because it is listed in the sections regarding Disability Support and Title IX, and there is no section on the website specifically regarding age discrimination. Further, the Student Handbook does not contain a statement identifying a person designated to handle complaints and inquiries regarding age-based discrimination.

OCR's review of TCC's written and online policies and procedures revealed that TCC does not appear to have a Notice of Non-Discrimination that satisfies the requirements of the Age Act; rather TCC has an *Equal Employment Opportunity* (EEO) statement, which states that TCC "is an Equal Opportunity institution that provides educational and employment opportunities on the basis of merit and without discrimination because of national origin, physical or mental disability, sexual orientation, or veteran status." TCC has another EEO statement that includes reference to discrimination based on age, but the statement is found in only a printed version of the TCC Human Resources manual that was provided to OCR and is not available on the TCC website. Further, a section of the TCC Student Handbook titled "Discrimination, Harassment" contains a statement that TCC prohibits discrimination and harassment against students based on "race, color, religion, gender, national origin, sexual orientation, disability, or any other basis prohibited by law," but age is not explicitly mentioned.

OCR further found that TCC has grievance procedures for addressing allegations of discrimination and harassment, but age is not one of the areas of discrimination it specifically purports to cover. Further, OCR's review of these procedures revealed that they lacked provisions necessary to satisfy the requirement under the Age Act to provide a "prompt and equitable resolution." Namely, the procedures lacked information indicating that they: apply to complaints alleging harassment carried out by third parties; provide adequate, reliable, and impartial investigations of complaints including the opportunity for both parties to present witnesses and other evidence; and provide written notice to the parties of the outcome of the complaint.

Prior to the completion of OCR's investigation, TCC expressed a desire to voluntarily resolve the complaint. Consistent with Section 302 of OCR's Complaint Processing Manual, TCC submitted the attached Resolution Agreement (Agreement) on July 21, 2014, which OCR has determined addresses the compliance issues identified during the investigation of this complaint and which, when fully implemented, will resolve the compliance issues.

Accordingly, as of the date of this letter, OCR will cease all investigative actions regarding this complaint; however, OCR will actively monitor the implementation of the Agreement by TCC to determine whether the commitments made by TCC have been implemented consistently with the terms of the Agreement. If TCC fails to implement the Agreement, as specified, OCR will resume its investigation of the above issues. If TCC determines a need to modify any portion of the Agreement, TCC may submit, for consideration, proposed revisions to OCR. Effective the date of

this letter, OCR is closing the investigation portion as related to this complaint. This letter is not intended nor should it be construed to cover any matters not specifically addressed herein.

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.

Under OCR procedures we are obligated to advise the institution against which the complaint is filed that intimidation or retaliation against a complainant is prohibited by regulations enforced by this agency. Specifically, the regulations enforced by OCR, directly or by reference, state that no recipient or other person shall intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege secured by regulations enforced by OCR or because one has made a complaint, testified, assisted or participated in any manner in any investigation, proceeding or hearing held in connection with a complaint.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions regarding this determination, please contact Tiffany Gray, the attorney assigned to this matter, at 214-661-9611, or me at 214-661-9600.

Sincerely,

/s/

Gregory McGhee
Team Leader, Supervisory Attorney
Office for Civil Rights, Dallas Office