



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VII
KANSAS
MISSOURI
NEBRASKA
OKLAHOMA
SOUTH DAKOTA

July 12, 2016

XXXXX X. XXXXX, XXXXX XXXXX
Emporia State University
1 Kellogg Circle, Box 4001
Emporia, Kansas 66801

Re: Docket # 07162043

Dear Mr. XXXXX:

On January 19, 2016, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received the above complaint against Emporia State University (University), Emporia, Kansas, alleging discrimination on the bases of race, color, disability, and retaliation. This letter is to confirm the University has voluntarily submitted a Resolution Agreement (Agreement) to resolve this complaint.

Specifically, the Complainant alleged the University failed to timely resolve his October 14, 2015, internal grievance he filed with the University's human rights/affirmative action office, resulting in the failure to reasonably respond to address the hostile environment to which the Complainant was subjected in violation of 34 C.F.R. § 100.3 and 34 C.F.R. § 104.4.

OCR is responsible for enforcing:

- Title VI of the Civil Rights Act of 1964 (Title VI), 42 United States Code (U.S.C.) § 2000d, and its implementing regulation, 34 Code of Federal Regulations (C.F.R.) Part 100. Title VI prohibits discrimination on the basis of race, color or national origin by recipients of Federal financial assistance.¹ The Title VI regulation at 34 C.F.R. § 100.7(e) prohibits retaliation.
- Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance.
- Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131, and its implementing regulation, 28 C.F.R. Part 35. Title II prohibits discrimination on the

¹ OCR recommends a grievance procedure for complaints of discrimination based on race, color, national origin, sex, disability, and age. Although Title VI does not require a grievance procedure, if a recipient offers a grievance procedure for Title VI complaints of discrimination based on race, color, or national origin, the grievance procedure should provide prompt and equitable resolution of the grievance.

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

basis of disability by public entities.

As a recipient of Federal financial assistance from the Department and a public entity, the University is subject to Title VI, Section 504, and Title II. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

On October 14, 2015, the Complainant filed a grievance with the University alleging that he had been subjected to discrimination and retaliation. At the time that he filed his OCR complaint on January 19, 2016, the University had not issued a decision regarding his grievance. The University's decision regarding his grievance was not issued until June 13, 2016. In a letter to the Complainant dated June 13, 2016, the University's provost provided the University's decision that the Complainant had not been subjected to discrimination or retaliation.

OCR examined the University's grievance procedure which states that a formal complaint should generally be resolved within 60 calendar days, though extensions may be generated for good cause. The length of time between the filing of the Complainant's grievance and the University's decision regarding his grievance was a little over eight months.

The University provided the following reasons for not meeting the University's timeframes in processing the Complainant's grievance:

Formal Complaints "should generally be resolved within 60 calendar days though extensions may be generated for good cause at the discretion of the Affirmative Action Officer." This time frame is not fixed, but should be observed whenever possible. This case has taken longer than 60 days, but not as a result of any neglect or intentional delay. There has been no effort or attempt to deprive the complainant of a timely resolution of his complaint. The factors that have caused this delay include, but are not necessarily limited to: (a) The Human Resources (HR) department is understaffed due to state budget cuts; (b) The responsibility for processing HIB visa applications was transferred from academic departments to HR last year, which added much time-sensitive work to HR, this resulted in disruption to all other work schedules; (c) There were over 120 recruitments last year at the University, much higher than normal, which further disrupted all other work schedules; (d) Title IX compliance has taken a great deal of time in policy development and implementation, as well as developing and conducting mandatory training; and, (e) An modest increase in employee grievances, but an increase in the complexity of these grievances (mostly pursuant to internal policies with firm action deadlines). There is confidence that many of these issues have been resolved or are being resolved, but there was about a nine to ten month period (beginning around September 1, 2015) during which there was disruption with the normal schedules for processing much of the work done by HR, unfortunately including this matter.

Additionally, the University obtained outside counsel to complete the investigation, the findings, and the resolution recommendations for the Complainant's grievance.

Prior to the completion of OCR's investigation, the University submitted a signed Agreement (copy enclosed) on July 12, 2016 that, when fully implemented, will address the allegation of

this complaint. The Agreement requires the University to review and revise its grievance procedure to ensure a prompt and equitable process for responding to grievances, provide training to staff on the grievance procedure and provide OCR the following information for each grievance that the University receives after the date of the Agreement: a copy of the grievance; the date the University received the grievance; the current status of the grievance (intake, investigation, closed, other specified); the age of the grievance; if the grievance is closed, the date the grievance was closed, the reason the grievance was closed, and a copy of the closure letter; if the grievance was closed after 60 calendar days, the reason why the grievance was closed after 60 calendar days and documentation to support that reason; and if the grievance is still open after 60 calendar days, the reason why the grievance is still open, documentation establishing the reason why the grievance is still open, and the anticipated date of closure.² Please consult the Agreement for further details.

OCR considers the allegation of this complaint resolved effective the date of this letter and will monitor the University's implementation of the Agreement. All actions taken to comply with the requirements of the Agreement are subject to OCR's review and approval. When OCR concludes the University has fully implemented the terms of the Agreement, OCR will close the complaint. If the University fails to carry out the Agreement, OCR may resume the investigation.

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.

Please be advised that the University may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the Complainant may file another complaint alleging such treatment.

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, we 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.

² The Agreement does not contain an individual remedy because the University issued the decision on the grievance subsequent to the filing of this complaint.

OCR is committed to prompt and effective service. If you have any questions, please contact XXXXX XXXXX, Attorney, at (816) 268-XXXX (voice) or (877) 521-2172 (telecommunications device for the deaf), or by email at XXXXX.XXXXX@ed.gov.

Sincerely,

/s/ Maria North

Maria L. North
Supervisory Attorney

Enclosure