



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
400 MARYLAND AVE., SW
WASHINGTON, DC 20202-1475

REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, DC

April 8, 2014

Ben Dillard, III, President
Florence Darlington Technical College
2715 W. Lucas Street
P.O. Box 100548
Florence, South Carolina 29502-0548

RE: OCR Complaint No. 11-14-2181
Letter of Findings

Dear Dr. Dillard:

The purpose of this letter is to advise you of our decision concerning the above-referenced complaint., which was filed on January 23, 2014, with the District of Columbia Office of the Office for Civil Rights (OCR), U.S. Department of Education (the Department), against Florence Darlington Technical College (the College). The Complainant alleged that, on January 23, 2014, the College discriminated against him:

1. On the basis of race (White) and sex (male) when College Bookstore staff required that he check his bag at the Bookstore entrance; and
2. On the basis of disability by failing to provide a sufficient number of College Bookstore parking spaces for individuals with disabilities.

OCR is responsible for enforcing certain Federal civil rights statutes and regulations, including Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d, and its implementing regulation, at 34 C.F.R. Part 100; 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; and Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, at 34 C.F.R. Part 104. These laws prohibit discrimination on the bases of, respectively, race, color, or national origin; sex; and disability in programs and activities that receive Federal financial assistance from the Department. OCR also has jurisdiction to investigate complaints under Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 6101 *et seq.*, and its implementing regulation, at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities, including public education systems and institutions, regardless of whether they receive Federal financial assistance from the

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Department. Because the College receives Federal financial assistance from the Department and is a public entity, it is subject to the provisions of the above laws and we have jurisdiction over it. Because the Complainant is alleging race, sex, and disability discrimination, we have jurisdiction over the allegations.

In making our determinations concerning the allegations, we reviewed the information provided by the Complainant in his complaint and emails, and by the College in its March 14, 2013, submissions. What follows is a discussion of our findings and conclusions on the allegations.

As stated above, Title VI prohibits race discrimination, and Title IX prohibits sex discrimination, in educational programs and activities receiving Federal financial assistance. In applying this standard to allegation 1, we will first determine whether there is sufficient evidence to establish an initial or prima facie case of race and/or sex discrimination, that is, whether the College took adverse action against the Complainant, and, if so, whether the Complainant's race and/or sex may have been a factor in the College's adverse action. If these elements are present, we will then determine whether the College had a legitimate, nondiscriminatory reason for taking the action, and, if so, whether the College's reason is a pretext or excuse for discriminating against the Complainant.

Regarding the first element of the above legal analysis, an adverse action is any action that denies or limits a student in the receipt of an aid, benefit, or service, or results in the provision of a student with an aid, benefit, or service that is less favorable, or is provided in a less favorable manner, from that provided to other students. The Complainant's submissions and those of the College indicate that College Bookstore staff required that the Complainant check his bag at the Bookstore entrance. We will assume, for the purposes of this analysis, that this constituted an adverse action against the Complainant.

Concerning the second element of the above legal analysis, which requires a showing that the Complainant's race and/or sex may have been a factor in the College's adverse action, supporting evidence is required—for example, evidence that: (1) College Bookstore staff treated an identified, similarly situated, non-White and/or female patron better than the Complainant; (2) College Bookstore staff made any statements relating to the Complainant's race and/or sex not that were not directly related to the adverse action; (3) College Bookstore staff had a policy or practice of unlawfully considering the race and/or sex of patrons; (4) College Bookstore staff involved in the adverse action acted inconsistently with College policies or practices in taking the adverse action; (5) College Bookstore staff involved in the adverse action had a history of discriminatory actions against White and/or male patrons; or (6) there are other

circumstances indicating that the College considered the Complainant's race in connection with the adverse action.

There is no evidence of the types described in items 2-6, above. The Complainant asserted, in his complaint, that Black males carrying “large book bags,” Black females “with book bags,” and females with “pocket books” and “large bags” were all allowed into the Bookstore, but did not provide any supporting evidence, e.g., the names of such individuals and/or the names of any witnesses. Consequently, in a January 30, 2014, email, OCR staff included requests for:

. . . the names of the College Bookstore staff, including the security guard, who discriminated against [the Complainant]; the names, races, and genders of the individuals the Complainant assert[ed] College Bookstore staff permitted to enter the Bookstore without checking their bags; all other information indicating that College Bookstore staff discriminated against [the Complainant] on the basis of race and/or sex; . . . the names of all witnesses to the alleged discrimination; and all other information and documentation supporting [the] allegations.

In the Complainant's January 30, 2014, email response, he provided the name of the security officer, but failed to provide any of the other information or documentation requested in the OCR email, other than unsupported restatements of what he had asserted in the complaint.

In response to OCR's February 14, 2014, notification/data request letter, the College denied that College Bookstore staff discriminated against the Complainant on the basis of race or sex, and provided supporting information and documentation -- including contemporaneous statements from six College staff persons -- indicating that:

1. For security reasons, College Bookstore policy and practice is to prohibit “book bags” from the Bookstore for the first two weeks of each semester (January 23rd was during this period), as this is a very busy period during which many thefts from the Bookstore have taken place;
2. There was a sign posted at the entrance of the Bookstore notifying patrons of this policy;
3. There are no exceptions to this policy/practice, except that purses are permitted to enable patrons to pay for their purchases; and
4. College Bookstore staff does not permit patrons to bring “book bags” into the Bookstore during the first two weeks of each semester, regardless of their race or sex.

In a March 19, 2014, email, OCR staff provided the Complainant with an opportunity to rebut the College’s narrative response to the complaint, and gave him until March 24, 2014, to do so. As of the date of this letter, he has failed to submit a rebuttal.

A finding that a recipient has violated one of the laws OCR enforces must be supported by a preponderance of the evidence, that is, sufficient evidence to prove that it is more likely than not that unlawful discrimination occurred. When there is a significant conflict in the evidence or assertions by the parties and OCR is unable to resolve that conflict, for example, due to the lack of corroborating witnesses or evidence, OCR generally must conclude that there is insufficient evidence to establish a violation of the law. Because the Complainant and the College are making contradictory assertions and there are no corroborating witness statements or other supporting evidence for the Complainant's position, there is insufficient evidence that the College’s requirement, on January 23rd, that the Complainant check his bag at the Bookstore entrance constituted discrimination against him on the basis of his race or sex.

Consequently, we find that there is insufficient evidence that the College is in violation of Title VI or Title IX with respect to allegation 1.

In allegation 2, the Complainant asserted that the College discriminated against him on the basis of disability by failing to provide a sufficient number of accessible College Bookstore parking spaces for individuals with disabilities. The legal standard applicable to this allegation is Section 208.2 of the “2010 Standards for Titles II and III Facilities: 2004 ADAAG [Americans With Disabilities Act Accessibility Guidelines]” (the “2010 Standards”), which includes the following table excerpt:

Total Number of Parking Spaces Provided in [Each] Parking Facility [i.e. Lot]	Minimum Number of Required Accessible Parking Spaces
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5

Total Number of Parking Spaces Provided in [Each] Parking Facility [i.e. Lot]	Minimum Number of Required Accessible Parking Spaces
151 to 200	6
201 to 300	7
301 to 400	8

See <http://www.ada.gov/regs2010/2010ADAStandards/2010ADAstandards.htm#pgfId-1010282>.¹

The College's submissions indicate that the five parking lots closest to the College Bookstore are as follows: Lot AA, 15 spaces, three of which are accessible; Lot A, 372 spaces, 11 of which are accessible; Lot D, 17 spaces, none of which are accessible; and Lot E/F, which is actually one parking lot that has 28 spaces, one of which is accessible. Based on the College's submissions, we find that it is not in compliance with Section 208.2 (and therefore, Section 504 and Title II) with respect to Lots D and E/F. The College's submissions also indicate that parking lots D and E/F are designated as "employee" lots, despite the fact that they are the lots closest to the accessible entrances of the College Bookstore. The applicable Federal standards require as follows:

208.3 Location. Parking facilities shall comply with 208.3

208.3.1 General. Parking spaces complying with 502 that serve a particular building or facility shall be located on the shortest accessible route from parking to an entrance complying with 206.4. Where parking serves more than one accessible entrance, parking spaces complying with 502 shall be dispersed and located on the shortest accessible route to the accessible entrances.

Lots D and E/F are also not in compliance with Section 208.3. The College has signed an agreement pursuant to which it will come into compliance with Section 504 and Title II (specifically, Sections 208.2 and 208.3 of the 2010 Standards) by adding one accessible

¹ Section 208.2 also provides that: "Where more than one parking facility [which includes parking lots] is provided on a site, the number of accessible spaces provided on the site shall be calculated according to the number of spaces required for each parking facility."

space to parking Lot D and one accessible parking space to Lot E/F, and by redesignating Lots D and E/F as public lots, i.e., not reserved exclusively for College employees. The provisions of the agreement are aligned with the issues raised by the Complainant and the information obtained during the course of OCR's investigation, and are consistent with the applicable regulations.

Based on the above findings and conclusions and the enclosed agreement, we are closing our investigation of the complaint effective the date of this letter. However, we will monitor the College's implementation of the agreement to ensure that it fully complies with it and thereby resolves the complaint.

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.

We remind the College that it is not permitted to retaliate against an individual who asserts a right under a law enforced by OCR, or who files a complaint, testifies, or participates in an OCR proceeding. If this happens, the individual may file a retaliation complaint with OCR.

Please note that, 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, we will seek to protect, to the extent provided by law, information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions about this letter or the outcome of this complaint, please contact Peter Gelissen, the OCR attorney assigned to this case, at (202) 453-5912 or peter.gelissen@ed.gov.

Sincerely,

/s/ April 8, 2014
Peter Gelissen for
Dale Rhines
Program Manager
District of Columbia Office
Office for Civil Rights