



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION I
5 POST OFFICE SQUARE, 8th FLOOR
BOSTON, MASSACHUSETTS 02109-3921

April 17, 2018

Donald J. Farish, Ph.D., J.D.

dfarish@rwu.edu

Re: Complaint No. 01-16-2019
Roger Williams University

Dear President Farish:

This letter is to advise you of the outcome of the complaint that the U.S. Department of Education (Department), Office for Civil Rights (OCR) received against Roger Williams University (University). The Complainant alleged that the University discriminated against him on the bases of race and sex when it wrongfully investigated him for allegedly placing XXXXXXXX XXXXXXXX XXXXX on cars belonging to another student and her XXXXXXXX in August and September 2015 (Allegation 1). The Complainant also alleged that his Criminal Law professor (Professor) harassed him on the basis of sex by referring to him as “XX.” on several occasions in class during the fall of 2015 (Allegation 2). Lastly, the Complainant alleged that the University treated him differently on the basis of race by manipulating the scoring of a XXXXXXXX contest at a XXXXXXXX XXX Association event in October 2015 (Allegation 3). As explained below, OCR has completed its investigation of Allegations 1 and 3, and resolved Allegation 2 through the enclosed Resolution Agreement (Agreement).

OCR enforces Title VI of the Civil Rights Act of 1964 (Title VI) 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. OCR also enforces Title IX of the Education Amendments of 1972 (Title IX) 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 from the Department. Because the University receives federal financial assistance from the Department, OCR has jurisdiction over it pursuant to Title VI and Title IX.

OCR reviewed documents provided by the Complainant and the University, and interviewed the Complainant and University staff. After carefully considering all of the information obtained during the investigation, OCR found insufficient evidence to support Allegations 1 and 3. OCR’s findings and conclusions are discussed below. In addition, prior to the conclusion of OCR’s investigation of Allegation 2, the University expressed an interest in resolving this allegation pursuant to Section 302 of OCR’s *Case Processing Manual* (CPM).¹ Subsequent discussions between OCR and the University resulted in the University signing the enclosed

¹ The *Case Processing Manual* is available at <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.

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

Agreement which, when fully implemented, will address Allegation 2. OCR will monitor the University’s implementation of the Agreement.

Background

Allegation 1

The Complainant graduated from the University’s XXXXX XXXXXX program at the end of the 2016-2017 academic year. During his first year (academic year 2014-2015), the Complainant’s XXX XXXXXXXXXXXX was shattered while parked off-campus. The Complainant reported this incident to the University and to the town police department. Correspondence provided by the University indicates that the Complainant told the University that his car’s vandalism was the result of numerous factors, including his ongoing XXXXXXXX with other unidentified students, and discrimination on the grounds of sexual orientation and race. The University’s data shows that the Complainant later advised the University that a student (Student 1) vandalized his car, because Student 1 and the Complainant were involved in an “ongoing XXXXXXXX.” The Complainant informed OCR that he told the University that Student 1 and his XXXXXXXXXXXX, another student (Student 2), were responsible for the incident. According to the town police department report, the Complainant could not identify a person responsible for the incident.

Correspondence provided by the University reveals that it recommended that the Complainant report the incident to the University Department of Public Safety (Public Safety) and allow Public Safety to conduct an investigation. However, the Complainant declined to do so. Ultimately, the town police department concluded that it could not determine “if the damage was done maliciously or not,” because there were no impact points on the windshield.

In August 2015, Student 2 informed the University that the Complainant was harassing her by speaking negatively about her to their classmates with the intention of having the remarks repeated back to her. Student 2 also reported that the Complainant left an anonymous XXXX on her XXXXXX’X car after she observed him on the street where the car was parked. According to Student 2, the note said “XXXX XX XXXXX XX XXX XXXX XXXXX!!! XX XXXXXXXXXXXX XXX X XXX XXXXXXXXXXX XXXX XXXXXXXXXXX XXXXX. X XXX’X XXXX XXX XXXXX XXXXXXX XXXXXXX. XXXX XXX XX XXXX XXXXXXXXXXX XX!!!”

Student 2 alleged that the Complainant left the XXXX because he is jealous of her XXXXXXXXXXXXXXX with Student 1.

Correspondence provided by the University reveals that based on its recommendation, Student 2 reported her allegations about the Complainant to Public Safety. The University’s data indicates that Public Safety investigated this incident by interviewing Students 1 and 2; and examining the Complainant’s XXXXXXXXXXXX. Student 2 told Public Safety that the Complainant had harassed her for the past eight months by giving her “XXXXX XXXXX,” leaving a derogatory XXXX on her mother’s car, telling Student 1 that she is the type of person to “XXX XXXXX,” and telling another student that she is a bad person. Student 1 informed Public Safety that his friendship with the Complainant began to disintegrate in the winter of 2015, when the Complainant insulted Student 2 by saying that “she was the type of girl to XXXXXXX XXXXX” him of sexual assault. Student 1 stated that he started distancing himself from the Complainant

after he learned that the Complainant believed Student 2 vandalized his car. According to Student 1, the Complainant also told Student 1's sister that Student 2 would lie about being XXXXXXXX XXXXXXXXXX. The University issued XX XXXXXXXX XXXXXXXX to Students 1 and 2, prohibiting them from interacting with the Complainant.

During his conversation with Public Safety, the Complainant denied leaving a XXXX on the car of Student 2's XXXXX or driving down her street the night before the XXXX was left. The University also issued a XX XXXXXXXX XXXXXXXX to the Complainant, prohibiting him from interacting with Students 1 and 2. The University's data indicates that the Complainant told Public Safety that he believed it was "only doing this to him because he was a XXX XXXXX XXXX." The Complainant told OCR that the University treated him like a "XXXXX-XXXXXXXXXXXXXXXX XXXX" when it failed to investigate the damage to his car, but contended that the University investigated Student 2's complaint because she is a XXXXXXX and the University considered him a "dangerous XXXXX XXXX."

In September 2015, Student 2 informed Public Safety that the Complainant placed a note on her car windshield, which said "XXXX XX XXXXX XX XXX XXXX XXXXX!!!" Student 2 also claimed that the Complainant was responsible for the XXXXXXX Student 1 discovered on his car window when he left her apartment the night before she found the note. Correspondence provided by the University reveals that Public Safety investigated this incident by photographing Student 2's car; interviewing Student 1; examining the Complainant's XXXXXXXXXXXX; and reviewing another student's (Student 3) statement about the Complainant's behavior.

Student 1 informed Public Safety that he could not think of anyone else but the Complainant who may be responsible for the incident. Student 3 told Public Safety that the Complainant began harassing him when he remained neutral during the Complainant's conflict with Students 1 and 2. Specifically, Student 3 said that the Complainant sometimes XXXXXXX or XXXX XXXXXXX at him during their classes, and engaged in numerous disruptive behaviors when they ended up at the same bar on a particular occasion.

Student 2 also reported this incident to the town police department, who spoke with the Complainant on two occasions. The University's data does not indicate whether the town police department concluded its investigation of Student 2's allegation or whether it shared any information about its investigation with the University.

Allegation 2

During the fall of his second year (fall 2016), the Complainant was enrolled in four courses, including Evidence. The Complainant informed OCR that the Professor, who taught his first-year Criminal Law and second-year Evidence courses, referred to him as "XX." instead of "XX." The University's data indicates that the Professor confirmed that during the Criminal Law course the previous year, he had mistakenly called the Complainant "XX." on two occasions. The Professor explained that his mistake occurred because he did not have his glasses on and mistakenly thought the Complainant was a XXXXXXX because of his first name. The Professor said that he apologized to the Complainant after the second occasion that he called the Complainant "XX." The University provided no information about the Professor's interaction

with the Complainant during the Evidence course, or whether the Complainant reported the Professor’s behavior to anyone at the University, including the Professor.

Allegation 3

On October 30, 2015, the XXXXXXXX XXX Association held a XXXXXXXXXX party, which the Complainant attended. Correspondence provided by the University indicated that the event included a XXXXXXXX XXXXXXXX judged using equipment that measured the volume of the audience’s applause for each contestant. Although the Complainant participated in the contest, he did not win the award for having the best XXXXXXXX. The Complainant contends that he was denied the prize because he is XXXXXXXX-XXXXXXX even though he had the most votes. The day after the XXXXXXXXXX party, the Complainant posted the following message to a social media site:

XXX XXXX XXXXX XXX XXXXX XXXXXXXXX.
XXXXX!!!! XXXXXX X XXXX XXXXXXXX XXXXX
XXXX XXXX XX XXX XXX XXXX XX XXX XXX XX
XXXXXXXXXXXXXXXX XXXXXXX XX XX XX
XXXXXXXXX!!!!!! XXX X XX XXXX XXXXXXXX
XXXXXXXXXXXX XXXX. XXXXX XXXX XX XXX
XXXX XX XXX XX XXXX XXXX.
#XXXXXXXXXXXXXXXXX #XXXXXXX

Following this post, a student (Student 4) complained to the University about the Complainant’s post as well as remarks he made at the XXXXXXXXXX party. Specifically, Student 4 alleged that the Complainant said the student responsible for reading the equipment “might be XXXXXXX.” Student 4 also said that students feel that the Complainant’s “unfounded charges of XXXXXXX” have increased XXXXXXX tensions among the student body, and that the University’s mandate that all students attend a XXXXXXXXXX event would force a conversation characterized by “XXXXXXXXXXXX attitude and tone.”

On November 3, 2015, the University held a diversity play, which all students were required to attend. Correspondence provided by the University indicates that after the diversity event, the Complainant posted the following message to a social media site:

XXXXX XXX XXX XXXXXXX XXXXXXX XX
XXXXXXXXXXXXXXXX XX XXX XXXXXXX. XX
XXX XXXXXXXX XXXXX. XXX XXXX XXXX

Student 4 shared this post with University administrators, and requested that they address the Complainant because his “unsupported XXXXXXXXXX of XXXXXXX” were having a negative impact on the student body. Student 1 and another student also sent the University letters, complaining about the Complainant’s social media posts and “[c]onstant XXXXXXXXXX of XXXXXXX.”

The University's data indicates that on November 9, 2015, the University met with Students 1 and 2 to discuss the Complainant's XXXXXX XXXXX posts and their concerns that the Complainant violated his XX XXXXXXXX XXXXX. The University then met with the Complainant to reiterate the need for him, Student 1, and Student 2 to comply with XX XXXXXXXX XXXXXX. During this meeting, the Complainant accused the University of discriminating against him on the basis of race and sex when it failed to offer him a XX XXXXXXXX XXXXX when his car was vandalized, and questioned him about his social media posts and the notes left on the cars of Student 2 and her mother. On November 18, 2015, the University informed its counsel about the Complainant's allegations and its ongoing investigation of his harassment allegation.

Legal Standards

Different Treatment

The Title VI regulation, at 34 C.F.R. § 100.3(a), provides that no person shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under a recipient's programs or activities on the basis of race, color, or national origin. The Title IX regulation, at 34 C.F.R. § 106.31(a), provides that no person shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under a recipient's education programs or activities on the basis of sex.

When investigating an allegation of different treatment, OCR first determines whether there is sufficient evidence to establish an initial, or *prima facie*, case of discrimination. Specifically, OCR determines whether the University treated the complainant less favorably than similarly situated individuals of a different race or sex. If so, OCR then determines whether the University had a legitimate, nondiscriminatory reason for the different treatment. Finally, OCR determines whether the reason given by the recipient is a pretext, or excuse, for unlawful discrimination.

Harassment

A recipient's failure to respond promptly and effectively to sex-based harassment about which it knew or should have known, and that is sufficiently serious that it creates a hostile environment, is a form of discrimination prohibited by Title IX. A recipient may also violate Title IX if an employee engages in sex-based harassment of students in the context of the employee carrying out his/her responsibility to provide benefits and services, regardless of whether the University had notice of the employee's behavior. Harassing conduct may take many forms, including verbal acts and name-calling; graphic and written statements, which may include use of cell phones or the internet; physical conduct; or other conduct that may be physically threatening, harmful, or humiliating. Harassment creates a hostile environment when the conduct is sufficiently severe or pervasive as to interfere with or limit a student's ability to participate in or benefit from the recipient's programs, activities, or services. When such harassment is based on sex, it violates Title IX.

To determine whether a hostile environment exists, OCR considers the totality of the circumstances from both an objective and subjective perspective and examines the context,

nature, scope, frequency, duration, and location of incidents, as well as the identity, number, and relationships of the persons involved. Harassment must consist of more than casual, isolated incidents to constitute a hostile environment.

When responding to harassment, a recipient must take immediate and appropriate action to investigate or otherwise determine what occurred. The specific steps in an investigation will vary depending upon the nature of the allegations, the source of the complaint, the age of the student or students involved, the size and administrative structure of the school, and other factors. In all cases, however, the inquiry should be prompt, thorough, and impartial. If an investigation reveals that discriminatory harassment has occurred, the recipient must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring.

Analysis

Allegation 1

The Complainant alleges that the University discriminated against him on the bases of race and sex when it wrongfully investigated him for allegedly placing XXXXXXXX XXXXXXXX XXXXXX on cars belonging to another student and her parents in August and September 2015. He contends that the University stereotyped him as a “XXXXXX-XXXXXXXXXX XXXXXXXXXX XXXX.” To support this contention, the Complainant notes that he was investigated after the University received a complaint from Student 2, who is white and female, but the University failed to investigate when he reported that his windshield had been shattered.

OCR notes that the Student is an XXXXXXXX-XXXXXXXXXX XXXX. However, OCR did not obtain any evidence that the Complainant was treated less favorably than similarly situated individuals of a different race or sex. OCR finds that Student 2 is not a valid comparator because the circumstances of Complainant and Student 2 are distinguishable. When the Complainant informed the University about the damage to his car, it recommended that he report the incident to Public Safety. The Complainant declined to tell Public Safety about the incident, so Public Safety did not investigate the incident. In contrast, when the University similarly recommended to Student 2 that she report the notes that had been left on her car to Public Safety, she did make a report and Public Safety conducted an investigation. Further, the Complainant has not identified any other individual of a different race or sex that he alleges was treated more favorably by the University in its decision to initiate an investigation, nor does he allege that there was any conduct or language during the investigation that indicated bias due to race or sex. Therefore, OCR finds that the Complainant has failed to establish an initial, or *prima facie*, case of discrimination.

Allegation 2

The Complainant alleges that the Professor harassed him on the basis of sex by referring to him as “XX.” on several occasions in class during fall 2015. Specifically, the Complainant explains that the Professor referred to him as “XX.” even though he informed the Professor that he

identifies as a XXXX, does not appear to be XXXXXX, and was one of XX XXXXXX-XXXXXXX XXX in his Criminal Law course.

Based on the above, the evidence obtained to date indicates that the Professor may have subjected the Complainant to a hostile environment on the basis of sex when he referred to him as “XX.” rather than “XX.” during class. To complete the investigation, OCR would need to interview the Professor and conduct supplemental interviews of the Assistant Dean of Students and the Complainant, as well as possibly other students in the class. These interviews would provide OCR additional information about the Professor’s interaction with the Complainant during the fall of 2015.

Allegation 3

The Complainant alleged that the University treated him differently on the basis of race by manipulating the scoring of a XXXXXX XXXXXX at a XXXXXX XXX XXXXXXXXXXXX event in October 2015. In particular, the Complainant contends that he was not awarded the prize because he is XXXXXX-XXXXXXXX even though he had the most votes.

OCR notes that the Student is XXXXXX-XXXXXXXX. However, OCR did not obtain any evidence that the Complainant was treated less favorably than similarly situated individuals outside of his protected class. The University’s data indicates that the Complainant participated in the XXXXXX XXXXXX held at the XXXXXX XXX XXXXXXXXXXXX’s XXXXXXXXXXX XXXXX. The Complainant was not declared the winner of the XXXXXX XXXXXX, because he did not receive the largest applause as judged by the equipment utilized.

Although the Complainant alleges that the student responsible for interpreting the equipment was XXXXXX, the Complainant has provided no evidence to support this contention. In particular, OCR finds that none of the data provided by the Complainant or University includes any conduct or comments made by the student responsible for interpreting the equipment which would allow OCR to conclude that his actions were motivated by race. In addition, the data does not indicate that the student responsible for interpreting the equipment had any additional interactions with the Complainant outside of the XXXXXX XXX XXXXXXXXXXXX XXXXXX XXXXXX.² Accordingly, OCR finds that the Complainant has not established that he was treated less favorably than similarly situated individuals of a different race. Therefore, OCR finds that there is insufficient evidence to conclude that the Complainant was treated differently on the basis of race.

Conclusion

This concludes OCR’s investigation of Allegations 1 and 3. Prior to OCR completing its investigation of Allegation 2 and making any findings, the University agreed to take steps to address the Complainant’s allegation by entering into a Resolution Agreement. Pursuant to the Agreement, the University will send an e-mail to University faculty and staff explaining discrimination or harassment based on sex, consistent with the requirements of 34 C.F.R. Part

² Contrary to his initial allegation, the Complainant acknowledged that he was not denied entry to the XXXXXX XXXXXX.

106. The e-mail will note that the use of XXX XXXXXXXXXXXXX, including XXXXXXXXXXXXX XXXXXXXXXXXXX, may in certain circumstances qualify as harassment based on sex

This letter should not be interpreted to address the University'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. 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 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 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, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

If you have any questions, you may contact Civil Rights Attorney Abra Francois at (617) 289-0142 or by e-mail at Abra.Francois@ed.gov.

Sincerely,

Meena Morey Chandra *w/p AMM*
Acting Regional Director

Enclosure

cc: XXXXXX X. XXXXX, Esq.
Roger Williams University
Office of General Counsel
XXXXXX@rwu.edu