

October 24, 2013

Jennifer J. Raab
President
The City University of New York, Hunter College
695 Park Avenue
New York, New York 10065

Re: Case No. 02-13-2032
City University of New York, Hunter College

Dear President Raab:

This letter is to notify you of the determination made by the U.S. Department of Education, New York Office for Civil Rights (OCR) with respect to the above-referenced complaint filed against the City University of New York, Hunter College. The complainant alleged that the College failed to respond appropriately to a complaint he made on or about September 24, 2012, that another student subjected him to racial harassment (Allegation 1). The complainant further alleged that his XXXXXXXXXXXX professor (the Professor) discriminated against him on the basis of his race, or in the alternative retaliated against him for his advocacy, by banning him from his XXXXXXXXXXXX lab in September 2012 (Allegation 2); and refusing to meet with him thereafter (Allegation 3).

OCR is responsible for enforcing Title VI of the Civil Rights Act of 1964 (Title VI), as amended, 42 U.S.C. § 2000d *et seq.*, and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color and national origin in programs and activities receiving financial assistance from the U.S. Department of Education (the Department). The College is a recipient of financial assistance from the Department. Therefore, OCR has jurisdictional authority to investigate this complaint under Title VI.

In addition, the regulation implementing Title VI, at 34 C.F.R. § 100.7(e), provides 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 an investigation, proceeding or hearing held in connection with a complaint.

Harassment of students on the basis of race is a form of discrimination prohibited by Title VI and its implementing regulation. Harassing conduct can include verbal, written, graphic, physical or other conduct by an employee, a student, or a third party, as well as conduct that is physically threatening, harmful or humiliating. Harassment can create a hostile environment if it is sufficiently severe, persistent, or pervasive to interfere with or deny a student's participation in, or receipt of benefits, services or opportunities in, the recipient's program.

In accordance with OCR's policy guidance on issues of racial harassment, once a recipient has notice of a possible hostile environment, the recipient has a legal duty to take reasonable responsive action. In determining whether the responsive action was reasonable, OCR will consider, among other things, whether the responsive action was consistent with any established institutional policies or with responsive action taken with respect to similar incidents. If an investigation reveals that discriminatory harassment has occurred, a 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.

In its investigation, OCR reviewed documentation that the complainant and the College submitted. OCR also interviewed the complainant and College staff. OCR made the following determinations.

OCR determined that the College's Policies and Procedures on Non-Discrimination and Sexual Harassment (the Policies) prohibit racial harassment of any student. OCR also determined that the Policies govern the College's obligation to respond to complaints of racial harassment. OCR reviewed the Policies and determined that these incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints regarding actions prohibited by Title VI and its implementing regulation. OCR determined, however, that the Policies do not provide the following: an assurance that the College will offer counseling and academic support services to any person found to have been subjected to harassment, and where appropriate, counseling to victims of harassment and the person(s) who committed the harassment; and definitions and examples of what types of actions may constitute harassment based on race, color or national origin.

With respect to Allegation 1, the complainant alleged that the College failed to respond appropriately to a complaint he made on or about September 24, 2012, that a XXXXX student (Student 2) subjected him to racial harassment.¹ Specifically, the complainant alleged that on or about XXXXXXXXXXXX XX, 2012, he filed a statement with the College's Department of Public Safety and Services (DPSS), in which he alleged that Student 2 assaulted him in his XXXXXXXXXXXXXXX lab (Lab 1), after having directed racial slurs at him on two previous occasions. He asserted that the College failed to respond appropriately, because they but did not inform him of the results of the investigation; did not take appropriate action against Student 2 during or after the investigation; and assigned him to an alternate lab to remedy the matter, but permitted Student 2 to continue working in Lab 1.

¹ The complainant alleged to OCR that Student 2 was also employed by the College. OCR determined that Student 2 was a XXXXXXXXXXXXXXX student who received funding from a research foundation that funds the City University of New York, but was not employed by the College.

OCR determined that the complainant was pursuing a master's degree at the College during the fall 2012 semester, and was enrolled in Lab 1. OCR further determined that Student 2 was also enrolled in Lab 1 with the Professor.

The Professor informed OCR that the complainant complained to him in XXXX 2012, that Student 2 said to him "you are a slave, I am a slave". The Professor informed OCR that during the course of this complaint, the complainant also advised him that Student 2 had said "nigger" to him in January 2012. The Professor stated that as a result of the complaint, he called both students to his office to discuss the matter. With respect to saying "nigger," Student 2 admitted using the word, but stated that he used it while singing rap music in class. With respect to saying "slave," Student 2 admitted using the word, but stated that he was trying to convey that both students were working hard in the lab. Professor 2 informed OCR that Student 2 is XXXX XXXXXX and appeared not to be aware that his comments could be considered offensive. He further stated that he explained to Student 2 that use of these words was inappropriate. The Professor stated that the students then shook hands, and he believed the matter was resolved. He stated that Student 2 never used the words again to his knowledge.

OCR determined that approximately three months later, on XXXXXXXXXXXX XX, 2012, the complainant filed a complaint with DPSS, in which he alleged that Student 2 "slammed" a bottle of lubricating gel into his hand that day in Lab 1, causing him pain. In the DPSS complaint, the complainant made reference to the earlier incidents with Student 2 that he alleged were indicative of racial animus. OCR determined that in response to the complainant's complaint, DPSS took a statement from Student 2, who denied slamming the bottle of gel into the complainant's hand. DPSS completed an incident report on September 24, 2012.

OCR determined that the complainant also reported the incident to the Professor on XXXXXXXXXXXX XX, 2012. Specifically, the Professor informed OCR that the complainant ran into his office that day and reported that Student 2 hurt his hand with a bottle of gel. The Professor further stated that Student 2 followed the complainant into the office, denying this. The Professor stated that the complainant did not raise the issue of the prior alleged racial slurs, or otherwise indicate that he believed that Student 2's actions with respect to the gel bottle were taken because of or were motivated by the complainant's race. The Professor stated that he told the students he would think about how to handle the situation and get back to them.

OCR determined that by electronic mail (email), dated September 25, 2012, the Professor informed the complainant that he was on his way to an academic conference, but would discuss the complainant's complaint with the Deputy Chair of the XXXXXXXXXXXX Department (the Deputy Chair) upon his return. OCR determined that in the email, the Professor directed the complainant not to return to Lab 1, stating that he could not have a "volatile" situation in his lab.

The Professor advised OCR that he then discussed the situation with the Deputy Chair. OCR determined that by email, dated XXXXXXXX X, 2012, the Deputy Chair then referred the matter to the Dean as a workplace violence issue. The Professor stated that he and the Deputy Chair agreed at that time that because there was an issue of potential workplace violence, the two students could not remain in Lab 1 together. The Professor advised OCR that it was impractical to allow both students to use Lab 1 at different times due to the nature of the experiments they

were conducting.² He further stated that he decided to move the complainant to another lab, rather than Student 2, because Student 2 was conducting demanding research on a daily basis as a XXXXXXXXXXXXXXX student and his work was more integrated into Lab 1. Whereas the complainant was typically only in the lab twice a week and had little lab work left to complete his master's thesis.

OCR determined that when the Deputy Chair referred the matter to the Dean, she did not notify the Dean that the complainant had alleged that the assault was an act of racial harassment. She informed OCR that this was because she believed that the complainant was only concerned with the workplace violence issue, and because the complainant had indicated in an email on XXXXXXX X, 2012, that the Professor previously addressed the issue regarding the slurs.³

OCR determined that on XXXXXXX XX, 2012, the Dean assigned two members of the Workplace Violence Prevention Advisory Team (the Advisory Team) to investigate the complainant's complaint. The Dean informed OCR that he treated the complaint as a workplace violence complaint, rather than a discrimination complaint, because the complainant had indicated in the DPSS incident report that the incidents involving the racial slurs had been resolved. OCR determined that on XXXXXXX XX, 2012, the Dean forwarded relevant emails, together with the incident report, to the two investigators.

OCR determined that the investigators reviewed the DPSS complaint and medical documentation that the complainant submitted. OCR determined that the investigators also interviewed the complainant on XXXXXXX XX, 2012. At that time, the complainant advised them of the incidents involving Student 2's alleged use of racial slurs that occurred in XXXXXXX and XXXX 2012. OCR determined that the complainant also advised the investigators that he had notified the Professor of the two incidents in XXXX, and that the Professor addressed the matter with the complainant and Student 2. Both investigators informed OCR that they believed that the complainant was only asking them to address the lab incident of XXXXXXXXXXX XX, 2012. They stated that the complainant did not ask them to investigate or address the XXXXXXX or XXXX slurs, or tell them that he believed the assault was based on his race.

OCR determined that the investigators also interviewed Student 2 and the Professor. Student 2 informed them that as of XXXXXXX 2012, he had a friendly relationship with the complainant, and they enjoyed listening to rap music together. He admitted that he said "nigger" to the complainant on one occasion in XXXXXXX 2012, but stated that he intended to use the word as a greeting, which was common in rap music and "urban culture." He further admitted that he said "slave" to the complainant on one occasion in XXXX 2012, but stated that he was referring to the long hours they were both keeping in the lab. He denied that he handed the bottle of gel to the complainant in XXXXXXXXXXX 2012 in a forceful or violent manner. The Professor

² The Professor also stated that he had tried to have the complainant and Student 2 share the lab when the XXXX conflict was brought to his attention, by assigning them different bench space; however, his lab is one small room, and it is impossible for people to avoid each other in it.

³ OCR determined that by email to the Deputy Chair, dated XXXXXXX X, 2012, the complainant stated that Student 2 admitted using the slurs during the meeting with the Professor in XXXX 2012, and that he did not pursue a claim regarding the slurs because the Professor "settled the issue."

informed the investigators that the complainant told him of the XXXXXXXX and XXXX incidents in XXXX 2012, and that he met with the students and thought the matter was resolved.

OCR determined that the investigators asked the Professor to find an appropriate time when the complainant could complete his lab work. As set forth in more detail below with respect to Allegation 2, by email dated XXXXXXXX XX, 2012, the Professor provided details to the complainant regarding when and how he could complete his lab work in another lab. OCR determined that thereafter, one of the investigators followed up with the complainant by stating that he hoped this addressed the complainant's concerns. OCR determined that the complainant responded to the investigators and the Dean that he believed Student 2, as the aggressor, should be moved to a different lab instead. He further stated that he was not hit by a random person, but rather by someone who exhibited a series of inappropriate behaviors towards him, starting with racial slurs, escalating to a deliberate refusal to talk to him, and then culminating in physical aggression. He concluded by complaining that Student 2 was allowed to continue in Lab 1 and faced no sanctions, while he was prevented from returning to Lab 1.

OCR determined that by email dated XXXXXXXX X, 2012, one of the investigators informed the Professor that the complainant was unhappy with the alternate lab assignment. The investigator told the Professor that he hoped to find a better solution, and stated that Student 2 was willing to modify his schedule in order to share Lab 1 with the complainant. OCR determined that by email dated XXXXXXXX XX, 2012, the Professor refused, saying that this was only an "alleged" incident of workplace violence, with no supporting evidence, and that the investigator should talk to two of his graduate students for background information about the complainant. The Professor further stated that the complainant had very little lab work left, and that the alternate lab arrangement was sensible. OCR determined that by email dated XXXXXXXX XX, 2012, the investigator informed the complainant that the Professor and the Deputy Chair had secured lab space for the complainant with a XXXXXXXXXX professor (Professor 2). The investigator stated that this would give the complainant a safe, secure space to do his work. He further stated that this was not a "punishment, discrimination or retaliation." OCR determined that the Professor assigned Professor 2 to obtain any equipment necessary for the complainant to complete his lab work.⁴

OCR determined that in a written report dated XXXXXXXX XX, 2012, the investigators concluded that the complainant did not sustain injury to his hand,⁵ and recommended that the complainant be moved to another lab to complete any remaining work for his degree.⁶ OCR determined that by email, dated XXXXXXXX XX, 2012, the complainant asked for copy of the investigative report. OCR determined that the Dean responded, stating that it was not the practice of the Advisory Team to distribute investigative reports, for confidentiality reasons. OCR determined that the investigators did not address the complainant's allegations of racial

⁴ The complainant alleged that the alternate lab did not contain all of the equipment he needed to complete his work. The Professor and Professor 2 contested this, and stated that any necessary equipment that was missing would have been provided upon request.

⁵ The investigators noted that the medical documentation submitted by the complainant indicated pain associated with his back, rather than his hand.

⁶ The investigators based this recommendation on the fact that the complainant had little lab work outstanding to complete his degree, whereas Student 2 had extensive outstanding lab work; and on the Professor's statements that the complainant had engaged in behavior on a few prior occasions that made other students in the lab uncomfortable.

harassment in the written report, or refer the allegations or the complainant to any other College administrator or entity for investigation.

On October 2, 2013, the College entered into the enclosed resolution agreement with OCR to resolve this allegation. OCR will monitor the implementation of the resolution agreement. If the College fails to implement the terms of the resolution agreement, OCR will resume its investigation of this complaint allegation.

With respect to Allegation 2, the complainant alleged that the Professor discriminated against him on the basis of his race, or in the alternative retaliated against him for his advocacy, by banning him from Lab 1 in September 2012. Specifically, the complainant alleged that the Professor allowed Student 2, rather than him, to remain in Lab 1 following the incident with Student 2 that occurred on September 24, 2012. The complainant alleged that the Professor did so in retaliation for his complaining of racial harassment and/or because Student 2 is XXXXX.

In analyzing whether retaliation occurred, OCR must first determine: (1) whether the complainant engaged in a protected activity; (2) whether the recipient was aware of the complainant's protected activity; (3) whether the complainant suffered an adverse action contemporaneous with, or subsequent to, the recipient's learning of the complainant's involvement in the protected activity; and (4) whether there is a causal connection between the protected activity and the adverse action from which a retaliatory motivation reasonably may be inferred. When there is evidence of all four elements, OCR then determines whether the recipient has a legitimate, non-retaliatory reason for the challenged action or whether the reason adduced by the recipient is a pretext to hide its retaliatory motivation.

OCR determined that the complainant engaged in protected activity when he complained to the Professor in XXXX 2012, that Student 2 had directed racial slurs at him; when he filed the DPSS incident report on XXXXXXXXXX XX, 2012; and when he made subsequent complaints to College staff that Student 2 subjected him to racial harassment. OCR determined that the College was aware of the complainant's protected activity.

As set forth above with respect to Allegation 1, OCR determined that the Professor prohibited the complainant from returning to Lab 1 following the incident on XXXXXXXXXX XX, 2012, and reassigned him to a different lab. As further set forth above, the Professor informed OCR that following the incident, the complainant and Student 2 could not both remain in Lab 1, because there was an issue of potential workplace violence and it was impractical to allow the students to use the lab at different times. The Professor stated that he decided to move the complainant rather than Student 2 to another lab, because Student 2 was conducting more demanding research that was more integrated into Lab 1 than the complainant; and the complainant had little lab work left to complete his degree requirements.

On October 2, 2013, the College entered into the enclosed resolution agreement with OCR to resolve this allegation. OCR will monitor the implementation of the resolution agreement. If the College fails to implement the terms of the resolution agreement, OCR will resume its investigation of this complaint allegation.

With respect to Allegation 3, the complainant alleged that the Professor discriminated against him on the basis of his race, or in the alternative retaliated against him for his advocacy, by refusing to meet with him following his filing of the DPSS report regarding the incident with Student 2 that occurred on XXXXXXXXXX XX, 2012. The complainant asserted that prior to filing the DPSS incident report, the Professor communicated with him regularly in the lab and met with him individually to discuss his lab work and thesis. The complainant asserted that after filing the incident report, the Professor refused to meet with him. The complainant alleged that the Professor took this action because of his race or in retaliation for his complaint of racial harassment.

OCR determined that the Professor served as the complainant's thesis advisor. The Professor informed OCR that prior to the incident that occurred on XXXXXXXXXX XX, 2012, he met with the complainant during lab sessions to discuss his lab work. The Professor informed OCR that after the complainant was removed from Lab 1, he did not communicate with the complainant for three weeks, pending the complainant's reassignment to another lab, because there was no lab work done for them to discuss. As stated above, OCR determined that by email, dated XXXXXXXX XX, 2012, the Professor provided information to the complainant regarding his alternate lab assignment; he also informed the complainant that any necessary equipment would be moved to the lab, outlined his remaining experiments, and told the complainant to provide him with a summary upon completion of one of the experiments. The Professor stated that he then waited for the complainant to resume his lab work, but the complainant did not do so.⁷

The complainant provided one example in support of his allegation. Specifically, the complainant provided an email communication from the Professor, in which the Professor cancelled a meeting planned for XXXXXXXX XX, 2012. OCR determined that the Professor had planned to meet with the complainant on XXXXXXXX XX, 2012, to further discuss the complainant's concerns about Student 2. OCR determined that on XXXXXXXX X, 2012, the Professor sent an email to the complainant stating that "[y]ou and I will *not* meet on the 12th as planned because of the administrative steps that are to be taken," referring to the fact that the Professor was referring the matter to the Deputy Chair. The complainant was unable to recall any other specific instances where he attempted to meet with the Professor and the Professor refused.

Based on the above, OCR determined that the Professor had a legitimate, nondiscriminatory and non-retaliatory reason for canceling this meeting; namely, the matter to be discussed, the complainant's concerns regarding Student 2, had been referred to the Deputy Chair for resolution. OCR determined that the proffered reason was not a pretext for discrimination or retaliation, as the Professor had referred the matter to the Deputy Chair. Therefore, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that the Professor discriminated against him on the basis of his race, or in the alternative retaliated against him for his advocacy, by refusing to meet with him following the September incident. Accordingly, OCR will take no further action with respect to Allegation 3.

⁷ OCR determined that the complainant did not complete his lab work and did not obtain his master's degree from the College.

This letter should not be interpreted to address the College'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 file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the College 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, 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 about OCR's determination, please contact Diane Castro, Compliance Team Investigator, at (646) 428-3808 or diane.castro@ed.gov; or Terri Russo, Compliance Team Attorney, at (214) 661-9687 or terri.russo@ed.gov.

Sincerely,

Timothy C. J. Blanchard

Encl.

cc: ~~XXXXXX XXXX Rachel Nash, Esq.~~
~~XXXX XXXXXXXXXXXX Lisa Hochstadt, Esq.~~