

December 14, 2015

Conrado Gempesaw, Ph.D.  
President  
St. John's University  
8000 Utopia Parkway  
Queens, New York 11439

Re: Case No. 02-15-2348  
St. John's University

Dear President Gempesaw:

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 St. John's University (the University). The complainant alleged that in retaliation for asserting that his XXXXXXXXXXXX professor (the Professor) refused to review a draft of an essay because of his race or color, the XXXXXXXXXXXX department chair (the chair): (a) overruled the Professor's decision to review the essay that was the subject of his grade dispute; (b) cancelled an independent research course led by the chair for which he had registered; (c) advised the complainant that he would prevent him from registering for the course with another professor; and (d) dissuaded two professors from representing the complainant in a grade appeal.

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 or national origin in programs and activities receiving financial assistance from the U.S. Department of Education (the Department). The University is a recipient of financial assistance from the Department. Therefore, OCR has jurisdictional authority to investigate this complaint under Title VI.

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.

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

OCR determined that the complainant, who is black, transferred to the University and enrolled in the Professor's Honors XXXXXXXXXXXX course (the course) in the XXXXXXXXXXXX department in fall 2014.<sup>1</sup> The Professor evaluated students' performance in the course based on: (1) class participation (25%); (2) a class presentation (25%); (3) a first essay (25%); and (4) a second essay (25%). The Professor informed the class that she was willing to read, review and provide feedback on students' draft essays as long as these were submitted in person, with enough time before the deadline so that she could provide in-person feedback during her office hours. She advised students that she would not accept a draft essay via electronic mail message (email), and would not provide written feedback that could then simply be adopted into the essay without further thought.

The first essay was due on October 14, 2014. Despite the Professor's instructions regarding the process to follow if students wished to have her review drafts, the complainant emailed a draft of the essay to the Professor on October 12, 2014, and asked for her feedback. The Professor advised the complainant that she would not look at the draft since it was so close to the due date. The complainant received a grade of D on his first essay, in or around October 2014. Prior to the deadline for the second essay, which was due on December 16, 2014, the complainant again disregarded the Professor's instructions and submitted a draft essay to the Professor via email on December 13, 2014, and requested that she review it.<sup>2</sup> The Professor once again informed the complainant that she would not review the draft essay because he submitted it to her only a few days before it was due, and did not do so in person. On December 19, 2014, the complainant learned that he had received a D+ on his second essay.<sup>3</sup> On the same date, the complainant sent an email to the Professor complaining that the grade on the final essay in the course and the Professor's refusal to read a draft of the final paper before the complainant submitted the final paper to the Professor were because of or motivated by his race and skin color.<sup>4</sup>

On December 19, 2014, the Professor shared the complainant's email with the chair.<sup>5</sup> Later on December 19, 2014, the complainant sent an email to the chair, who had been serving as his academic advisor throughout the semester, to dispute the grade that the Professor gave him on his second essay and request that the essay be reviewed by another professor. The chair

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<sup>1</sup> The complainant graduated from the University in May 2015.

<sup>2</sup> On November 22, 2014, the Professor had emailed the class and reminded them that she would be happy to go over drafts of the second essays, but that it would have to be done in person. She also provided the dates and times of her remaining office hours for the semester. The Professor then forwarded that email to the complainant on November 25, 2014, and reminded him once again to come to see her during her office hours if he needed her assistance.

<sup>3</sup> The complainant received an A in class participation and a B+ on his class presentation, and with his essay grades, he received an overall grade of C+ in the course.

<sup>4</sup> In the email, the complainant stated, *inter alia*, "I am [b]lack but the colour of my skin makes me no less of a person than you are. I remember you said you take things personal[ly]. I recorded the class session in which you said to email you if one had any issue. I did email my draft to you but [you] won't look at it...I object to your grading of my second paper."

<sup>5</sup> The Professor and the Chair advised OCR that that they did not discuss the complainant's accusation over the University's winter break, except on one occasion when the Chair visited the Professor's office and expressed his disbelief that the complainant would level an accusation related to his race.

responded in an email on the same date, and advised the complainant that it would be inappropriate for him or any other professor from the philosophy department to review and grade his essay, out of professional respect for the Professor. He stated that he was happy to discuss it further with the complainant, but encouraged the complainant to either ask the Professor to reconsider the grade she gave him on the second essay, or to use the grade as a learning experience and move on.

OCR determined that on or about January 14, 2015, at the end of the University's winter break, the complainant visited the chair, and again raised the matter of his grade on the second essay in the course. In an email to the chair later that same day, the complainant once again re-stated his desire to have an "objective review" of his grade on the second essay, and/or pursue a complaint to the academic fairness committee. The chair responded by email on the same date, stating in part, "This is not really about academics any more. At the very least you should apologize to [the Professor] for your accusation that race was a contributing factor to the difficulty you experienced in the class. I thought I made it clear to you that this is a most serious charge, not to be thrown around in anger or frustration. It is quite acceptable that you might feel frustration or confusion about grading issues, and it is quite acceptable to seek clarification, but you cannot use race as a weapon without justification."

OCR determined that on January 16, 2015, the complainant emailed the Professor and requested that she review the second essay again and reconsider the grade she had given him on it. On the same date, the Professor responded by email and stated that the complainant should contact the chair to discuss further.

The complainant alleged that in retaliation for the complainant's email asserting that the Professor had refused to review a draft of his essay because of his race or skin color, the chair (a) overruled the Professor's decision to review the grade on the complainant's second essay; (b) cancelled an independent research course led by the chair for which the complainant had registered; and, (c) advised the complainant that he would prevent him from registering for the independent research course with another professor.

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 was subjected to 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 by sending the email on December 19, 2014, asserting that the Professor had refused to review a draft of his essay

because of his race or skin color.<sup>6</sup> Further, OCR determined that the chair was aware of the complainant's protected activity.

On January 17, 2015, the chair emailed the complainant and stated, "I instructed [the Professor] not to review your paper. Your mark is final. You ignored my insistence that you apologize for your accusation of racism, which was apparently thrown out there in frustration or anger, and without clear justification. That is far more serious than a grade in a course...In a normal grade dispute I would ask the professor to review the material one more time, even if there was very little chance that it would lead to a grade change. We do this quite often, simply out of respect for the students and also as a normal part of the learning process. But in this case, after what has gone on, it is not appropriate and I will not allow it. It is not a good idea that you and I do an independent research course this semester, so I will cancel that course this week.<sup>7</sup> I will not approve this course for you with another professor either."

The chair acknowledged that he instructed the Professor not to review the grade, cancelled the complainant's independent study course, and prohibited the complainant from taking the independent study course with another professor. The chair asserted that he did so because he believed that the complainant's claim that the Professor discriminated against him on the basis of his race and color was unjustified. The chair stated that he provided the complainant with an opportunity to explain why he made the comment about race in the email to the Professor on December 19, 2014, but the complainant did not do so. With respect to the independent study course in particular, the chair also stated that based on his interactions with the complainant throughout the fall 2014 semester, he had begun to realize that the complainant's prior educational experiences had been much more collaborative and tutorial than the experience he was receiving at the University. The chair stated that he therefore determined that the independent study course would not be appropriate for the complainant, as the complainant needed a course with more structure.

Based on the above, OCR determined that the chair's decision was motivated by a desire to retaliate against the complainant for his complaint of race discrimination regarding the Professor.<sup>8</sup> Moreover, OCR determined that the chair's actions could effectively chill future protected activities.

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<sup>6</sup> Provided the complainant had a good faith, objectively reasonable belief in the accuracy of the allegation, he is protected from retaliation. See, In re Capistrano Unified Sch. Dist., Docket No. 89-33-CR, 89-IX-3, Doc. No. 00043, at 37 (1991)(noting that a "complainant's reasonable belief that the employer discriminated against the person is sufficient to merit legal protection of his opposition"); In re Chaffey Community Coll. Dist., Docket No. 95-91-CR, 95-504-2, at 10 (1995)("[t]he good faith, reasonable belief standard protects an employer against malicious accusations and frivolous claims"); Parker v. Balt. & Ohio R.R. Co., 652 F.2d 1012, 1019 (D.C. Cir. 1981)(stating that the retaliation scheme "relies heavily on the initiative of aggrieved employees, whose efforts in the public interest would be severely chilled if they bore the risk of discharge whenever they were unable to establish conclusively the merits of their claim); see also, Garcia v. Lewis, 2005 WL 1423253 (S.D.N.Y. 2005); Little v. United Techs., Carrier Transicold Div., 103 F.3d 956 (11th Cir. 1997).

<sup>7</sup> In the fall 2014 semester, the Chair had agreed to supervise an independent study in Political Philosophy for the complainant during the spring 2015 semester, since the course was not being offered.

<sup>8</sup> OCR determined that on April 15, 2015, the complainant filed a complaint with the University alleging, in part, that the Professor's actions in failing to review the complainant's paper, and the grade attached to the paper, were taken because of the complainant's race. The University's Employee Relations and Compliance Officer (the Officer) conducted an investigation into the complainant's allegation. The Officer interviewed the complainant, the

Accordingly, OCR determined that there was sufficient evidence to establish that the chair's actions in (a) overruling the Professor's decision to review the essay that was the subject of his grade dispute; (b) cancelling an independent research course led by the chair for which the complainant had registered; and (c) advising the complainant that he would prevent him from registering for the independent research course with another professor, were in retaliation for the complainant's protected activity and violated the regulation implementing Title VI at 34 C.F.R. § 100.7(e).

On December 10, 2015, the District agreed to implement the enclosed resolution agreement, to address the compliance issues identified in items (a), (b) and (c). OCR will monitor the implementation of the resolution agreement.

With respect to (d), the complainant alleged that in retaliation for his assertion that the Professor's refusal to review a draft of the second essay was because of his race or skin color, the chair dissuaded two professors (Professors A and B) from representing him in a grade appeal. In support of his allegation, the complainant stated that Professors A and B were reluctant to assist him because of the chair's influence, but he did not specify when or how the chair exercised such influence.

The chair denied that he dissuaded anyone from representing the complainant. Rather, he asserted that Professors A and B contacted him and advised him that the complainant approached them about representing him in his formal grade dispute. The chair stated that both professors told him that they did not wish to participate, as they were reluctant to review another professor's grade. OCR interviewed Professors A and B; both confirmed the chair's account. Both stated that they were reluctant to serve on the academic fairness committee as the complainant's representative(s), because they were uncomfortable with reviewing a fellow professor's grades and substituting their judgment for the professor's judgment, not because the chair dissuaded them from doing so.<sup>9</sup>

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Professor, the chair, and other staff; and reviewed the email correspondence between the complainant and the Professor, as well as other evidence provided by the complainant (a recording of a class in which the Professor stated that she would review students' draft papers), and determined that there was no evidence that the Professor violated the University's Policy Against Discrimination or treated the complainant differently because of his race. The Officer concluded that the documentary evidence, including two emails and the audio recording that the complainant submitted, supported the finding that the Professor had a clear policy on reviewing papers and she made this policy clear to the complainant and her other students, verbally and in writing; and, the complainant had failed to adhere to the Professor's policy. The Officer noted that after receiving a failing grade on the first essay, the complainant did not take advantage of the Professor's offer to review his next essay prior to submission; he did not come to see her to discuss his paper topic; and he did not provide her with an outline or a draft of his essay in advance of the due date even though he received two emails specifically outlining the process for her to provide extra help.

<sup>9</sup> OCR determined that pursuant to the University's academic fairness procedure, in April 2015, the University convened three faculty members, one of whom represented the complainant, one of whom represented the Professor, and a third, neutral committee member, to review the complainant's claim that the Professor's grade on the second essay was inappropriate. OCR determined that pursuant to the University's academic fairness procedure, the committee determined that the complainant's request to review his grade on his second essay was not appropriate for a hearing, because it was a grade on a specific assignment in a course and not a final grade in a course. Therefore, the committee denied the complainant's request to review the grade.

OCR must often weigh conflicting evidence in light of the facts and circumstances of each case and determine whether the preponderance of evidence supports the allegation. Here, OCR did not find the complainant's assertion that the chair dissuaded two professors from representing the complainant in a grade appeal was supported by a preponderance of the evidence. Based on the foregoing, OCR determined that there was insufficient evidence to support the complainant's allegation that the chair dissuaded two professors from representing him in a grade appeal in retaliation for his assertion that the Professor's refusal to review a draft of the second essay was because of his race or skin color. Accordingly, OCR will take no further action regarding (d), and has closed it as of the date of this letter.

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 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 Richard Anderson, Compliance Team Investigator, at (646) 428-3781 or [richard.anderson@ed.gov](mailto:richard.anderson@ed.gov); or James Moser, Compliance Team Attorney, at (646) 428-3792 or [james.moser@ed.gov](mailto:james.moser@ed.gov).

Sincerely,

/s/

Timothy C. J. Blanchard

Encl.

cc: Kathleen M. McElroy  
Senior Counsel  
St. John's University