



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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November 8, 2012

IN RESPONSE, PLEASE REFER TO: 03072043

Mr. Alex Johnson
President
Community College of Allegheny County
808 Ridge Avenue
Pittsburgh, PA 15212

Dear Mr. Johnson:

OCR is writing to inform you of the status of the above-referenced complaint filed with the Philadelphia Office of the Office for Civil Rights (OCR), United States Department of Education, against the Community College of Allegheny County (the "College").

The Complainant alleged that the College had "instituted an initiative to provide special educational opportunities and career support for African American Males and now Females." The Complainant further alleged that to "permit a public funded institution to carry out this form of discrimination I believe is wrong and a violation of the civil rights laws. If the funds to provide these services came from other private sources I feel that the public funded College had a duty to refuse these funds if the condition associated with them required the college to discriminate against other racial groups, and peoples national origin."

We regret the substantial delay in resolving this complaint. Our investigation revealed the College abolished the challenged program in 2007, the same year that this complaint was filed. The College also has informed OCR that it does not intend to resume the program. Based on these findings, and consistent with OCR's case processing procedures, OCR is administratively closing this complaint as moot because there are no current allegations appropriate for further investigation and resolution.

Investigation

OCR thoroughly investigated the complaint, beginning with a data request letter. OCR analyzed the data submitted, and submitted a second data request letter and analyzed that data as well. Based on the evidence, OCR finds the following to have occurred. In January 2005, the College announced a new initiative (the "African American Male Initiative") aimed at recruiting African American males to the college. A year later, in 2006, the College launched a similar initiative aimed at recruiting African American females to the college

(the “African American Female Initiative”). Both initiatives sought to recruit African American applicants to the College by offering financial assistance with tuition and other school-related needs, and by providing mentoring and support programs once admitted. Eventually, the initiatives were expanded to include skill development and assistance with job placement in specific career fields, largely in the health care industry, that were believed to be in high demand in Pennsylvania. Both initiatives were funded at least in part by private grants.

According to the College, these initiatives were targeted towards African Americans, but were not race-exclusive. That is, the College has told OCR that students of other races were eligible to participate in both initiatives, and that at least one Caucasian student was an active participant in the initiative targeted towards African American women. The College also stated that students of other races who were not active participants in the initiatives nonetheless were both eligible for, and received, services from the initiatives, such as assistance with filling out financial aid forms. The College also has stated that other services offered by both initiatives, such as tutoring, were also available through the College to students not participating in either of the initiatives.

However, OCR in its investigation found that students at the College who had not been approved for financial aid and who were not participants in one of the initiatives were not eligible to receive funds from the College to assist with tuition, emergency transportation, childcare and other school-related needs. Students participating in either of the initiatives could and did receive funds from the College for these services, even if their applications for financial aid had not yet been approved.

According to the College, both initiatives ended in 2007, largely due to lack of funding. The College reported that the initiatives were replaced in January 2008 with a program named the Academic Achievement Initiative (AAI); participation in this program, the College has stated to OCR, was based on eligibility for federal Pell Grants, which are given to students based on financial need and without regard to race. By July 2008, according to the College, this program was phased out and students served by that program were transitioned to another program, called the 3R (Recruit, Refer, Retain) Program. The 3R Program aimed to recruit first-generation educationally and economically disadvantaged students, without regard to race. Eventually, by June 2010, the College’s 3R Program also was discontinued, due to lack of funding, according to the College.

Legal Standard

OCR enforces Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, as implemented by regulations at 34 C.F.R. Part 100, which bars institutions that receive federal financial assistance from discriminating on the basis of race, color, or national origin.

It is not a violation of Title VI, in and of itself, for a postsecondary institution to operate a race-themed mentoring and support program. OCR and the U.S. Department of Justice (DOJ) discussed this issue in joint guidance issued in December 2011.¹ “Many institutions

¹ “Guidance on the Voluntary Use of Race to Achieve Diversity and Avoid Racial Isolation in Postsecondary Education,” available at: <http://www.ed.gov/ocr/docs/guidance-pse-201111.pdf>.

operate mentoring, tutoring, retention, and support programs for enrolled students who may need additional assistance in academic or other areas to succeed at the institution. The Departments recognize that a postsecondary institution seeking the educational benefits of diversity not only must enroll a diverse group of students, but also must retain those students.”

As an example of such a mentoring and support program, OCR and DOJ further stated: “An institution could sponsor retention or support programs open to all students that offer content that the institution believes might be of particular interest to a group targeted for retention. Such programs could, for example, hold motivational lectures (*e.g.*, highlighting the accomplishments of Latino business leaders or the artistic achievements of Pacific Islanders), and could include small group follow-up workshops with mentors.”

A race-themed mentoring and support program would fall within this category of approaches if it did not admit or exclude students on the basis of their race. Such a program would be unlikely to be subject to strict scrutiny review and thus is unlikely to violate Title VI.²

Notwithstanding that students of other races at the College who asked to participate in the initiatives were allowed to do so, the facts of this case may not squarely fall within the scope of the joint guidance. This is because the College’s mentoring and support program at issue appears to have exclusively recruited African Americans for the initiatives. For example, promotional materials for the initiatives included a list of eligibility criteria, and at the top of these lists were the words “African American.”

Such race-exclusive recruiting differs fundamentally from race-targeted recruiting. With race-targeted recruiting, a college may intentionally target for recruitment students of particular races, such as those underrepresented at a particular school or program, while also conducting broader recruitment efforts without regard to race. Race-targeted recruiting seeks to ensure that students from particular groups are aware of opportunities, but it does not exclude others from being recruited.

We need not decide whether the College’s program complied with Title VI in this case because OCR has determined that the proper resolution of this complaint is an administrative closure on the basis of mootness. As stated above, according to OCR’s case processing procedures, OCR can administratively close a complaint if there are no current allegations appropriate for further investigation and resolution. Administrative closure of this complaint is appropriate because the challenged programs ended five years ago, in 2007, the same year that the complaint was filed, and there are no plans to reinstitute the programs.

² “Strict scrutiny” is a legal term referring to a two-step process. First, as OCR and DOJ explained in their joint guidance, there must be a compelling interest. In this context, OCR and DOJ have so far recognized only one interest as compelling at the postsecondary level: student body diversity. Second, the use of race must be narrowly tailored to meet one of these interests. Narrow tailoring assesses whether an educational institution has considered workable race-neutral alternatives; whether its plan provides for flexible and individualized review of students; whether it has minimized undue burdens on other students; and whether its plan is limited in time and subject to periodic review.

OCR notes here that the College, if it desired, could resume or start a race-themed program aimed at mentoring and supporting African Americans. Such a program would likely be in compliance with Title VI if it did not admit or reject students on the basis of their race and if it engaged in broad-based recruiting that let students of all races know of the opportunity to participate. Race-targeted recruiting could be a part of this process.

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.

Further, no person is permitted to intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the laws OCR enforces. If any individual is harassed or intimidated because of filing a complaint or participating in any aspect of OCR case resolution, the individual may file a 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. If we receive such a request, we will seek to protect, to the extent provided by law, information that, if released, could constitute an unwarranted invasion of personal privacy.

Thank you for your cooperation. If you have any questions, feel free to contact Diane Riddick, Investigator, at (215) 656-8583 or by email at diane.riddick@ed.gov.

Sincerely,

/s/

Jacques Toliver
Acting Team Leader
Philadelphia Office