



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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November 4, 2015

IN RESPONSE, PLEASE REFER TO: 03142053

Dr. Michael Fiorentino
Lock Haven University
401 N. Fairview Street
Lock Haven, PA 17745

Dear Dr. Fiorentino:

This is to advise you that we have completed our investigation and reached a determination in the above-referenced complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR) against Lock Haven University (the University). The Complainant, XXXXX X. XXXXXX (the Complainant) alleges that the University discriminated against him on the basis of his age by:

1. Giving him a grade XX XX XX XXX XXXXX XXXXX XXXXXXXX course; and
2. Failing to address a hostile environment based on age of which the University had notice.

OCR enforces the Age Discrimination Act of 1975 (the Age Act), 42 U.S.C. 6101et seq., and its implementing regulation, at 34 C.F.R. Part 110, which prohibit discrimination on the basis of age by recipients of Federal financial assistance. As a recipient of Federal financial assistance from the Department, the University is subject to the Age Act and its implementing regulation. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

OCR applies a preponderance of the evidence standard to determine whether the evidence is sufficient to support a particular conclusion. Specifically, OCR examines the evidence in support of and against a particular conclusion to determine whether the greater weight of the evidence supports the conclusion or whether the evidence is insufficient to support the conclusion.

During our investigation, we interviewed the Complainant and the University staff and reviewed documents submitted by the Complainant and the University. OCR finds insufficient evidence to support the Complainant's allegations. However, OCR determined that the University did not have age discrimination grievance procedures that incorporated appropriate due process standards and provided for the prompt and equitable resolution of complaints alleging any prohibited actions pursuant to the Age Act, at 34 C.F.R. § 110.25(c). On October 5, 2015, the University signed a Resolution Agreement to address this compliance concern.

Legal Standards

The regulation implementing the Age Act, at 34 C.F.R. § 110.10(a), provides that no person shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

In determining whether a recipient has subjected an individual to discrimination on the basis of age, OCR looks at whether there were any apparent differences in the treatment of similarly situated individuals on the basis of age. If different treatment is established, OCR then considers whether the recipient had a legitimate, nondiscriminatory reason for the apparent difference in treatment and whether the reason provided by the recipient was a pretext for discrimination based on age. Additionally, OCR examines whether the recipient treated the individual in a manner that was consistent with established policies and procedures and whether there is any other evidence of age discrimination.

Harassment on the basis of age is also a form of discrimination prohibited by the Age Act. To determine whether a hostile environment based on age exists, OCR considers whether there was harassing conduct sufficiently severe, pervasive or persistent so as to interfere with or limit the ability of an individual to participate in or benefit from the services, activities or privileges provided by a recipient. If a hostile environment based on age exists, and a recipient has notice of the hostile environment, then the recipient is required to take appropriate responsive action.

When determining whether a hostile environment exists, OCR will examine the context, nature, scope, frequency, duration, and location of incidents, as well as the identity, number, and relationships of the persons involved. The harassment must, in most cases, consist of more than casual or isolated incidents to establish a violation under the Age Act. Generally, the severity of the incidents needed to establish a hostile environment under the Age Act varies inversely with their pervasiveness or persistence.

OCR evaluates the appropriateness of the responsive action by assessing whether it was prompt, thorough and effective. If harassment is found, the recipient should take reasonable timely, age-appropriate, and effective corrective action, including steps tailored to the specific situation. The response must be designed to stop the harassment, eliminate the hostile environment if one has been created and remedy the effects of the harassment on the student who was harassed and others, if appropriate. The recipient must also take steps to prevent the harassment from recurring including disciplining the harasser where appropriate.

The regulation implementing the Age Act, at 34 C.F.R. § 110.25, also requires recipients to adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by the Age Act or the regulation. In order to be prompt and equitable, age discrimination grievance procedures should contain the following elements:

- notice to students, parents, and employees of the procedure, including how and where to file a complaint;
- application of the procedure to complaints alleging age discrimination carried out by students, employees, or third parties;
- adequate, reliable, and impartial investigation, including the opportunity to present witnesses and other evidence;
- designated and reasonably prompt timeframes for the major stages of the complaint process;
- notice to the parties of the outcome of the complaint, and the basis for the decision; and

- an assurance that the recipient will take steps to prevent the recurrence of any prohibited actions and to correct its discriminatory effects on the complainant and others, if appropriate.

Facts

XX—Paragraphs Redacted--XX

Analysis

XX—Paragraphs Redacted—XX

On October 5, 2015, the University signed an agreement which, when fully implemented, will address all of OCR's compliance concerns. As is our standard practice, OCR will monitor the implementation of the agreement until the University is in compliance with the regulation implementing the Age Act, at 34 C.F.R. § 110.25.

This concludes OCR's investigation and 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. The Complainant has the right, pursuant to the regulation at 34 C.F.R. § 110.39 implementing the Age Act, to file a civil action for injunctive relief in federal court following the exhaustion of administrative remedies. Administrative remedies are exhausted if: (1) 180 days have elapsed since the complainant filed the complaint with OCR, and OCR has made no finding, or (2) OCR issues any finding in favor of the recipient. A civil action can be brought only in a United States district court for the district in which the recipient is found or transacts business. A complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but these costs must be demanded in the complaint filed with the court. Before commencing the action, the complainant shall give 30 days notice by registered mail to the Secretary of the Department of Education, the Secretary of the Department of Health and Human Resources, the Attorney General of the United States, and the recipient. The notice shall state the violation of the Age Act, the relief requested, the court in which the action will be brought, and whether or not attorney's fees are demanded in the event the complainant prevails. The complainant may not bring an action if the same alleged violation of the Age Act by the same recipient is the subject of a pending action in any court of the United States.

This letter is a letter of findings issued by OCR to address an individual OCR case. Letters of findings contain fact-specific investigative findings and dispositions of individual cases. Letters of findings are not formal statements of OCR policy and they 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.

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, we 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.

OCR is committed to a high-quality resolution of every case. If you have questions or concerns about OCR's findings, you may contact Irene Town at 215-56-8586 or at irene.town@ed.gov.

Thank you for your cooperation with this matter.

Very truly yours,

/s/

Nancy E. Potter
Team Leader

cc: Cathleen McCormack, Esquire
enclosure