



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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**November 20, 2017**

Ronald J. Daniels, President  
Office of the President  
242 Garland Hall  
The Johns Hopkins University  
3400 N. Charles St.  
Baltimore, MD 21218

**Re: OCR Complaint No. 03-15-2376**

Dear Dr. Daniels:

The Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) has completed its investigation of the complaint we received on July 13, 2015 against Johns Hopkins University (the University). The Complainant, XXXXXX, alleged that the University discriminated against XXXXXX. Specifically, she alleged that the University:

1. XXXXXX<sup>1</sup>;
2. XXXXXX; and
3. XXXXXX.

OCR enforces:

- Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d, and its implementing regulation, 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin in any education program or activity operated by a recipient of Federal financial assistance.
- Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, and its implementing regulation, 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any education program or activity operated by a recipient of Federal financial assistance.
- Age Discrimination Act of 1975, 42 U.S.C. § 6101, and its implementing regulation, 34 C.F.R. Part 110. The Age Act prohibits discrimination on the basis of age by recipients of Federal financial assistance.

As a recipient of Federal financial assistance, the University is subject to these laws.

In reaching a determination, OCR reviewed documents provided by the Complainant and the University and interviewed the Complainant and University staff. OCR's investigation of

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<sup>1</sup> OCR notes that during the course of our investigation it was determined that the Complainant initiated XXXXXX.

Allegation #1 did not encompass the underlying actions that formed the basis of the Complainant's July 2014 complaint to the University's Office of Institutional Equity (the OIE complaint). Rather, consistent with the manner in which the allegations were submitted in this matter and OCR's complaint processing procedures, our investigation focused on whether the University provided an adequate response to the Complainant's allegations of discrimination based on race and national origin, and a prompt and equitable response to her allegations of discrimination based on age and sex. After carefully considering all of the information obtained during the investigation, OCR identified areas of non-compliance regarding Allegation #1, which the University agreed to resolve through the enclosed Resolution Agreement. Specifically, OCR found that the University's response to the Complainant's July 2014 complaint did not meet the requirements of Title VI, Title IX, and the Age Act. OCR also found that the University's notice of non-discrimination does not meet the requirements of the Age Act. However, based on a preponderance of the evidence, OCR did not find sufficient evidence to support Allegation #2 or Allegation #3. OCR's findings and conclusions are discussed below.

### **Legal Standards**

#### *Title VI*

The Title VI implementing regulation, at 34 C.F.R. §100.3(a), provides in general that no person shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination. Section 100.3(b), provides that a recipient may not, on the ground of race, color, or national origin, restrict or deny an individual any service or benefit or provide any service or benefit to an individual which is different, or is provided in a different manner from that provided to others. Title VI prohibits harassment, as well as different treatment, based on race or national origin. In addition, §100.6(d) requires recipients to maintain a notice of nondiscrimination and provides that each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this regulation and its applicability to the program for which the recipient receives Federal financial assistance, and make such information available to them in such manner as the responsible Department official finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this regulation.

Harassment on the basis of race and national origin is prohibited by Title VI. Recipients are responsible under Title VI for providing students with a nondiscriminatory educational environment. Once a recipient has notice of a racially hostile environment, the recipient has a legal duty to take reasonable steps to eliminate it. Thus, if OCR finds that the recipient took responsive action, OCR will evaluate the appropriateness of the responsive action by examining reasonableness, timeliness, and effectiveness.

#### *Title IX*

The Title IX implementing regulation, at 34 C.F.R. §106.31 (a), provides in general that no person shall on the basis of sex, be excluded from participation in, be denied the benefits of, any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives Federal financial assistance. Title IX also requires

recipients to maintain a notice of non-discrimination, a Title IX Coordinator, and grievance procedures. OCR did not investigate or analyze the University's compliance with those requirements of Title IX because they are currently being investigated in OCR Docket #03-14-2289. Rather, OCR investigated whether the University provided a prompt and equitable resolution to the allegations of sex discrimination raised in the Complainant's OIE complaint.

Harassment on the basis of sex is prohibited by Title IX. In addition, sexual harassment of a student by a teacher or other school employee can be discrimination in violation of Title IX. Once a recipient has notice of possible sexual harassment of students, whether carried out by employees, other students, or third parties, it should take immediate and appropriate steps to investigate or otherwise determine what occurred and take prompt and effective steps reasonably calculated to end any harassment, eliminate a hostile environment if one has been created, and prevent harassment from occurring again. If OCR is asked to investigate or otherwise resolve incidents of sexual harassment of students, including incidents caused by employees, other students, or third parties, OCR will consider whether, among other things, whether the recipient appropriately investigated or otherwise responded to allegations of sexual harassment.

#### *Age Act*

The Age Act implementing regulation, at 34 C.F.R. §110.10(a), provides in general that no person in the United States 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. Under §§110.25 (a), (b) and (c), respectively, a recipient shall designate a responsible employee, provide notice and grievance procedures. Specifically, §110.25(a) requires a recipient to designate at least one employee to coordinate its efforts to comply with and carry out the Act and its regulations, including the investigation of complaints that the recipient has violated this Act; Section 110.25(b) requires a recipient to provide notice to its beneficiaries in a continuing manner of the information regarding the Act's provisions and regulations and the identification of the responsible employee by name or title, address and telephone number; and Section 110.25(c) provides that the recipient shall adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints alleging any action that would be prohibited by this Act or regulations.

Harassment on the basis of age is prohibited by the Age Act. The Age Act requires recipients to provide a prompt and equitable response to complaints of age discrimination, including harassment.

#### *Different Treatment*

In cases alleging different treatment on the basis of race, national origin, sex, or age, OCR first determines whether there were any differences in the treatment of a student and similarly situated students of another race, national origin, sex, or age. Additionally, OCR examines whether the recipient treated the student in a manner that was consistent with established policies and practices and whether there is any other evidence of discrimination. If different treatment is present, OCR then assesses the recipient's explanation for any difference in the treatment to determine if the reasons offered are legitimate or merely a pretext for discrimination.

## **Findings of Fact and Conclusions of Law**

### *Notice of Non-Discrimination*

During the 2014-2015 and 2017-2018 academic years, the University had three (3) separate policies that contained a notice of non-discrimination: (1) *Equal Opportunity Statement*; (2) the *AAP Catalog's Non-discrimination Policy*; and (3) the *Anti-Harassment Policy*. Our investigation found that for both time periods, the notice of non-discrimination contained in the *Equal Opportunity Statement* and *Anti-Harassment Policy* contained all of the information required by Title VI and the Age Act. However, OCR identified an area of non-compliance in the *2014-2015 AAP Catalog Non-discrimination Policy* and the *2017-2018 AAP Catalog Nondiscrimination Policy*. Specifically, while both policies state that questions regarding Title VI and Title IX should be referred to the Office of Institutional Equity (OIE) and provide the OIE's contact information, they do not provide information regarding to whom inquiries regarding any other types of discrimination, including discrimination on the basis of age, should be directed.

### *Grievance Procedures*

The University employed its 2014-15 *Anti-Harassment Policy and Procedures* to address the Complainant's July 2014 OIE complaint, which were the procedures in effect at the time to address complaints of discrimination and harassment based on race, color, national origin, sex, and age. As discussed above, the Age Act requires that schools maintain grievance procedures. OCR reviewed both the 2014-15 and 2017-18 *Anti-Harassment Policy and Procedures*, which are very similar in content, to determine whether each was in compliance.

XX – Paragraphs Redacted – XX

### **Relevant Grade Appeal Policies and Procedures**

Our investigation found that the University maintains two additional policies relevant to grade disputes: (1) The AAP's *Probation and Dismissal Policy*, and (2) the AAP's *Grade Dispute Policy*. Both policies were published in the *2014-2015 AAP Catalog*. The *Probation and Dismissal Policy* provides that degree candidates who receive a grade of C or below are placed on academic probation, and that degree candidates who receive a second grade of C or below will be dismissed from the AAP program. The *Grade Dispute Policy* provides that if a student does not agree with a grade assigned by an instructor, the student must first contact the instructor to attempt to resolve the disputed grade. If the instructor and the student are unable to reach an agreement, the student may present his/her argument to the Program Committee in writing with supporting facts and documents. Grade appeals must be submitted to the Program Committee no later than the last day of classes for the following semester. In deciding a grade dispute, the Program Committee may request the instructor's evaluation in writing or ask the instructor and/or the student to appear before them. According to Administrator 1, the student and/or instructor would be asked to appear before the Program Committee if the Program Committee did not have clear and substantial written documentation. The Program Committee then

determines whether the disputed grade should be changed or retained and informs the student and the instructor of the decision. Administrator 1 also explained that the Program Committee may meet in person, by phone, or by email, as the student, instructor, and Program Committee may be located in various locations, including online. Pursuant to the *Grade Dispute Policy*, the Program Committee's decision is final.

XX – paragraphs redacted – XX

### **Conclusion**

To resolve the areas of non-compliance identified above, the University entered into the attached Resolution Agreement, signed on November 2, 2017. Once the Resolution Agreement is fully implemented, the University will be in compliance with Title VI, Title IX, and the Age Act with respect to the issues addressed in this letter. OCR will monitor the University's implementation of the Resolution Agreement until the University is in compliance with the statutes and regulations at issue in the case.

This concludes OCR's investigation of the complaint. 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.

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 Services, the Attorney General of the United States, and the recipient. The notice shall state the alleged 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.

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, or participates in an OCR proceeding. 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.

We appreciate the University's cooperation in the resolution of this complaint. If you have any questions regarding this letter, please contact Amy Niedzalkoski, Team Attorney, at 215-656-8571 or amy.niedzalkoski@ed.gov.

Sincerely,

/s/

Beth Gellman-Beer  
Supervisory Attorney  
Philadelphia Office

Enclosure

cc: Jennifer DaCosta, Assistant General Counsel