

UNITED STATES DEPARTMENT OF EDUCATION OFFICE FOR CIVIL RIGHTS

REGION III DELAWARE KENTUCKY MARYLAND PENNSYLVANIA WEST VIRGINIA

THE WANAMAKER BUILDING, SUITE 515 100 PENN SQUARE EAST PHILADELPHIA, PA 19107-3323

December 11, 2020

IN RESPONSE, PLEASE REFER TO DOCKET #03202249

Via e-mail only to: Mirta.Martin@FairmontState.edu

Dr. Mirta M. Martin President Fairmont State University 1201 Locust Avenue Fairmont, WV 26554

Dear Dr. Martin:

OCR enforces Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin in any program or activity receiving Federal financial assistance from the Department. Title VI also prohibits retaliation.

In the course of our investigation, OCR reviewed documents and information provided by the Complainant and the University and interviewed University staff. Prior to completion of OCR's investigation, the University requested to voluntarily resolve the allegations in the complaint.

Legal Standard

The Title VI regulation, at 34 C.F.R. § 100.3(a), provides that no person shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under the District's programs or activities on the basis of race, color, or national origin. While the regulation implementing Title VI does not contain an explicit requirement that recipients adopt and implement complaint procedures to address allegations of discrimination based on race, color, or national origin, grievance procedures that encompass race, color, and national origin discrimination can be part of a prompt and effective response to allegations of discrimination prohibited by Title VI. In addition, a recipient that has adopted discrimination complaint procedures must apply the procedures in a manner that does not constitute discrimination

prohibited by Title VI. Whether or not it has such procedures, a recipient is responsible for addressing discriminatory incidents about which it knows or reasonably should have known.

The regulation implementing Title VI of the Civil Rights Act of 1964 (Title VI), at 34 C.F.R. § 100.7(e), prohibits retaliation. To establish a prima facie case of retaliation, OCR must determine whether: (1) an individual experienced an adverse action caused by the recipient; (2) the recipient knew that the individual engaged in a protected activity; and (3) there is evidence of a causal connection between the adverse action and the protected activity. While OCR would need to address all the elements in order to find a violation, it is not necessary to address all these elements in order to find insufficient evidence of a violation, where the evidence otherwise demonstrates that retaliation cannot be established. If these elements are present, then a prima facie case of retaliation is established, and OCR next considers whether the recipient has identified a legitimate, nondiscriminatory reason for taking the adverse action. If so, OCR then considers whether the reason asserted is a pretext for discrimination.

Factual Findings

Background

University Policies

The University reported that it uses Policy #GA-01, titled "Rule Regarding Discrimination, Harassment, Sexual Harassment, Sexual Misconduct, Domestic Misconduct, Stalking, Retaliation, and Relationships," for all complaints of discrimination, including complaints of race discrimination.

In an interview with OCR, the University's Title IX Coordinator stated that it has been the University's practice to conduct a preliminary inquiry when it receives a complaint of discrimination to determine whether it would go forward with an investigation. The Coordinator stated that the level of preliminary inquiry conducted can vary on a case by case basis, depending on the information provided in the complaint and that it sometimes includes speaking with the complainant.

XX – Paragraphs Redacted – XX

Conclusion

Under OCR procedures, a complaint may be resolved before the conclusion of an investigation if a recipient asks to resolve the complaint by signing a Resolution Agreement and OCR

determines that such a resolution is appropriate. The provisions of the Resolution Agreement must be aligned with the complaint allegations, the information obtained in the investigation to date, and be consistent with applicable regulations. Such a request does not constitute an admission of a violation on the part of the University nor does it constitute a determination by OCR of any violation of our regulations.

Consistent with OCR's procedures, on October 19, 2020, prior to the conclusion of OCR's investigation, the University requested to resolve the allegations of the complaint through a Resolution Agreement. On December 9, 2020, the University signed this Agreement. As is our standard practice, OCR will monitor the University's implementation of the Agreement, a copy of which is enclosed. When fully implemented, the Agreement will fully address the allegations. Accordingly, OCR is concluding its investigation of the complaint as of the date of this letter.

This concludes OCR's investigation of the complaint 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 may have the right to file a private suit in federal court whether or not OCR finds a violation. 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.

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.

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.

Thank you for your cooperation during this investigation. If you have any questions or concerns regarding OCR's case determination, you may contact Marcia Jones, Investigator, at 215-656-8555 or by email at marcia.jones@ed.gov or Gina DePietro, Team Attorney, at (215) 656-8595 or by email at gina.depietro@ed.gov.

Sincerely,

/s/

Christina M. Haviland Supervisory Attorney Philadelphia Office

cc: Cailey Murray, Esq. (via email only)