



**UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS, REGION IV**

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**REGION IV**  
ALABAMA  
FLORIDA  
GEORGIA  
TENNESSEE

September 25, 2015

Mr. XXX  
Director  
ITT Technical Institute  
2639 North Monroe Street  
Building A, Suite 100  
Tallahassee, FL 32303

Re: Complaint #04-15-2308

Dear Mr. XXX:

On March 31, 2015, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received the above referenced complaint filed against ITT Technical Institute (Institute). The Complainant alleged that the Institute discriminated against her on the basis of race (African American) and retaliated against her. Specifically, she alleged that the Institute discriminated against her by dismissing her from the Institute's Nursing Program and denying her request for readmission on appeal, while granting the requests for readmission made by two white students who were also dismissed from the Nursing Program. The Complainant further alleged that the Institute retaliated against her by denying her request for readmission after she reported that she was discriminated against on the basis of race.

As a recipient of Federal financial assistance, the Institute is subject to the provisions of Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d *et seq.*, and its implementing regulation, 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin. Accordingly, OCR has jurisdiction over this complaint.

OCR began an investigation of the following legal issues:

- 1) whether the Institute subjected the Complainant to different treatment on the basis of race by dismissing her from its Nursing Program and denying her request for readmission on appeal, in noncompliance with the Title VI implementing regulation at 28 C.F.R. §§ 100.3(a) and (b); and

- 2) whether the Institute retaliated against the Complainant by denying her request for readmission to its Nursing Program on appeal after she reported that she was discriminated against on the basis of race, in noncompliance with the Title VI implementing regulation at 28 C.F.R. § 100.7(e).

During the investigation, OCR interviewed the Complainant and several Institute faculty and staff members. OCR also requested from the Institute documents and information related to the issues in this matter, which the Institute provided to OCR.

During the course of the investigation, and prior to the completion of OCR's investigation of the first allegation, the Institute offered to resolve that aspect of the complaint. Pursuant to OCR's *Case Processing Manual*, an allegation may be resolved when, before the conclusion of an investigation, the recipient requests to resolve the allegation *and* OCR determines that it is appropriate to resolve it with an agreement during the course of the investigation. OCR accepted the Institute's request to resolve the first allegation, and the Institute entered into the enclosed Resolution Agreement (Agreement), further described below, which when fully implemented, will resolve this allegation. In regard to the second issue, OCR found insufficient evidence to support a finding of noncompliance with the applicable regulations. Below are the bases for OCR's determination in this matter.

### **Applicable Standard**

OCR evaluates evidence obtained during an investigation under a preponderance of the evidence standard to determine whether the greater weight of the evidence is sufficient to support a conclusion that a recipient, such as the Institute, failed to comply with a law or regulation enforced by OCR or whether the evidence is insufficient to support such a conclusion.

### **Issue #1: Whether the Institute subjected the Complainant to different treatment on the basis of race by dismissing her from its Nursing Program and denying her request for readmission on appeal.**

The Complainant alleged that the Institute subjected her to different treatment on the basis of her race (African American) when they dismissed her from its Nursing Program. Specifically, the Complainant alleged that the Institute discriminated against her by dismissing her from the Program and denying her request for readmission on appeal, while granting the requests for readmission made by two white students who had also been dismissed from the Nursing Program.

OCR investigated the Complainant's allegation regarding different treatment on the basis of race pursuant to Title VI. The regulation implementing Title VI at 34 C.F.R. §100.3(a) and (b)(1)(i)-

(iv) and (vi) provides 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 under any program to which the Title VI regulation applies.

The evidence obtained and reviewed thus far in this matter raises potential questions concerning whether the Institute's articulated reasons for denying the Complainant's appeal may be a pretext for discrimination based on her race. However, concerns raised about the basis for the denial of readmission on appeal are being addressed through the Institute's voluntary entry into the Agreement in this case.

Pursuant to the Agreement, the Institute will, among other things, grant the Complainant readmission into its Nursing Program, revise its appeal procedure to provide students with notice about what constitutes "extenuating circumstances" for purposes of appeal, and provide training to its staff regarding Title VI regulations prohibiting different treatment on the basis of race.

**Issue #2: Whether the Institute retaliated against the Complainant by denying her request for readmission to its Nursing Program on appeal after she reported that she was discriminated against on the basis of race.**

The Complainant alleged that the Institute retaliated against her by denying her request for readmission to its Nursing Program on appeal after she called the Student Relations Specialist at the Institute's corporate office on March 12, 2015 and reported that she was discriminated against on the basis of race.

The regulation implementing Title VI at 28 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 the laws OCR enforces, or because he or she has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing in connection with a complaint.

In order to determine if retaliation in violation of Title VI has occurred, OCR must determine whether: (1) the complainant engaged in an activity protected by the laws OCR enforces; (2) the recipient was aware of the protected activity; (3) the recipient took adverse action against the complainant contemporaneous with or subsequent to the protected activity; and (4) a causal connection between the adverse action and protected activity can reasonably be inferred. If these elements are established, OCR next examines whether the recipient has a legitimate, nondiscriminatory and non-pretextual reason for its actions. However, if one of the elements cannot be established, then OCR finds insufficient evidence of a violation.

**Protected Activity and Knowledge of Protected Activity**

OCR first determines whether a complainant engaged in a protected activity, and whether the recipient had knowledge of the protected activity.

The Complainant alleged that she called the Student Relations Specialist at the Corporate Office on March 12, 2015 and reported that she was discriminated against on the basis of race.

OCR interviewed the Student Relations Specialist regarding this issue. The Student Relations Specialist recalled speaking with the Complainant on March 12, 2015, but she stated that the Complainant never reported that she was discriminated against on the basis of race. According to the witness, the Complainant stated that after she had been dismissed from the Nursing Program, the Institute “gave her the run around” before she submitted her appeal. The Student Relations Specialist also said the Complainant reported that her appeal had been denied and that she felt the decision was personal. The Complainant further explained to the Specialist that extenuating circumstances prompted her course failures. She also said that another student was in the same situation but, because she had a close relationship with another instructor, she was readmitted to the Nursing Program. The witness then told the Complainant to gather her appeal documents and she would send them to the Senior National Director for review. The Student Relations Specialist stated that she recorded the Complainant’s statements on a Student Complaint Intake Form.

OCR reviewed the Student Complaint Intake Form. The form reflects that the Student Relations Specialist talked with the Complainant on March 12, 2015. The form states as follows:

School gave her the runaround before she submitted her appeal. Her appeal was denied. She believes the decision was personal- against her. She says she has extenuating circumstances. She claims another student was in the same situation but since she had a close relationship with another instructor, she was permitted to re-enter.

The form does not contain any allegations of race discrimination.

OCR also interviewed the Senior National Director, the Nursing Chair, two Nursing Instructors and the Institute’s Director regarding this issue. Each of these individuals stated that the Complainant never reported race discrimination to the Institute nor to any of them individually.

OCR also reviewed the Complainant’s appeal documents, which she submitted to the Institute on March 13, 2015, a complaint regarding the denial of her appeal that she filed with the Institute on March 19, 2015, and another complaint regarding the denial of her appeal that she filed with the Florida Department of Education on March 30, 2015. OCR also reviewed numerous emails to and from the Complainant and her nursing instructors. OCR finds that none of these documents contain any allegations of race discrimination.

During the investigation of this case, OCR attempted to contact the Complainant to give her the opportunity to rebut the evidence and present additional evidence. However, the Complainant has not provided any additional evidence that would alter OCR's determination.

## **Conclusion**

OCR finds that the Complainant's statement that she alleged race discrimination during her discussion with the Student Relations Specialist was not corroborated by the Student Relations Specialist or the witness' documentation of her discussion with the Complainant. Further, the written internal complaints submitted by the Complainant to the Institute did not include complaints of race discrimination. Therefore, OCR finds that the evidence does not support a conclusion that the Complainant engaged in a protected activity or that the Institute had knowledge of the protected activity. Accordingly, based on a preponderance of the evidence standard, OCR finds there is insufficient evidence to support a finding that the Institute engaged in retaliation in violation of Title VI with regard to this allegation.

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This concludes OCR's investigation of the complaint in this matter and should not be interpreted to address the Institute'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.

OCR will monitor the Institute's implementation of this Agreement to ensure that it is fully implemented. If the Institute fails to fully implement the Agreement, OCR will reopen the case and take appropriate action to ensure compliance with Title VI.

Please be advised that the Institute 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. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

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, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*

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This concludes OCR's consideration of this complaint, which we are closing effective the date of this letter. If you have any questions regarding this matter, please contact XXX at (404) 974-XXX, or XXX, Team Leader, at (404) 974-XXX.

Sincerely,

Melanie Velez  
Regional Director