



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

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April 2, 2018

Dr. Glenda Baskin Glover, President
Tennessee State University
3500 John A. Merritt Boulevard
Nashville, Tennessee 37209

Re: OCR Complaint No. 04-15-2347

Dear Dr. Glover:

The U.S. Department of Education (Department), Office for Civil Rights (“OCR”) has completed its investigation of the above-referenced complaint against Tennessee State University (University). The Complainant alleged that the University discriminated against her and other students on the bases of race (African-American (Black) and White), national origin (Middle Eastern), sex (female), and age (over 40). In addition, the Complainant alleged that her XXXX professor (Professor) retaliated against her after she complained that the Professor made discriminatory comments, was racist, and volatile.

As a recipient of Federal financial assistance from the Department, the University 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 bases of race, color, or national origin. The University is also subject to the provisions of the Age Discrimination Act of 1975 (Age Act), 42 U.S.C. §§ 6101-6107, and its implementing regulation, 34 C.F.R. Part 110, which prohibit discrimination on the basis of age by recipients of Federal financial assistance from the Department. As a recipient of Federal financial assistance from the Department, the University is subject to the requirements of Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681, *et seq.*, and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex. Accordingly, OCR has jurisdiction over this complaint. Additional information about the laws OCR enforces is available on our website at www.ed.gov/ocr.

On May 28, 2015, OCR opened the following issues for investigation:

1. Whether the University subjected students in the Course to a hostile environment on the basis of national origin (Middle Eastern) when, after the Complainant reported that the Professor asked students he presumed to be of Middle Eastern origin to stand-up and explain the difference between two sects of Islam, discussed “Allah”, and shouted “Down with the Shah!” in January 2015, the University failed to take immediate and appropriate action to investigate or otherwise determine what occurred and failed to take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its

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effects, and prevent the harassment from recurring, in non-compliance with Title VI and its implementing regulation at 34 C.F.R. § 100.3.

2. Whether the University subjected students in the Course to harassment on the basis of race (African-American (Black)) when, after the Complainant reported that the Professor used “the N-word” during the spring 2015 semester of the Course, the University failed to take immediate and appropriate action to investigate or otherwise determine what occurred and failed to take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring, in non-compliance with Title VI and its implementing regulation at 34 C.F.R. § 100.3.
3. Whether the University subjected students in the Course to a hostile environment on the basis of sex (female) when, after the Complainant reported that the Professor singled out a student for being gay and told female students in the Course to please “get their pap smears”, the University failed to take immediate and appropriate action to investigate or otherwise determine what occurred and failed to take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring, in non-compliance with Title IX and its implementing regulation at 34 § 106.31.
4. Whether the University discriminated against the Complainant on the basis of race (White) by treating her less favorably than her similarly-situated non-White peers when the Professor wrote notes to the Complainant about her attendance, asked her to meet with him after class, berated and behaved aggressively towards her on April 29, 2015 and referred to her as “pale face” during the spring 2015 semester, in non-compliance Title VI and its implementing regulation at 34 C.F.R. § 100.3.
5. Whether the University discriminated against the Complainant on the basis of sex (female) when the Professor treated the Complainant less favorably than White male students when he wrote notes to the Complainant about her attendance, asked her to meet with him after class, berated and behaved aggressively towards her on April 29, 2015 and referred to her as “pale face” during the spring 2015 semester, in non-compliance with Title IX and its implementing regulation at 34 C.F.R. § 106.31.
6. Whether the University subjected the Complainant to different treatment on the basis of age (over 40) when the Professor treated the Complainant less favorably than younger students by making repeated statements to the Complainant about setting an example for other students with respect to attendance, asked her to meet with him after class, and berated and behaved aggressively towards her on April 29, 2015 when she left and then re-entered the classroom, in non-compliance with the Age Act and its implementing regulation at 34 C.F.R. § 110.10.
7. Whether the University subjected the Complainant to retaliation and hostility when, following her complaints that the Professor made inappropriate racial remarks, remarks based on stereotypes about people from the Middle East, and inappropriate statements to female students in the Course, the Professor issued a class assignment to students in the Course

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seeking responses to the allegations the Complainant made to University officials, told the Complainant “If you lie, you die,” and berated and behaved aggressively towards the Complainant on April 29, 2015, in non-compliance with Title VI and its implementing regulation at 34 C.F.R. § 100.7(e).

OCR reviews evidence under the preponderance of the evidence standard. Under this standard, 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. In this matter, OCR reviewed documents submitted by the University and Complainant, and interviewed the Complainant, and several University staff and student witnesses. Given the complaint allegations, OCR also reviewed the University’s Notice(s) of Non-Discrimination, Grievance Policy (Tennessee Board of Regents Policy P-080), and its Office of Equity and Inclusion webpage, which included a link for contacting the University’s Title IX Coordinator.

Legal Standards

Title VI

Title VI implementing regulation at 34 C.F.R. § 100.3 states that no person in the United States 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 this part applies. A recipient under any program to which this part applies may not, directly or through contractual or other arrangements, on ground of race, color, or national origin provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program; Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program; restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program; deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program (including the opportunity to participate in the program as an employee but only to the extent set forth in paragraph (c) of this section).

Title VI implementing regulation at 34 C.F.R. § 100.7(e) states 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 section 601 of Title VI or this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

To determine whether harassment is severe, pervasive or persistent as to constitute a hostile environment OCR will examine the context, nature, scope, frequency, duration, and location of racial 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 racial incidents to establish a violation under Title VI.

When OCR evaluates the severity of racial harassment, the unique setting and mission of an educational institution must be taken into account. An educational institution has a duty to provide a nondiscriminatory environment that is conducive to learning. In addition to the curriculum, students learn about many different aspects of human life and interaction from school. The type of environment that is tolerated or encouraged by or at a school can therefore send a particularly strong signal to, and serve as an influential lesson for, its students.

As with other forms of harassment, OCR must take into account the relevant particularized characteristics and circumstances of the victim especially the victim's race and age when evaluating the severity of racial incidents at an educational institution. If OCR determines that the harassment was sufficiently severe that it would have adversely affected the enjoyment of some aspect of the recipient's educational program by a reasonable person, of the same age and race as the victim, under similar circumstances, OCR will find that a hostile environment existed.

To determine severity, the nature of the incidents must also be considered. Evidence may reflect whether the conduct was verbal or physical and the extent of hostility characteristic of the incident. In some cases, a racially hostile environment requiring appropriate responsive action may result from a single incident that is sufficiently severe. Such incidents may include, for example, injury to persons or property or conduct threatening injury to persons or property.

The size of the recipient and the location of the incidents also will be important. Less severe or fewer incidents may more readily create racial hostility in a smaller environment, such as an elementary school, than in a larger environment, such as a college campus.

The identity, number, and relationships of the individuals involved will also be considered on a case-by-case basis. For example, racially based conduct by a teacher even an "off-duty" teacher, may have a greater impact on a student than the same conduct by a school maintenance worker or another student. The effect of conduct may be greater if perpetrated by a group of students rather than by an individual student.

In determining whether a hostile environment exists, OCR will be alert to the possible existence at the recipient institution of racial incidents other than those alleged in the complaint and will obtain evidence about them to determine whether they contributed to a racially hostile environment or corroborate the allegations.

Finally, racial acts need not be targeted at the complainant in order to create a racially hostile environment. The acts may be directed at anyone. The harassment need not be based on the ground of the victim or complainant's race, so long as it is racially motivated (e.g., it might be based on the race of a friend or associate of the victim). Additionally, the harassment need not result in tangible injury or detriment to the victims of the harassment. If OCR finds that a hostile environment existed under these standards, then it will proceed to determine whether the recipient received notice of the harassment, and whether the recipient took reasonable steps to respond to the harassment.

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A school is responsible for addressing harassment incidents about which it knows or reasonably should have known. In some situations, harassment may be in plain sight, widespread, or well-known to students and staff, such as harassment occurring in hallways, during academic or physical education classes, during extracurricular activities, at recess, on a school bus, or through graffiti in public areas. In these cases, the obvious signs of the harassment are sufficient to put the school on notice. In other situations, the school may become aware of misconduct, triggering an investigation that could lead to the discovery of additional incidents that, taken together, may constitute a hostile environment. In all cases, schools should have well-publicized policies prohibiting harassment and procedures for reporting and resolving complaints that will alert the school to incidents of harassment.

When responding to harassment, a school must take immediate and appropriate action to investigate or otherwise determine what occurred. The specific steps in a school's investigation will vary depending upon the nature of the allegations, the source of the complaint, the age of the student or students involved the size and administrative structure of the school, and other factors. In all cases, however, the inquiry should be prompt, thorough, and impartial.

If an investigation reveals that discriminatory harassment has occurred, a school must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring. These duties are a school's responsibility even if the misconduct also is covered by an anti-bullying policy, and regardless of whether a student has complained, asked the school to take action, or identified the harassment as a form of discrimination.

Appropriate steps to end harassment may include separating the accused harasser and the target, providing counseling for the target and/or harasser, or taking disciplinary action against the harasser. These steps should not penalize the student who was harassed. For example, any separation of the target from an alleged harasser should be designed to minimize the burden on the target's educational program (*e.g.*, not requiring the target to change his or her class schedule).

In addition, depending on the extent of the harassment, the school may need to provide training or other interventions not only for the perpetrators, but also for the larger school community, to ensure that all students, their families, and school staff can recognize harassment if it recurs and know how to respond. A school also may be required to provide additional services to the student who was harassed in order to address the effects of the harassment, particularly if the school initially delays in responding or responds inappropriately or inadequately to information about harassment. An effective response also may include the issuance of new policies against harassment and new procedures by which students, parents, and employees may report allegations of harassment (or wide dissemination of existing policies and procedures).

Finally, a school should take steps to stop further harassment and prevent any retaliation against the person who made the complaint (or was the subject of the harassment) or against those who provided information as witnesses. At a minimum, the school's responsibilities include making sure that the harassed students and their families know how to report any subsequent problems,

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conducting follow-up inquiries to see if there have been any new incidents or any instances of retaliation, and responding promptly and appropriately to address continuing or new problems.

Title IX

Title IX implementing regulation at 34 C.F.R. § 106.31 states that except as provided elsewhere in this part, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives Federal financial assistance. Except as provided in this subpart, in providing any aid, benefit, or service to a student, a recipient shall not, on the basis of sex provide different aid, benefits, or services or provide aid, benefits, or services in a different manner; deny any person any such aid, benefit, or service; subject any person to separate or different rules of behavior, sanctions, or other treatment, or otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

Sexual harassment is unwelcome conduct of a sexual nature. It includes unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature.

The Title IX implementing regulation at 34 C.F.R. §106.8(a) provides that each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX, including any investigation of any complaint communicated to such recipient alleging its noncompliance with Title IX or alleging any actions which would be prohibited by this part. The recipient shall notify all its students and employees of the name, office address and telephone number of the employee or employees appointed. Pursuant to 34 C.F.R. § 106.8(b), recipients must adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by Title IX.

Notice of Nondiscrimination

The Title IX implementing regulation at 34 C.F.R. §106.9 require that each recipient publish a notice of nondiscrimination stating that the recipient does not discriminate on the basis of sex in its education programs and activities, and that Title IX requires it not to discriminate in such a manner. The notice must state that inquiries concerning the application of Title IX may be referred to the recipient's Title IX coordinator or to OCR. It should include the name or title, office address, telephone number, and e-mail address for the recipient's designated Title IX coordinator.

The notice must be widely distributed to all students, parents of elementary and secondary students, employees, applicants for admission and employment, and other relevant persons. OCR recommends that the notice be prominently posted on school Web sites and at various locations throughout the school or campus and published in electronic and printed publications of general distribution that provide information to students and employees about the school's services and policies. The notice should be available and easily accessible on an ongoing basis.

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Age Act

The regulation implementing the Age Act at 34 C.F.R. § 110.10 states 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. A recipient may not, in any program or activity receiving Federal financial assistance, directly or through contractual, licensing, or other arrangements, use age distinctions or take any other actions that have the effect, on the basis of age, of -- (1) excluding individuals from, denying them the benefits of, or subjecting them to discrimination under a program or activity receiving Federal financial assistance; or (2) denying or limiting individuals in their opportunity to participate in any program or activity receiving Federal financial assistance.

Retaliation

Because the Complainant's protected activity was related to race-based discrimination, we apply the Title VI standard for retaliation to this allegation. Retaliation is prohibited under the provisions of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d *et seq.*, and its implementing regulation at 34 C.F.R. § 100.7(e). The Title VI regulation 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 or other matter in connection with a complaint.

When OCR investigates retaliation allegations, it uses a four-part prima facie analysis. A prima facie case of retaliation is established by showing: 1) an individual engaged in a protected activity (e.g., opposed a discriminatory policy, asserted protected rights, or participated in an OCR complaint or proceeding); 2) the recipient was aware of, or had knowledge of, the protected activity; 3) the recipient took adverse action against the individual contemporaneously with or subsequent to the individual's participation in the protected activity; and 4) there was an inferable causal relationship between the adverse action and the individual's participation in the protected activity.

Once OCR has established a prima facie case of retaliation, OCR examines whether the recipient can articulate a legitimate, non-discriminatory reason for its action. If the recipient asserts a reason for its actions, OCR analyzes whether the reason articulated by the recipient is a pretext, or cover-up, for retaliation.

Factual Findings

At the time the complaint allegations were filed, the Complainant was a part-time student enrolled in the University's undergraduate XXXX program. At that time, the Complainant was fifty (50) years old. She is a White female. The Complainant's allegations stem from the conduct of XXXX the Professor who taught a course (Course) XXXX XXXX XXXX XXXX (January-May 2015). The Course met once per week.

Hostile Environment (directed at other students)

National Origin Discrimination

According to the Complainant, on January 18, 2015 the Professor asked Muslim students in the Course to stand up and then discussed “Allah.” From the rear of the classroom, he then yelled, “Down with the Shah.” The Complainant contends that there was no correlation between the Professor’s conduct and the class topic. In an interview with OCR staff, the Professor explained that during a class discussion about the “rule of law” he discussed the practices of other countries and asked whether there were any Sunni’s or Shiites in the classroom that would like to correct his understanding of the differences between the groups. The Professor contends that no one responded.

OCR interviewed four student witnesses with respect to this allegation. Three of the four students recalled the Professor making the comments alleged by the Complainant. Two students (Student 1 and Student 2) self-identified as Muslim. Student 1 identified himself as of Middle Eastern origin. Student 1 corroborated both the Complainant and Professor’s version of the incident. When the Professor asked all of the Muslim students to stand, he stood and responded to the Professor’s inquiries. He told OCR that he did not feel singled out, targeted, or discriminated against on the basis of his national origin. He perceived the Professor’s remarks as an illustration of global issues relevant to the class discussion. Student 2, who was not of Middle Eastern origin, corroborated the relevant aspects of the Complainant’s account. Student 2 told OCR that during the exchange, she felt singled out based on religion, but not national origin. Her nation of origin is Somalia.

Race (African-American (Black))

The Complainant told OCR that the Professor used the term “the N-word” in class. The Professor told OCR that he never used “the ‘N-word’ that ends with an ‘r’”. However, he explained that during the chapter on ethics, he told his students that people do not use the “N-word” in public discourse anymore. This class discussion focused on the concept that if one person uses the word, then the term will redound in the culture. Further, the Professor admitted that he told the students that he heard “you all” use the “N-word” followed by a warning to the students to watch what they say.

Student 1 did not confirm whether he heard the Professor use the term “the N-word” but told OCR staff that he believes that the Professor makes remarks to “humiliate” younger black students. Student 2 told OCR that the Professor not only used the “N-word” but also the term “nigger.” However, no other student witness corroborated this account.

Student 3 told OCR that she recalled the Professor referencing the “N-word,” in the context of saying that he heard black female students use the term in reference to their boyfriends. In addition, Student 3 reported her feeling that the Professor says “racist things” in class. She was reluctant to label the Professor “racist” because she alleged that he made inappropriate comments about persons of all races. She also reported that on one occasion, the Professor said, “Blacks get away with a lot.”

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Student 4 recalled the Professor using the term the “N-word.” Student 4 told OCR about an occasion where the Professor told an African-American student that if he were accused of a crime, he would find him guilty based on his skin color. Student 4 told OCR that she felt that the Professor created a hostile environment on the basis of race (African-American (Black)).

In addition, the Complainant reported that she felt that the Professor disliked that she sat in the rear of the class with the Black students, but did not report that he made comments to this affect. According to investigative notes provided to OCR through the University, during an interview, the Professor volunteered that the Complainant “sits as close as she can” to a Nigerian student, which he felt kept the student off task because “women have a way of doing that.”

Generally, during interviews with OCR staff, the students discounted their opinions regarding the Professor’s conduct because of their impressions that he was smart, a lawyer, and would know where to draw the line.

Sex

The Complainant alleged that during a lecture, the Professor stated “Ladies, please get your pap smears.” Students 3 and 4 recalled this comment. Student 3 added that the Professor also told the female students in the course not to get married. In his OCR interview, the Professor admitted that he told students that two of six female students in his law school class were already dead; he then pointed into the class and stated, “Ladies, get your pap smears.”

Further, the Complainant alleged that in mid-January 2015, the Professor asked the class whether any of his students were gay. Student 1, Student 2, and Student 4 recalled this inquiry. They told OCR, respectively, that one female student spoke up in response to the Professor’s comments. The Professor told OCR that he may have asked whether there were any gay students in the course during a lesson on the rule of law where people are treated generally equal. None of the student witnesses reported that the Professor made comments that were based on sex, were sexual in nature, or based on sex stereotypes.

Student 3 added that the Professor discussed a “rape-case” at another university and referred to the students as “stupid” for leaking information that sparked an investigation into the allegation.

Hostile Environment (towards the Complainant)

Race (White)

The Complainant alleged that the Professor referred to her as “pale face.” She stated that she was the only white female student in the class at the time. During an interview with OCR staff, the Professor denied directing the “pale face” comment towards the Complainant, but admitted calling the only other white female student in the Course “pale face” during a discussion about being made an example of. He explained that he knew this student’s story, so he got close to her face and said “See what it feels like to be a pale face.”

In her OCR interview, Student 4 recalled the Professor referring to the Complainant and another student he perceived as white “pale face.” Three other students who were interviewed had no recollection of this comment.

Although only one student witness interviewed by OCR confirmed the Complainant’s account that the Professor referred to her as “pale face”, three of the four student witnesses the University’s XXXX of the XXXX interviewed heard the remark. One student reported being certain that it was directed towards the Complainant because after the Complainant raised her hand to ask a question, the Professor responded “Wow, pale face I’ve been waiting on you to ask a question.”

Sex

The Complainant alleged that the Professor referred to her as “pale face” but did not subject White male students to such name calling. Her contention was supported by the evidence. In addition, the Complainant alleged that on February 4, 2015, the Professor gave her a note addressed to “friend” which indicated that he noticed her leaving class early and opined, “What if there is a test during the second half of class?” In addition, the note asked the Complainant to get in touch with the Professor via his personal contact information. Further, the Complainant alleged that the Professor researched her online and asked her questions about her personal affairs (i.e. her mother and job). On one occasion, the Professor asked her to stay after class to meet with him. The Complainant stated that these actions, along with the Professor giving her his personal contact information, made her feel uncomfortable. The Complainant reported to OCR that she did not consider the Professor’s conduct to be sexual in nature, and while she alleged a hostile environment based on sex, she did not allege sexual harassment.

In an interview with OCR staff, the Professor neither confirmed nor denied researching the Complainant online. With respect to his notes to the Complainant, the Professor explained that he was giving the Complainant an alternate means of communicating with him.

Age

The Complainant alleged that she was subjected to a hostile environment on the basis of age when the Professor directed the above-referenced comments and notes towards her on February 4, 2015, but did not similarly interact with younger students in the class. The Complainant contends that approximately 50 % of the class leaves early each night, but that younger students were treated more favorably than she. In addition, the Complainant told OCR that on April 4, 2015, the Professor returned her test with a note which said, “Stop leaving class early, I’ve already spoken to you about this, you are setting a bad example for other students, what is your problem.”

According to the Complainant, there would be no reason for the Professor to believe that she should “set an example” but for that she is an older non-traditional student. OCR investigated these allegations as possible harassment and as different treatment on the basis of age.

In an OCR interview, the Professor explained that the Complainant's behavior, in persistently leaving class, was done in such a way as to draw attention to herself, which made her conduct more disruptive than others. The Professor stated that the Complainant disregarded his classroom rules, which were printed on the class syllabus. He added that she did not come to him with an explanation of why she needed to leave class early or arrange a meeting with the Department Head. Instead, the Professor contended that the Complainant avoided him so that they never had a meeting about her disruptive practice of leaving the classroom.

The Professor told OCR that he gave the Complainant a hand written note – addressed “Dear friend” (because he did not know her name) and gave her alternate methods of communicating with him. He contends that he was attempting to inform her of her misbehavior. He added that there were only three white students in the class. He explained his feeling that if the traditional aged students (all of whom are black) see her getting up, they take that as a signal that it is okay for them to leave. Further, he told OCR staff that he feels that white older students at the University have higher credibility and status than traditionally aged black students.

The attendance policies printed in the Professor's Course syllabus stated:

“Punctuality/Attendance: Punctual attendance at every scheduled class is required. Roll will be taken at each class in the form of a class roll that **each student must both circle his/her name and sign his/her name**. Excessive absences are defined in the Student Handbook and generally mean more than three unexcused absences. If I am in the room when you enter, you are late. If I have picked up the signed class roll, you will not be allowed to sign it. Don't ask to do so, I will refuse. Do not sign the roll for someone else or allow someone to sign it for you. This will result in you being dropped from the class. Sometimes I forget to pass the class roll. Be a good citizen and remind me during the class”

OCR asked the four student witnesses about the Professor's classroom attendance policies and his position on students leaving class. Student 1 told OCR that the Professor did not care whether students attended class or came and left throughout. The other three student witnesses reported that although they could tell (by the Professor's body language) that he disliked students leaving during class, he never directly addressed younger students who did so. Student 4 reported that the first time the Professor made a “big deal” about a student leave was during the Professor's April 29, 2015 exchange with the Complainant, discussed below.

Two younger African-American (Black) students reported that the Professor was quite lenient with them regarding general attendance policies.

Retaliation

Documentation showed that the Complainant reported the Professor's conduct to another College XXXX professor (Professor 2) on February 21, 2015. Her report specifically referenced the Professor's use of the term “the N-word”, his Pap smear statement, and his notes. Professor 2 told OCR that she immediately reported the Complainant's concerns to the XXXX of the College of XXXX.

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On the other hand, the XXXX told OCR that she was not made aware of the Complainant's allegations until March 5, 2015, at which time the Complainant explained her specific allegations against the Professor, including the "Down with the Shah!" remarks. According to the XXXX, she, the Complainant, XXXX, and XXXX met on March 11, 2015.¹ During the meeting, the Complainant discussed the above concerns about the Professor.

Despite acknowledging that the Complainant's report in addition to her view that the Professor was "racist" and "volatile," the XXXX stated that she did not consider the Complainant's reports allegations of discrimination. The same day the XXXX met with the Complainant, she also discussed the Complainant's concerns with her supervisor, the XXXX of XXXX (XXXX). According to the XXXX, the XXXX advised her to reduce the concerns to writing and then allow the Professor an opportunity to respond. The XXXX summarized the Complainant's concerns in a memorandum (XXXX's Memorandum). The XXXX did not advise her to forward the concerns to the Office of Equity and Inclusion (OEI) for investigation.

At the XXXX's direction, on March 25, 2015, the XXXX met with the Professor to discuss the concerns in the XXXX's Memorandum. She did not disclose the Complainant's identity. She asked the Professor to respond to the concerns in writing within one week (by April 1, 2015). The same day, the Professor issued a writing assignment that required students in the Course to address the allegations contained in the XXXX's Memorandum, which he distributed to the class. After class, the Complainant reported the Professor's conduct to Professor 2 and the XXXX and XXXX by email.

The Professor admitted disseminating the XXXX's Memorandum in an effort to collect the "best evidence" of what occurred in his classroom. The Professor told OCR that from the moment he saw what he referred to as "the laundry list" of concerns in the XXXX's Memorandum; he knew that the Complainant had complained about him. Student witnesses told OCR that some students refused to complete the assignment, others reported the assignment to the XXXX and XXXX, and others, who learned of the assignment before entering class, chose not to attend.

The Complainant alleged on April 8, 2015, the Professor discussed a section of the U.S. Code which involved lying to federal agents. In addition, the Complainant contends that the Professor discussed faculty and students' rights and responsibilities with regard to making material misrepresentations. The Complainant alleged that the Professor aimed the subject of the lecture at her and stated that the takeaway was "If you lie, you die."

OCR viewed the Course syllabus for April 8, 2015, which showed that the scheduled discussion topic was Anti-trust law. Student 4 recalled the lecture, and indicated that the Professor looked directly at the Complainant and stated "If you lie, you die". She told OCR that she could see both the Professor and the Complainant's faces.

In his interview with OCR, the Professor recalled this lecture, which he contends was focused on the fact that you can violate anti-trust law without having "mens rea," or criminal intent. The

¹ The date for this meeting was delayed until March 11, 2015 due to inclement weather.

Professor did not recall saying “If you lie, you die.”; but, added that if he said it, it involved the subject matter of the classroom.

According to the Complainant, on April 29, 2014, the Professor indicated that he would take roll at the end of class. However, when the Complainant went to the restroom, the Professor went to the back of the class and watched her exit to the hallway. Thereafter, the Professor began taking roll. A student came out to get the Complainant to sign the roll. As soon as the Complainant re-entered the classroom, the Professor dismissed class.

According to the Complainant, after class, she asked the Professor to sign the roll. In response, he got in her face, yelled at her, and accused her trying to get him fired, while pointing his finger an inch from her nose. She attempted to sign the roll thereafter, and the Professor came behind her and jerked the roll away from her while continuing to scream, demean, and intimidate her. In response, she left the classroom. Some of her classmates with went with her. The Professor followed the students upstairs while screaming at the Complainant.

Several student witnesses corroborated the Complainant’s account. In addition, Professor 2 told OCR that on April 29, 2015, a rush of students entered her office. She tried to shut her office door as the students were explaining what happened. Thereafter, the Professor arrived and pushed the door open. She told the Professor that the students were obviously intimidated by him. She also requested that he contact security.

OCR viewed video footage of the incident. It showed the Professor refusing to allow the Complainant to sign the roll, snatching it from her, following her around the classroom, and getting in her face. Student witnesses told OCR that the Professor never spoke to any other students that left the room in this manner or directly in any manner.

The Professor told OCR staff that on April 29, 2015, he was surprised to see the Complainant leave class before the midway point, so he picked up the original roll, handed out another one, and asked the students to quickly sign the new roll. He admitted that he refused to allow the Complainant to sign the roll when she returned to class, but denied following the Complainant and other students to Professor 2’s office. Instead, he contended that but admitted that he encountered the students while returning to his own office. He admitted that Professor 2 told him that he was making the students uncomfortable.

When asked about his classroom policies on attendance, the Professor stated that he does not allow students to leave the classroom of their own volition. According to the Professor, students are forbidden from getting up. Further, the Professor explained that he passes a class roll for students to sign. Since last year, he has been required to report three or more student absences to administration or to lower the student’s grade. He added that there are negative consequences for a true “didn’t come to class scenario.” In his class, students that are late are always entitled to sign the class role because he is trying to encourage students to be there.

The Professor confirmed that students besides the Complainant left class and did not return without informing him prior to. He added that he felt these students took their cue from the Complainant because she is “the older wiser lady in the class.” He explained that he never

confronted any of them. The Professor told OCR that he mentioned leaving early to younger students in the Course and then they provided a reason for leaving (i.e. night jobs). He added that if any student meets with him and communicates their need to leave (special attendance need), he attempts to meet their need consistent with University policy. When asked if there were actually students in the Course that specifically informed him of their need to leave early, he responded that he does “not recall a single student doing so.”

Following this incident on April 29, 2015, the XXXX removed the Professor from the classroom and assigned the XXXX the task of proctoring his final exams.

University’s Response

The Complainant told OCR that after the Professor’s March 25, 2015 assignment, she had a phone call with the XXXX about whether she would stay in the classroom or not. The Complainant contends that after she expressed her discomfort with the March 25, 2015 assignment, she asked the XXXX and XXXX if she could be reassigned to another section of the Course because she did not feel that it would be in her best interest to remain in the Professor’s classroom. The Complainant stated that the XXXX recommended that she drop the Course and pick it up in the summer. She declined to do so due to financial concerns.

The Complainant contends that thereafter, the XXXX offered to place a monitor in the classroom until the end of the semester. At this point, there were about 6 classes left in the semester. The XXXX told OCR that she assigned monitors to the Professor’s classes. However, she emphasized that the monitors were not in place for the Complainant’s protection.

Two professors monitored the Course on April 8, 2015 and April 15, 2018, respectively. According to the Complainant, neither monitor stayed the full duration of the class meeting. According to the XXXX, although she originally viewed the Complainant’s concerns as informational in nature, as the situation progressed, in consultation with the XXXX, she determined that she needed to forward the complaint to the OEI. She reported the allegations to the OEI on March 31, 2015.

The XXXX of the XXXX (XXXX) told OCR that after receiving an email from the XXXX containing the XXXX’s Memorandum, she begin an investigation of the Complainant’s allegations. First, she discussed the allegations with the Complainant, including the additional allegations that the Professor referred to her as “pale face”, and her feeling that the Professor treated her differently because she “sat in the back of the class with blacks, – but he liked whites up front.”

On April 1, 2015, the XXXX sent the Professor a letter notifying him that her office was opening an investigation into allegations that he made harassing and discriminatory comments implicating race, gender, and national origin. Because the XXXX had difficulty getting in contact with the Professor, she interviewed the student witnesses identified by the Complainant next. Thereafter, she interviewed the Professor. The XXXX told OCR that during her interview with the Professor she specifically told him that retaliation was prohibited and not to disclose the

contents of the investigation to anyone. Nonetheless, following her interview with the Professor, the XXXX learned of the April 29, 2015 incident.

Professor 2 told OCR that she had received numerous complaints of discriminatory comments made by the Professor in past classes. In each instance, she reported this conduct to her superiors, the XXXX and XXXX XXXX. However, when she tried to follow up on these complaints, she was not provided any information except that the XXXX was handling it. In their respective interviews with OCR, the XXXX, XXXXXXXXX, and XXXX denied receiving any prior complaints about discriminatory comments or actions by the Professor. In an interview with OCR staff, the XXXX confirmed that she did not review the Professor's personnel file as a part of her investigation despite learning from Professor 2 that she had received similar complaints about the Professor in the past.

OCR reviewed a copy of the XXXX's recommendations following her investigation. She found that the preponderance of the evidence supported the conclusion that the Professor created a hostile educational environment for the Complainant based on race and that he retaliated against her. The XXXX recommended that "the University should impose major disciplinary action against [the Professor] with serious consideration given to dismissing the [Professor] from the University," that the Professor "be immediately removed from the classroom and not be permitted to return to the classroom until he has attended appropriate workshops/training sessions, including cultural awareness training and other workshops to develop his awareness of cultural competency, as well as develop an appreciation for how his behavior affects students."

In her OCR interview, the XXXX explained that she made these recommendations because when she interviewed the Professor (and in his written response), he made insensitive comments in general conversation about his classes. She told OCR that the Professor was oblivious that some of his comments were insensitive and potentially offensive. Further, she stated that the students she interviewed throughout her investigation shared similar accounts of instances that occurred in class. She stated that student accounts of the Professor's conduct were "verified repeatedly." Her findings report that among other comments made during her discussions with the Professor, were, "we are supposed to have 700 Saudis students but I haven't seen any evidence of them. Maybe they're all in engineering." In addition, the findings reflect that the Professor used the words "spic" and "kyke" during his interview with the XXXX.

In support of her recommendation that consideration be given to terminating the Professor, the XXXX told OCR that she viewed the videos of the Professor's conduct on April 29, 2015. She noted that the Professor ignored what she told him about retaliatory behavior. She also reported feeling that the Professor's conduct was unlikely to change even with training. The XXXX was not involved in the conversations concerning whether the Professor would be fired or remain with the University. She submitted her findings to Counsel, who forwarded them to the XXXX.

The XXXX told OCR that based solely on the statements of multiple students, as well as the Complainant's concerns about the Professor's conduct, she determined that it would be appropriate to remove the Professor from his teaching responsibilities in fall 2015. The University provided documentation that the Professor was placed on a PIP on August 27, 2015. The XXXX stated that the PIP was modified after she received the investigative findings from

the XXXX and reviewed them with the XXXX. She stated that the modifications included having the Professor participate in training. By letter to the Professor dated September 22, 2015, the XXXX informed the Professor that in addition to the PIP that he had been previously issued, he would be required to complete training on the University's harassment and discrimination grievance procedures, a cultural competency course, and an online diversity module selected by the University.

When asked whether, in her discussions with the XXXX, termination of the Professor's employment was considered, the XXXX responded that it was. The two decided against termination, in part, due to considerations of the extensive procedures involved with terminating a tenured professor. The XXXX also noted the Professor's 30 years' of experience and that he had no prior record of similar complaints.

The Professor confirmed that he did not teach during the fall 2015 semester; however, he was paid. Having completed nearly half of the training PIP training requirements, the professor told OCR that he considered himself in "substantial compliance" with the plan. He added that he asked to be placed on sick leave to "buy [himself] some time to complete the PIP." He also told OCR staff that he "came up with the sick leave thing" because it became apparent to him that he might not be able to fully comply with the PIP before the end of the semester.

As of the date of this correspondence, the professor is no longer employed by the University.

Analysis and Conclusions

Preliminarily OCR notes that, in cases of alleged harassment, the protections of the First Amendment must be considered if issues of speech or expression are involved. Free speech rights apply in the classroom (e.g., classroom lectures and discussions) and in all other education programs and activities of public schools (e.g., public meetings and speakers on campus; campus debates, school plays and other cultural events; and student newspapers, journals, and other publications). In addition, First Amendment rights apply to the speech of students and teachers.

Allegation One: Whether the University subjected students in the Course to a hostile environment on the basis of national origin (Middle Eastern).

With respect to the Complainant's allegation that the Professor created a hostile environment on the basis of national origin, OCR finds that the evidence is insufficient to support this allegation. The only clear evidence of national origin discrimination was a single incident in January 2015 when the Professor shouted "Down with the Shah!" OCR interviewed two students, with national origins other than the United States, and one specifically from the Middle East (Student 1). Student 1, who identified as Muslim, told OCR staff that he felt the topic of Islam related to global issues relevant to the class discussion and that he did not feel singled out or targeted.

To determine whether a hostile environment exists, OCR considers whether the harassing incidents were severe, pervasive *or* persistent. OCR examines the context, nature, scope, frequency, duration, and location of harassing incidents, as well as the identity, number, and relationships of the persons involved. OCR examines the incidents from the perspective of a

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by fostering educational excellence and ensuring equal access.*

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reasonable person of the same age and race as the harassed student. The identity, number, and relationships of the individuals involved will also be considered on a case-by-case basis.

Here, Student 1 did not feel personally singled out or harassed on the basis of national origin with respect to the Professor's "Down with the Shah!" comment. Student 2 reported feeling singled out on the basis of her religion, not national origin.² Even when considering the comments together, assuming that the Professor's discussion of Islam was based on national origin, the comments did not rise to the level of severe, pervasive or persistent as they did not, by their nature, indicate a discriminatory animus towards persons of Middle Eastern origin, did not occur consistently throughout the semester, and were arguably made in the context of discourse within the collegiate setting.

Although the evidence showed that during the Professor's interview with the XXXX he made potentially offensive comments based on stereotypes about persons from Saudi Arabia, there was no evidence that similar comments were made during the Course or directly to University students. Therefore, the evidence does not support a conclusion that a hostile environment based on national origin was created.

Allegation Two: Whether the University subjected students in the course to harassment on the basis of race (African-American (Black)).

OCR finds that there is sufficient evidence to establish that the Professor created a hostile environment on the basis of race (multiple). Four of five students interviewed, including the Complainant, and the Professor confirmed that the Professor used the term "N-word" during the spring 2015 Course. One student (Student 2) recalled hearing the Professor use the term "nigger." Student 4 reported additional racially insensitive comments made by the Professor during the Course and her feeling that the Professor created a hostile environment on the basis of race. Student 3 reported her feeling that the Professor says "racist things" in class.

In addition, the Complainant reported that she felt that the Professor disliked that she sat in the rear of the class with the Black students, but did not report that he made comments to this affect. The XXXX's interview notes stated that the Professor noted that the Complainant sits as close as she can to a Nigerian student, which kept that student off task. The XXXX recommended that the Professor be removed from his teaching responsibilities because, during her investigation, he made a number of insensitive racially remarks and seemed oblivious to the potentially offense nature of his comments.

Although only one student witness interviewed by OCR confirmed the Complainant's account that the Professor referred to her as "pale face", three of the four student witnesses the XXXX interviewed heard the remark. One student reported being certain that it was directed towards the Complainant because after the Complainant raised her hand to ask a question, the Professor responded "Wow, pale face I've been waiting on you to ask a question."

² OCR does not have jurisdiction to investigate allegations of discrimination on the basis of religion.

The evidence supports a finding that the Professor created a racially hostile environment for his students by frequently making stereotypical and discriminatory remarks about race, referring to students using racially offensive names (i.e. pale face), and using the term “the N word” throughout the spring 2015 semester. This conduct was severe in light of the Professor’s status as an instructor at the University and a lawyer. Students discounted their perceptions of the Professor’s conduct citing his authority as a professor and attorney. Because of the University’s expectation that students maintain an adequate level of attendance, students in the Professor’s Course were a captive audience. In response to questions about his comments during the Course, the Professor provided an instructional basis for the remarks. However, OCR was unable to connect the Professor’s comments to any of the subject matter identified in his Course syllabus.

OCR finds the preponderance of the evidence sufficient to support a finding that the University failed to take prompt steps that were reasonably calculated to end discrimination that could create a hostile environment or to prevent its recurrence. The evidence established that the Complainant reported allegations of race, national origin, and gender discrimination on February 21, 2015. After receiving notice of the potentially hostile environment, the University did not take reasonable steps to respond to determine what occurred. Although the XXXX sought to obtain the Professor’s response to the allegations more than a month after they were reported, she did not consider the Complainant’s reports allegations of harassment or discrimination, and did not forward the concerns to the Office of Equity and Inclusion.

In addition, the XXXX recommended that the Complainant drop the Professor’s Course and to re-take it during the summer, rather than appropriate steps to end the harassment that would not act to penalize or burden the Complainant. Following the XXXX’s reported findings, no consideration was given to address the impact of the Professor’s conduct on the larger community of students in the Course or other classes the Professor instructed nor was the Complainant offered counseling or other services to remedy the effects of the harassing conduct.

Lastly, despite the XXXX’s findings that the Professor was unlikely to benefit from training and her recommendation that termination be considered, the XXXX and XXXX’s decision of whether to terminate the Professor’s employment was based on the consideration of the arduous process of terminating a tenured employee rather than on the merits. Thus, University’s response was not targeted to prevent the recurrence of future harassment. Therefore, OCR finds that the evidence is sufficient to establish that the University is in violation of Title VI with respect to this allegation.

Allegation Three: Whether the University subjected students in the Course to a hostile environment on the basis of sex (female).

The evidence relevant to whether students in the Course were subjected to a hostile environment on the basis of sex was limited to the Professor telling the female students in the Course to get their pap smears, stating his opinions about the conduct of students in a rape case at another university, and making a comment that resulted in a female student identifying herself as gay. OCR notes that there was no evidence that the Professor made comments regarding sex or gender stereotypes with the respect to the student identifying herself as gay.

OCR finds the evidence insufficient to establish that these incidents are sufficiently serious as to create a hostile environment based on sex. The context in which the comments were made does not support a finding that the comments were pervasive or persistent. The comments were made in the context of collegiate level classroom discussions, based on the personal experiences of the Professor and his classmates, and were isolated, separate, and occurred over the course of a semester.

OCR recognizes that the offensiveness of a particular expression as perceived by some students, standing alone, is not a legally sufficient basis to establish a sexually hostile environment under Title IX. In order to establish a violation of Title IX, the harassment must be sufficiently serious to deny or limit a student's ability to participate in or benefit from the education program. OCR finds that this conduct is not sufficiently serious as to create a hostile environment on the basis of sex; but, notes its comment above regarding the University's response to complaints regarding this conduct.³

Allegation Four: Whether the University discriminated against the Complainant on the basis of race (White) by treating her less favorably than her similarly-situated non-White peers.

A conclusion that an individual has been subjected to different treatment requires a finding of intentional discrimination on the basis of an individual's race. Evidence of discriminatory intent may be direct or circumstantial, and "intent cases" usually involve a highly fact-intensive inquiry. Absent direct proof of discriminatory motive, a different treatment inquiry frequently focuses on: (1) whether the recipient—in excluding or denying the aggrieved person a program, service, or benefit—treated the person differently from an individual of a different race, national origin, sex, or age; and (2) whether the recipient can provide a legitimate nondiscriminatory justification for the different treatment. A recipient's rebuttal or nondiscriminatory justification can be overcome with a showing of pretext.

The evidence obtained during this investigation is sufficient to support a finding that the Professor treated the Complainant less favorably than her non-White classmates. First, the Professor described the Complainant as "a white fifty-ish woman" and called her "pale face". In addition, the Professor admitted that he treated the Complainant less favorably than non-White students with respect to his classroom rules for entering, exiting, and leaving early. The Professor asserted his belief that if the Complainant violated his class rules, then all of the younger students would do the same. He explained his view that if the traditionally aged students (all of whom are black) see the Complainant getting up, they take that as a signal that it is okay for them to leave. Further, he told OCR staff that he feels that white older students have higher credibility and status than traditionally aged black students. Therefore, there was direct evidence of the Professor's discriminatory motive.

Further, although the Professor alleged that he wrote notes to the Complainant about leaving early because she would not communicate with him about leaving class, there was no evidence

³ See OCR's 2001 Guidance on Sexual Harassment.

that he treated similarly-situated non-White students consistently. Further, he ultimately engaged in an intimidating and hostile encounter with the Complainant when he refused to allow her to sign the class roll during the April 29, 2015 class meeting. When asked to explain this conduct, he stated that the Complainant blatantly disregarded his classroom rules, which were printed on the class syllabus.

OCR determined that the Professor's explanation of his April 29, 2015 behavior was a pretext for discrimination. None of the students with whom OCR spoke reported that the Professor implemented the rules stated in his syllabus. Each of the student witnesses OCR interviewed, all of whom were younger and non-White, explained that although the Professor generally did not like students leaving class and then re-entering, he had never directly addressed students that did so. No other student with whom OCR spoke detailed encounters similar to the one between the Complainant and Professor on April 29, 2015 and his earlier notes and remarks. In fact, two younger Black students reported that the Professor was quite lenient with them with respect to general attendance.

OCR could identify no evidence that the Professor subjected younger Black students to similar attendance standards. Therefore, the evidence is sufficient to establish that the University subjected the Complainant to different treatment on the basis of race (White).

Allegation Five: Whether the University discriminated against the Complainant on the basis of sex (female).

As discussed above, the evidence showed that the Professor subjected the Complainant to more stringent standards with respect to classroom attendance, including writing her notes about leaving early and not allowing her to sign the roll on the basis of her race. With respect to the Complainant's allegations that this conduct was also discriminatory on the basis of sex, the facts failed to establish a prima facie case of different treatment because male and female students alike were treated more favorably than the Complainant with respect to attendance policies. Further, while the Complainant may have been singled out with respect to the Professor leaving notes for her, giving her his contact information, and looking her up online, the preponderance of the evidence does not establish that the Professor's actions were based upon the Complainant's sex. Rather, as discussed with regard to Allegations four and six, the evidence establishes that the Professor's actions were related to expectations that he had based upon the Complainant's age and race. Moreover, the Professor's conduct did not rise to the level of sexual harassment in that it was not in and of itself of a sexual nature.

OCR notes that the evidence showed that the Complainant and another female students, who the Professor perceived as White, were referred to as "pale face" while the only other White student (male) was not, the evidence did not support a finding of discriminatory motive on the basis of sex.

Therefore, the evidence is insufficient to establish that the Professor discriminated against the Complainant on the basis of sex, in this regard.

Allegation Six: Whether the University subjected the Complainant to different treatment on the basis of age (over 40).

A conclusion that an individual has been subjected to different treatment on the basis of age requires a finding of intentional discrimination on the basis of an individual's age. Evidence of discriminatory intent may be direct or circumstantial, and "intent cases" usually involve a highly fact-intensive inquiry. Absent direct proof of discriminatory motive, a different treatment inquiry frequently focuses on: (1) whether the recipient—in excluding or denying the aggrieved person a program, service, or benefit—treated the person differently from an individual of a different race, national origin, sex, or age; and (2) whether the recipient can provide a legitimate nondiscriminatory justification for the different treatment. A recipient's rebuttal or nondiscriminatory justification can be overcome with a showing of pretext.

Based on the factual findings above regarding age and the reasons detailed above, with respect to Allegation Five, the evidence is sufficient to establish that the Professor treated the Complainant less favorably than similarly-situated younger students respect to his classroom rules for entering, exiting, and leaving early. Specifically, the Professor admitted treating the Complainant differently than other students based on the Complainant's age with regard to the students leaving the class. The Professor explained his feeling that if the "traditional aged students (all of whom are black)" see her getting up, they take that as a signal that it is okay for them to leave.

Therefore, the evidence is sufficient to establish that the Professor discriminated against the Complainant on the basis of age, but subjecting her to different (less favorable) treatment than her similarly-situated younger peers.

Allegation Seven: Whether the University subjected the Complainant to retaliation.

Consistent with OCR's Case Processing Manual, with respect to the Complainant's allegations of retaliation that were timely re-filed with OCR on September 14 and October 28, 2015, OCR reviewed the results of the University's investigation to determine whether the University provided a comparable resolution process under comparable legal standards. OCR found that the XXXX conducted an investigation consistent with the University's grievance policies; each party was given the opportunity to present witnesses and other evidence in support of their positions; the XXXX interviewed the witnesses identified; and both parties were notified of the outcome in writing. Based on the evidence collected by the XXXX and discussed above, and using the appropriate legal standards, the XXXX concluded that the Professor retaliated against the Complainant.

However, as indicated above, OCR found that the University failed to provide the Complainant with a remedy reasonably calculated to end the harassment or retaliation and prevent its recurrence that is the same remedy that would be obtained if OCR were to find a violation. Thus, OCR finds that the University failed to provide the Complainant a comparable resolution process.

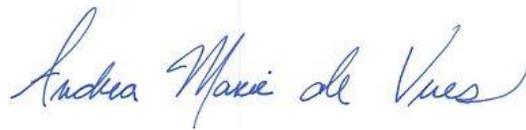
The University entered into the enclosed Agreement and submitted it to OCR on March 26, 2018. The enclosed Agreement, when fully implemented, will resolve all of the allegations and compliance concerns identified during the course of the investigation. OCR will monitor the University's implementation of this Agreement to ensure that it is fully implemented. If the University fails to fully implement the Agreement, OCR will reopen the case and take appropriate action to ensure compliance with Title VI and the Age Act. Further, the Complainant may file a private lawsuit in federal court whether or not OCR finds a violation. For service complaints under the Age Discrimination Act, the Complainant may file in federal court only after they have exhausted administrative remedies. See 34 C.F.R. § 110.39.

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 that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Intimidation or retaliation against complainants by recipients of Federal financial assistance is prohibited. No recipient may 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 one has made a complaint, or participated in any manner in an investigation in connection with a complaint.

OCR appreciates the University's cooperation in this matter and looks forward to receiving the monitoring reports, as required by the enclosed Agreement. If you have any questions, please contact Cerrone Lockett, General Attorney at 404-974-9318.

Sincerely,

A handwritten signature in blue ink that reads "Andrea Marie de Vries". The signature is written in a cursive style.

Andrea de Vries
Compliance Team Leader