



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

61 FORSYTH ST., SOUTHWEST, SUITE 19T10
ATLANTA, GA 30303-8927

REGION IV
ALABAMA
FLORIDA
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February 1, 2017

Ms. Sherry Parker
Executive Director
Southern Technical College
2910 S. Orlando Drive
Sanford, Florida 32773

Re: Complaint #04-16-2236

Dear Director Parker:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed on XXXX X, 2016, against Southern Technical College (College) alleging discrimination on the bases of race (black) and national origin (XXXXXXXXXX). Specifically, the Complainant alleged that the College subjected her to different treatment on the bases of race and national origin when:

- 1) She was dismissed from the College after she was accused of using a XXXXX word in her XXXXXXXXXX XXXX XXXXXXXXXXXXXX (XXX) class and engaging in other disruptive behavior while a similarly situated white student, who also used the same XXXX word and engaged in disruptive behavior toward staff, was not dismissed; and
- 2) She was given a grade of XX on a test in her XXX class for missing one question while a similarly situated white student who also missed one question was given a grade of XX on the test.

OCR investigated this complaint under Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. Sections 2000d et seq., and its implementing regulation, 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, and national origin. As a recipient of Federal financial assistance from the Department, the College is subject to the above-referenced statute. Accordingly, OCR has jurisdiction over this complaint.

OCR investigated the following legal issue: whether the College subjected the Complainant to different treatment on the bases of race and national origin, in noncompliance with Title VI and its implementing regulation at 34 C.F.R. § 100.3.

During the course of this investigation, OCR reviewed evidence submitted by the Complainant and the College, and also interviewed the Complainant. A finding that a recipient has violated one of the laws that OCR enforces must be supported by a preponderance of the evidence (i.e., sufficient evidence to prove that it is more likely than not that unlawful discrimination occurred).

Prior to the conclusion of the investigation, the College requested to address the complaint allegation with a voluntary resolution agreement (Agreement) pursuant to Section 302 of OCR's *Case Processing Manual* and OCR agreed to the request. Provided below is summary of OCR's investigation to date.

Legal Standards

The regulation implementing Title VI, at 34 C.F.R. § 100.3(a), 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 Title VI applies. The regulation implementing Title VI at 34 C.F.R. § 100.3(b)(1)(i)-(iv) states that a recipient under any program to which Title VI applies may not, directly or through contractual or other arrangements, on the ground of race, color or national origin, deny an individual any service, financial aid, or other benefit provided under the program; 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/her receipt of any service, financial aid, or other benefit under the program; or 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.

Under a different treatment analysis, a recipient violates Title VI if one of its agents or employees, acting within the scope of his or her official duties, treats an individual differently on the basis of race, color, or national origin without a legitimate, nondiscriminatory reason. A recipient's rebuttal/nondiscriminatory justification can be overcome with a showing of pretext.

Summary of Investigation to Date

College's Harassment/Discrimination Policy

The College's 2016-2017 Catalog (Catalog) contains the College's Non-Discrimination and Non-Harassment policy (Policy) which states that the College is committed to both equal employment and equal educational opportunities. The Policy also provides that no person shall be subject to discrimination on the basis of age, race, color, national origin, sex, or disability in the administration of any educational program or activity including participation in, receiving the benefits of, admission to, or employment in such programs and activities. According to the Policy, students have the right to file complaints of discrimination and harassment, and complaint investigation will be conducted in a fair, respectful, and consistent manner. The College's Grievance Process is also contained in the Catalog.

The Catalog also includes the Student Code of Conduct (Code), which provides that any student found to have committed misconduct may be subject to disciplinary sanctions as outlined in the policy. The categories of misconduct in the Code include, "inappropriate or profane behavior that causes a disruption of teaching, research, administration, disciplinary proceedings, or other College activities." The Code provides for a range of potential discipline for any misconduct

violation, including “a written warning” and “disciplinary action up to and including suspension or dismissal from the College.”

Complainant’s Suspension

On XXXXXXXX XX, 2016, the Complainant began the XXX program. The Complainant alleges that she was dismissed from the program for engaging in disruptive behavior, saying the word “XXXXXXXXXX” to the instructor (Instructor) of her XXX 101 course (Course), while a white student in her class was not dismissed for disruptive behavior that also involved using a XXXXX word in a class.

The College reported that there were four students in the Course that included two black, one Hispanic, and one white student. The College’s documents reflect that during one incident in XXXXX 2016 the Complainant used the word “XXXXXXXXXX;” the Complainant admitted to one incident and apologized. The Complainant asserted to OCR and College administrators that the Instructor also said the word “XXXXXXXXXX”.

The Complainant was suspended from the College in XXXXX 2016 until XXXX XX XXXX 2016 for disruptive behavior. The investigation to date shows that the Complainant admitted to the behavior and apologized for using the inappropriate language. Reports by College staff show that after the Complainant was suspended from the College she met with the XXXXXXXX XXXXXXXX XXXXXXXX XXXXXXXX and XXXXXXXX XX XXXXXXXX to discuss concerns regarding her suspension. The information indicates that during the meeting, the Complainant raised concerns that a white student was treated differently when she used similar language. With regard to the comparator, the evidence shows that on XXXXX XX, 2016, the Instructor reported to the XXXXXXXX XX XXXXXXXX that the white student in her Course had an outburst in class and it was necessary for another staff person to intervene to keep the situation from becoming more volatile. The evidence indicates that the white student was advised she could not be disruptive in class and apologized to the Instructor. The evidence does not indicate that she was subject to any disciplinary sanctions regarding the incident.

The Complainant submitted to the College a handwritten note dated XXX XX, 2016, stating that she was cancelling her enrollment at the College effective immediately. The Complainant confirmed that she did not enroll in the College in XXXXX 2016.

Grade in XXX 101 course

The Complainant alleged the Instructor graded her exam incorrectly in the Course which resulted in her receiving a lower grade on the exam than the white student in the class. Information provided by the College shows that on XXXXX XX, 2016, the Complainant met with a College representative to discuss concerns regarding how the Instructor taught the Course. She also raised concerns that the grades were not computed properly for the midterm. Documentation indicates that the Complainant was advised that the representative would speak to the Instructor and review her midterm exam. The Complainant filed a complaint with XXXXXXXX XXXXXXXX XX XXXXXXXX regarding the grade she received in the Course. In response, the College reported to the XX XXX that it investigated the Complainant’s concerns

regarding her grade in the Course and determined that the exam was graded correctly. OCR reviewed the Complainant's academic records, which showed that she received an A in the Course. For some tests in the Course the Complainant had a lower grade than a white student but it was not readily apparent which test the Complainant expressed concerns about. The Complainant's academic records also show that she received full credit for each course she was enrolled in XXXXXX and XXXXXX 2016 semesters. Further investigation would be needed to conclude OCR's investigation as to whether the Student was treated differently with regard to grading in the Course. OCR will also need to consider whether the grade the Complainant received on the exam in question amounted to tangible harm to her considering that she received a final grade of A in the course.

Conclusion

The Resolution Agreement requires the College to (1) offer the Complainant readmission into the XXX program on the Sanford campus; (2) detail the items it charged the Complainant during her enrollment in the College XXXXXX and XXXXXX 2016 and provide an accounting of the monies the Complainant borrowed to attend the College; (3) provide training to administration, faculty, and staff at the College's Sanford Campus regarding its prohibition against discrimination under Title IV. The training will be provided by a source with expertise in Title VI¹ and shall cover, at a minimum, the prohibition against discrimination and different treatment on the basis of race, color, or national origin; and (4) assign an administrator to review the College's responses to disciplinary referrals for instances of disruptive behavior under the Code throughout the 2016-2017 academic school year to ensure compliance with Title VI.

The provisions of the Agreement are aligned with the complaint allegations and the information obtained during the investigation and are consistent with applicable regulations. OCR will monitor the implementation of the agreement until the recipient is in compliance with the statutes and regulations at issue in the case.

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.

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 possible, any personally identifiable information, the release of which 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

¹ If the College desires, it may coordinate with OCR to provide free training at a mutually-agreeable time and place.
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because one has made a complaint, or participated in any manner in an investigation in connection with a complaint.

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 letter, please contact Ledondria H. Saintvil, Attorney, at (404) 974-9373, or me at (404) 974-9367.

Sincerely,

Ebony Calloway-Spencer, Esq.
Compliance Team Leader

Enclosure