



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

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ATLANTA, GA 30303-8927

REGION IV
ALABAMA
FLORIDA
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April 5, 2018

Mr. Frank L. Sims
President, Fisk University
1000 17th Avenue N.
Nashville, TN 37208

Re: OCR Complaint # 04-17-2101

Dear Mr. Sims:

On December 29, 2016, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint alleging discrimination on the bases of race and disability by Fisk University (University). We determined that we had the authority to investigate this complaint consistent with our complaint procedures and applicable law. Specifically, Complainant alleged the following:

1. The University discriminated against the Complainant on the basis of race when, while he was enrolled in the Fisk-Vanderbilt Masters to Ph.D. Bridge Program, he was paid less than similarly-situated white students.
2. The University discriminated against the Complainant on the basis of disability when the University withdrew the Complainant from the Masters to Ph.D. Bridge program and then required him to undergo a mental health evaluation in order to be considered for re-entry into the program.

OCR is responsible for enforcing:

- Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d, and its implementing regulation, 34 C.F.R. Part 100. Title VI prohibits discrimination on the basis of race, color or national origin by recipients of Federal financial assistance. As a recipient of Federal financial assistance from the Department, the University is subject to Title VI.
- Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance. The Section 504 implementing regulation at 34 C.F.R. § 104.61 incorporates by reference the prohibition against retaliation provided for in the Title VI regulation at 34 C.F.R. § 100.7(e).

As a recipient of Federal financial assistance from the Department, the University is subject to these laws. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

Based on the above, OCR investigated the following legal issues:

1. Whether the University discriminated against the Complainant on the basis of race when, while he was enrolled in the Fisk-Vanderbilt Masters to Ph.D. Bridge Program, the Complainant was paid less than similarly-situated white students, in noncompliance with Title VI implementing regulation at 34 C.F.R § 100.3.
2. Whether the University discriminated against the Complainant on the basis of disability when the University withdrew the Complainant from the Masters to Ph.D. Bridge program and then required him to undergo a mental health evaluation in order to be considered for re-entry into the program, in noncompliance with Section 504, at 34 C.F.R. § 104.4, and Title II, at 28 C.F.R. § 35.130.

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. OCR's investigation included a review and analysis of the documents submitted by the Complainant and the University, as well as interviews with the Complainant and University employees. After a thorough review of the evidence available, OCR has determined that with regard to Issue #1, there is insufficient evidence to support a finding of noncompliance with Title VI, as alleged. Regarding Issue #2, OCR has determined that there is sufficient evidence to support a finding of noncompliance with Section 504, as alleged. The bases for OCR's determinations are set forth below.

Allegation 1 – Different Treatment on the Basis of Race

Legal Standards - Title VI: Different Treatment

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

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 a similarly situated individual of a different race; 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.

Complainant's Allegation

The Complainant, who is black, alleged that the University discriminated against him on the basis of race when it paid him a lower stipend than white students who were also enrolled in the Bridge Program.

Factual Findings

To determine whether different treatment occurred, OCR first considered whether the evidence establishes a prima facie case of different treatment on the basis of race by determining (1) whether the student is a member of a protected group, (2) whether the Student suffered an adverse action (i.e. a denial of access to an aid, benefit or service) and (3) whether other similarly-situated students of a different race received a benefit that the Student did not.

OCR reviewed documents provided by the Complainant and the University. The evidence showed that of the 12 students who began the Bridge Program during the 2016-2017 school year, 7 were black, 2 were Hispanic and 3 were white. Ten of the participants, including one white student, received stipends in the amount of \$1,800. The remaining two students received stipends in the amount of \$2,210. Both of those students were white and they were studying in the physics field.

Because the Complainant is a member of a protected class and students outside his protected class received stipends with higher monetary value, OCR determined that there was sufficient evidence to establish a prima facie case of discrimination and proceeded with the next step of the analysis.

Legitimate non-discriminatory reason

Having established a prima facie case of different treatment, OCR then determined whether the University provided a legitimate, nondiscriminatory reason for providing the Complainant a lower stipend amount than the two similarly-situated white students in the program.

The University's Program Director advised OCR that the two white Students received a higher stipend than the Complainant because they received stipends from a different program than the Complainant based on their later admission and area of study (physics). To further support their justification, the University presented evidence that showed that the two white students who received stipends of \$2,210 (Students 11 and 12) were the last ones accepted into the program. The evidence showed that the University received notice in May 2016 that Vanderbilt was willing to share some of its stipend money with the University in order to support more students. An email between Program administrators dated May 10th, 2016 showed that a GAANN grant,

which was offered by the Department of Education, became available for incoming students in the Program on or about May 10, 2016. It was only after that offer from Vanderbilt and notice that the GAANN grant was available that Students 11 and 12 were admitted into the Program on May 13th and June 3rd respectively. Because the GAANN grants attached to Student 11's and 12's offers of admission provided higher baseline stipends of \$2,210, they received higher grants than the other students in the Program.

The evidence also showed that the Complainant was the first person accepted into the Program in January 2016. At the time of his acceptance, there was only one stipend available and it was in the amount of \$1,800. According to the Provost at the University, the Student was accepted earlier than his counterparts because he was noted to be an "unusually promising student." The evidence showed that more than three months passed before the rest of the eleven students were accepted into the Program. Those students received funds from various sources dependent upon their areas of study and availability of funds at the time of acceptance.

Because the evidence showed that stipends were dependent on availability at the time of acceptance, OCR determined that the University provided a legitimate non-discriminatory reason for the Complainant receiving a smaller stipend than two of his white classmates.

Pretext

Having found that the University provided a legitimate, nondiscriminatory reason for two white students receiving higher stipends than the other students, OCR next proceeded with its pretext analysis.

In order to determine the existence of pretext, OCR investigated how and when the GAANN grants were distributed and whether those funds could have been given to other students. The evidence showed that the GAANN grants were specifically allocated for physics students. This means that the four biology students, all of whom were black, could have not have received the GAANN grants because they were not studying physics. The Complainant was not in the reward pool for stipend money when the GAANN grants became available because he had already secured his stipend in January.

OCR also considered whether other black or Hispanic students other the Complainant would have been eligible GAANN grant due to their area of study and time they were admitted into the Program. The evidence showed that at least one other physics student, who was accepted around the time of Student 11, was black (Student 6). Student 6 received an offer of admission via email on May 3, 2016, and she was given until May 9th to accept or decline the offer. She accepted the offer on May 3, 2016. As stated earlier, an email between Program Administrators showed that the GAANN grant became available for incoming students in the Bridge Program on or about May 10, 2016. The email stated that "in the past couple of days," the University had discovered the "possibility" for Student 11 to apply for the GAANN grant that "might" allow the University to accept Student 11 into the program. Student 11 was not actually offered acceptance until May 13th, and he was only given until the 16th to accept or decline the offer.

By the time Student 11 was offered acceptance into the Program, Student 6 had already accepted her admission and was no longer in the award pool for stipends. Because the last eligible physics student had already accepted the University's offer of acceptance before the University became aware that the GAANN grant was available, the GAANN grant was used for the next acceptable student, who happened to be white.

OCR also investigated the Bridge Program as a whole, not just the entering class of 2016-2017. OCR reviewed data related to all of the students enrolled in the Bridge Program during the year of the Complainant's enrollment. There were 17 other students in their second year in the Program at working towards their Master's Degrees: 7 black, 5 Hispanic, 3 white, 1 Native American and 1 black/Hispanic. The evidence showed that three of these black students were receiving stipends of \$2,500 compared to one white student receiving \$2,500. Two black students were receiving stipends of \$2,210 compared to one white student receiving \$2,210. Two black students received stipends of \$1,800 compared to one white student receiving that amount.

Conclusion

OCR determined that although two white students in the same class as the Complainant received higher stipends than the other students, the University presented a legitimate non-discriminatory reason for the discrepancy. There is no evidence of pretext since the reason given for the difference in stipends was supported by the evidence that every student's stipend was dependent on the source of the stipend and the availability of funds at the student's time of acceptance. Pretext is further undermined by the fact that there were more black students receiving stipends of greater than \$1,800 than white students in the Program overall, and there was no difference in stipend amounts for students enrolled at Vanderbilt versus Fisk University. Accordingly, based on the preponderance of the evidence, OCR concludes that there is insufficient evidence to conclude that the University discriminated against the Complainant in noncompliance with Title VI.

Allegation #2 – Disability Discrimination

Prior to the completion of OCR's investigation, the University requested to voluntarily resolve this complaint. Pursuant to Section 302 of OCR's Case Processing Manual, a complaint may be resolved before the conclusion of an investigation when the recipient or public entity expresses an interest in resolving the complaint. The attached Resolution Agreement (Agreement) will require the University to take actions to remedy any compliance concerns regarding compensatory education services.

On March 3, 2018, OCR received the enclosed signed Agreement that, when fully implemented, will resolve the complaint. 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 Section 504. The Complainant may file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the University may not harass, coerce, 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.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information that, if released, could constitute an unwarranted invasion of privacy.

If you have any questions about this complaint, please contact Jamila Montaque, at 404-682-3342 or Jamila.montaque@ed.gov, or the undersigned at 404-974-9408.

Sincerely,

April England-Albright, Esq.
Supervisory General Attorney