



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

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ATLANTA, GA 30303-8927

REGION IV  
ALABAMA  
FLORIDA  
GEORGIA  
TENNESSEE

November 1, 2018

Dr. Christopher Blake, President  
Middle Georgia State University  
100 University Parkway  
Macon, Georgia 31206

Re: Complaint #04-17-2176

Dear Dr. Blake:

On May 3, 2017, the U.S. Department of Education, Office for Civil Rights (OCR), received the above-referenced complaint against Middle Georgia State University (University) alleging discrimination on the basis of age and retaliation. Specifically, the Complainant alleged that during her enrollment in the spring 2016 semester of a clinical practice course, the instructor treated her less favorably than similarly-situated students under the age of forty (40) by:

- a. Failing to meet with the Complainant, or to provide her with timelines, instructions, assignments, expectations, due dates, ongoing information, or observation feedback;
- b. Failing to give the Complainant adequate time to prepare and plan for observations;
- c. Conducting fewer observations of the Complainant's performance than younger students in her dual degree cohort and inconsistent with course requirements;
- d. Holding the Complainant to different standards with respect to observations by refusing to observe the Complainant without a lesson plan while doing so for younger students in her cohort; and,
- e. Informing the Complainant that the seminars listed in the course syllabus were not for her, but requiring the attendance of younger students in her cohort.

The Complainant also alleged that the above conduct constitutes retaliation for her complaint to the University's Provost that she was not receiving the same treatment as other (younger) students in her cohort and that the University was attempting to "weed [her] out" because she "did not fit what it had in mind" for its dual degree program.

As a recipient of Federal financial assistance from the Department, the University is subject to the provisions of the Age Discrimination Act of 1975 (Age Act), 42 U.S.C. Sections 6101-6107, and its implementing regulation, 34 C.F.R. Part 110, which prohibit discrimination on the basis of age. Accordingly, OCR has jurisdiction over this complaint. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

On May 23, 2017, OCR notified the parties that it was opening an investigation into the following legal issues:

1. Whether the University discriminated against the Complainant on the basis of age when the Professor for the spring 2016 semester of the Early Childhood Special Education (ECSE) Clinical Practice I course (Course) treated the Complainant less favorably than younger students in the dual degree cohort by: (1) failing to provide the Complainant with information necessary for success in the course; (2) holding the Complainant to higher standards than younger students; (3) refusing to conduct an observation of the Complainant without a lesson plan; and, (4) issuing the Complainant an “F” in the course, in noncompliance with the regulation implementing the Age Act at 34 C.F.R. § 110.10; and,
2. Whether the University retaliated against the Complainant after notice that she was potentially being treated less favorably than younger students in her dual degree cohort when the Professor for the spring 2016 semester of the ECSE Clinical Practice I course: (1) failed to provide the Complainant with information necessary for success in the course; (2) held the Complainant to higher standards than other students; (3) assessed the Complainant using different (more stringent) standards than other students in her cohort; and, (4) issued the Complainant an “F” in the course, in noncompliance with the regulation implementing the Age Act at 34 C.F.R. § 110.34.

During its investigation, OCR interviewed the Complainant and reviewed documents and information submitted by the University, including the University’s policies and procedures relevant to complaints of discrimination, the Complainant’s enrollment records and course schedule, academic output and scores from the Complainant and younger students in the course, complaints filed by the Complainant with University officials, and communications between the Complainant and the course instructor and program leadership concerning the Complainant’s performance in the course. In addition, OCR interviewed younger students enrolled in the Course and University faculty and staff regarding the University’s policies, procedures, and practices. OCR also interviewed the instructor concerning his practices within the Course.

**Allegation One: Whether the University discriminated against the Complainant on the basis of age when the Professor for the spring 2016 semester of the ECSE Clinical Practice I course treated the Complainant less favorably than younger students in the dual degree cohort by: (1) failing to provide the Complainant with information necessary for success in the course; (2) holding the Complainant to higher standards than younger students; (3) refusing to conduct an observation of the Complainant without a lesson plan; and, (4) issuing the Complainant an “F” in the course.**

Before OCR made a compliance determination in this case, the University sought to voluntarily resolve Allegation One of this complaint and OCR determined it is appropriate to do so. Pursuant to Section 302 of OCR’s Case Processing Manual, allegations under investigation may be resolved at any time when, prior to the point when the Regional Office issues a final determination under CPM Section 303, the recipient expresses an interest in resolving the

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allegations and OCR determines that it is appropriate to resolve them with an agreement. The attached Resolution Agreement (Agreement) requires the University to take actions to remedy Allegation One of this complaint.

**Allegation Two: Whether the University retaliated against the Complainant after notice that she was potentially being treated less favorably than younger students in her dual degree cohort when the Professor for the spring 2016 semester of the ECSE Clinical Practice I course: (1) failed to provide the Complainant with information necessary for success in the course; (2) held the Complainant to higher standards than other students; (3) assessed the Complainant using different (more stringent) standards than other students in her cohort; and, (4) issued the Complainant an “F” in the course.**

### Facts

The Complainant enrolled in the University’s ECSE program in August 2012. Her allegations of retaliation relate to her enrollment in the ECSE Clinical Practice I course (Course) during the spring 2016 semester, which ended in May 2016. The alleged adverse actions took place during the Course. On November 28, 2016—*after* the alleged adverse actions at issue in this complaint—the Complainant submitted a grade appeal to the University’s President, which questioned whether her treatment and resulting grade in the Course was based on her age. The University maintains a grievance procedure for complaints of age discrimination. However, there was no evidence that the Complainant utilized the grievance procedure to report her concerns of age-based discrimination.

### Legal Standards

The regulation implementing the Age Act at 34 C.F.R. § 110.34 states that a recipient may not engage in acts of intimidation or retaliation against any person who attempts to assert a right protected by the Act or these regulations; or cooperates in any mediation, investigation, hearing, or other part of the Department’s investigation, conciliation, and enforcement process.

To establish a prima facie case of retaliation, the evidence must show that: (1) the complainant experienced an adverse action caused by the recipient; *and* (2) the recipient knew that the complainant engaged in a protected activity or believed the complainant might engage in a protected activity in the future; *and* (3) there is some evidence of a causal connection between the adverse action and the protected activity. Although all three elements must exist to establish a prima facie case, OCR need not address all three elements if it determines one is missing.

If the evidence is sufficient to establish a prima facie case of retaliation, OCR will then determine if the recipient has identified a facially legitimate, non-retaliatory reason for the adverse action. The recipient’s facially legitimate, non-retaliatory reason must be clear, reasonably specific, and of such a character to justify the recipient’s action. If the recipient identifies a facially legitimate, non-retaliatory reason for the adverse action, OCR next conducts a pretext inquiry to determine whether this reason is genuine or is a pretext for retaliation. OCR examines all available evidence to determine whether the recipient’s proffered reasons are

credible. If not, OCR may conclude that the recipient retaliated against the complainant in response to his or her protected activity.

### Analysis and Conclusion

The evidence does not establish a prima facie case of retaliation. The evidence showed that the Complainant questioned whether her treatment and grade in the Course were based on her age when she appealed her grade in the Course on November 28, 2016. However, the evidence also showed that the Complainant did not complain to University officials about discrimination on the basis of age until *after* the adverse actions she identified. Therefore, the evidence is insufficient to establish a causal connection between the adverse action and the protected activity and thus, a prima facie case of retaliation.

Therefore, OCR finds that there is insufficient evidence to establish that the University retaliated against the Complainant in violation of the regulation implementing the Age Act at 34 C.F.R. § 110.34.

On October 17, 2018, 2018, OCR received the enclosed signed Agreement that, when fully implemented, will resolve the issue raised in Allegation One of this 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 the Age Act. The Complainant may file a private suit in federal court whether or not OCR finds a violation. By letter dated, [date], OCR notified the Complainant that [include section 701 standard language].

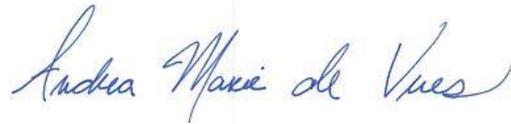
This concludes OCR's investigation of the complaint and should not be interpreted to address the University's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in an individual OCR case. This letter 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.

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 letter, please contact Cerrone Lockett, at (404) 974-9318.

Sincerely,

A handwritten signature in blue ink that reads "Andrea M. de Vries". The signature is written in a cursive style with a large initial 'A'.

Andrea M. de Vries  
Compliance Team Leader

Enclosure