

Course A. OCR looks forward to receiving the College's first monitoring report, which is due on March 14, 2014.

OCR completed its investigation of the remainder of allegation #1 and allegation #2. Based on the information obtained during its investigation, OCR has determined there is insufficient evidence to conclude that the College retaliated against or discriminated against the Complainant as alleged. OCR's determinations are set forth below.

Legal Standards

The regulation implementing XXXXXXXXXXXXXXXXXXXXXXX states that no individual may be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination on XXXXXXXXXXXXXXXXXXXXXXX under any program or activity that receives Federal funds from the Department. The regulation at XXXXXXXXXXXXXXX also prohibits a recipient, XXXXXXXXXXXXXXX from providing any service or other benefit to an individual that is different, or is provided in a different manner, from that provided to other individuals.

The regulation implementing XXXXXXXXXXXXXXX states that no individual XXX, XXXXXXX, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in any education program or activity operated by a recipient of Federal financial assistance. XXXXXXXXXXXXXXX also prohibits a recipient, on the basis XX XXX from providing any service or other benefit to an individual that is different, or is provided in a different manner, from that provided to others. XXXXXXXXXXXXXXX
XX
XX.

Different treatment

In determining whether a recipient subjected a student to different treatment based on XXXXX, OCR considers whether there were any apparent differences in the treatment of similarly-situated students based on XXXXXXX. If this is established, OCR assesses the recipient's reason for any differences in treatment of similarly-situated students to determine whether the reasons are legitimate, non-discriminatory and whether they are merely a pretext for unlawful discrimination. Additionally, OCR examines whether the recipient treated the student in a manner that was consistent with established policies and procedures and whether there is any other evidence of discrimination based on XXXXXXXXXXX.

Harassment

presentations accounted for 35% of the final grade, papers accounted for 45%, participation accounted for 10% and the final exam, which was a presentation, accounted for 10%. With respect to guidelines on participation, Instructor A's syllabus stated, "When you are here, be here. Make yourself known to me and the rest of the class." Students were to participate in open discussions, critiquing professional speeches, providing feedback to peers, sharing opinions and responding to questions. After a student finished a presentation, classmates would be asked to comment on what they liked and what they would change. XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX" Instructor A stated she used this format to discourage students from becoming argumentative and defensive.

The Complainant's Class Participation XXXXXXXXXXXXXXXXXXXX

Instructor A told OCR that the Complainant had a great start in the class and was talented and creative. Although the Complainant XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXX. Instructor A believed that XXXX earned grades of XXXXX- on XXX assignments prior to XXXXXXX.⁴ By the fifth class, Instructor A realized that the XX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX. Instructor A observed that the Complainant's classmates were becoming visibly impatient.

The Complainant believed that Instructor A deliberately "XXXXXX" while allowing XXXXX-XXXXXXXXXXXXXXXXX peers to comment without interruption during group discussions. XXXX observed that, XX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX. The Complainant acknowledged that no one in the class ever commented on XXXXX or made derogatory comments about XXXXX XXXXX, but believed that Instructor A created a hostile environment XXXXXX by encouraging and allowing XXX classmates to XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX. The Complainant told OCR that XX was reluctant to complain about XXX discrimination because of the College's responses to XXX previous complaints of discrimination.

XXXXXXXXXXXXX

On XXXXXX the Complainant gave a presentation in class, in which XXX told a story XXXX XXXXXXXXXXXXXXX that Instructor A described as "XXXXXXXXXXXXXXXXXXXX." During XXX presentation, the Complainant repeatedly said, "XXXXXXXXXXXXXXXXXXXX At the end of the presentation, one XXXX student commented that the Complainant had XXXXXXXXXXXXXXX XXXXXXX. Instructor A told OCR that the Complainant became XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXX that she and the Complainant's classmates provided on XXXX

⁴ The Complainant's grades have been erased from the College's grade tracking system. Instructor A did not keep copies of work that had been evaluated and returned to the Complainant.

speech. According to Instructor A, during the ensuing class discussion, the Complainant XXXX
XXXXXXXXXXXXXXXXXXXXXXXXX. Instructor A tried to XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXX but the Complainant refused. Finally, Instructor A told the
Complainant that XXXXXXXXXXXXXXXXXXXX. According to Instructor A, the Complainant
did not speak XXXXXXXXXXXX. Instructor A stated that this was the first time XXhad XXX
the Complainant short or silenced her in class. Instructor A informed OCR that after the class
ended, a XXXstudent told XXX that the Complainant had quietly told XXXXXXXXXXXXXXX
XXXXXX.” Instructor A told OCR that this was the first time XXX was made aware that the
Complainant believed that XXX had been treated differently because of XXXXXX. Instructor A
denied ever being told or understanding from the Complainant or XXX classmates that the
Complainant had suggested XXX was subjected to XXX discrimination.

The Complainant provided a different account of the XXXXX class. XXXreported becoming
uncomfortable during class because Instructor A deliberately XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXX The Complainant said XXX felt ostracized, and that the
entire class became very hostile XXXXXXXXXXXXrecalled one XXXXXXXX student shouting,
“XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX.” Another XXXXXstudent called XXX
XXXXXXXXXXXXXXXXXXXXXXXXXalleged that Instructor A’s failure to discipline these students
for their behavior reinforced the hostile environment.

OCR attempted to interview each of the students enrolled in XXXXXXXX. One student, Student
A, agreed to an interview and stated that the Complainant appeared personally offended by
XXXXXXXXXXXXXXXXXXXXXXXXX constructive feedback XXXXXXXXXXXXXXXXXXXX. According to
Student A, the feedback focused on whether the Complainant had met the assignment’s
requirements. Overall, Student A denied that Instructor A was XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXX than XXXX peers. XX also denied that XXXXXXXXXXXXXXXXXXXX
XX, in a manner that differed from
how XXXXX responded to other students. For example, Student A reported that Instructor A
consistently XXX. Student A
further noted that the XXX
XXXXXXXXXXXX In fact, XXXX recalled that one student XXXXXXXXXXXXXXXXXXXXXXX
XX. Student A denied
ever observing his classmates XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXdenied
observing any conduct that led XXXX to believe Instructor A or XXX classmates treated the
complainant differently or harassed XXXXXXXXXXXXXXXXXXXXXXX.

That week, Instructor A consulted with the Interim Chair about the Complainant’s behavior in
class. In a follow-up XXXXemail to the Interim Chair, Instructor A thanked XXXX “providing
background information on the Complainant and good advice.” In XXXXXinterview with OCR,
Instructor A could not recall specifically what details the Interim Chair shared about the

students who did not attend class, cursed in class or disrupted class were neither punished XX
XXXXXXXXXXXXXXXXXXXX. She also referenced her XXXexperience at the College when the
Dean prohibited her XXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX [the College] is still up to this XXXXdiscrimination
against XXXXXXXXXXXXXXXstudents!”

The Complainant told OCR that XXdid not understand why XXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX had to be involved XXX posed no threat. The Complainant told
OCR that once XXleft the building, CPD officers told XXX that XXXXwas not allowed back on
campus and told X to leave campus, which XXXdid. Based on the CPD officers’ statements, the
Complainant believed XX had been expelled. XXlater clarified with the Dean’s office that XX
had not been expelled, XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXwould need to meet with
the Dean XXXXXXXXXXXXXXXHere too, the College denied calling Campus security or the CPD
because of the Complainant’s XXXXXXX or in retaliation for XXXXXprotected conduct. The
College explained that security and the CPD were involved in removing the Complainant from
the classroom after XXXXdefied the Dean’s request that XXXXXXXXXXXXXXXXXXXXXXX XXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

XXXXXXXXXXXXXXXXXXXX

The following day, the Complainant sent an email to the Coordinator of Student Relations
documenting XXXconcerns that XXX had been discriminated against and also retaliated against
for “XXXXXXXXXagainst discrimination. Despite being provided with the link to the College’s
non-discrimination policy in the XXXXemail, the Complainant did not file a formal complaint
with the College’s Office of Human Resources, and instead raised XXconcerns only in emails to
the Coordinator of Student Relations. Although XXemails could be construed as a complaint of
discrimination, the College explained that they did not treat the emails as such because the
Complainant refused to clarify or discuss XXconcerns with the Dean when they met in person on
XXXXXXX.

XXXXXXXXXXXXXXXXXXXX

On XXXXXXXXXXXXXXXXXXXXXXX, the Complainant met with the Dean, the Coordinator of Student
Relations, the counselor and one of the Campus security officers. During the meeting the Dean
explained that Instructor A had informed the Dean’s Office that the Complainant was XXXX X
in class on XXXand defied the Instructor’s instructions to end XXX speech in a timely manner.
According to the College, the Complainant was told that XXXXcould not return XXXXXXXXXXXXXXX
XX
XX. The College
explained that it imposed these restrictions on the Complainant not because of XXXXXXX, or

in retaliation for XXXXXXprotected conduct, but solely in response to the Complainant's
XX
XX
because XXXhad frightened Instructor A and XXXclassmates, to ensure that Instructor
A and the other students in Course A would be able to complete the course without further
XXXXXand because the Complainant had previously disregarded XXXXXXXXXXXXXXXXXXXX class.

According to the Dean, despite XXXXinitial protests, the Complainant agreed to complete XX
XX
assignments for the course. The Dean told OCR that XXXXinstructed the
Complainant to contact Instructor A should XXXhave any questions about her XXXXX
assignments, including any requests for an XXXXXXof the XXXXXXXXXXXX.

XXXXXXXXXXXXXXXXXXXX

In a XXXXemail to Instructor A, the Complainant requested a grade for her XXXXpresentation
and also asked that the XXX to XXXXXXX
Shortly thereafter, and before receiving a response from Instructor A, the Complainant sent an
email to the Dean in which XXexplained that in light of XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX was
having difficulty completing XXXX assignments.

Instructor A told OCR that XXX did not respond to the Complainant and instead forwarded XX
email to the Interim Chair for a response. That evening the Interim Chair responded to Instructor
A's email, copying the Dean:

... [the Dean] will be able to give you some clear thoughts about how to proceed
with this. I feel that [the Complainant's] behavior in XXXXXXXXis not
acceptable and XXX Ideally, I think
XXXshould be XXX for the
class so that XXX cannot claim bias from [the College] –but neither can XX be
rewarded with the academic privilege of XXXXXXXXXXXXXXXXXXXXXXX I don't see
how you are in a position XXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXXat this point.

I am happy to engage in discussions about this so that we act in the best interests
(so far as that is possible) of the student, of the faculty member, and of the College.

The Interim Chair explained to OCR that his reference to “bias” in the email related to
educational bias, not XXXXbias. He also explained to OCR that XXbelieved the Complainant
was no longer entitled to complete the XXXXXassignments XXXXhad defied the Dean of

XXXXXXXXXXXXXXXXXXXX-- and XXXXrefusal to follow the directives of the Dean of Students, who requested the Complainant not to return to Course A and instead complete the course by submitting XXXXassignments, and the instructions of Campus security, that XX leave the class when XXXarrived after being asked not to attend. The College denied restricting the Complainant's access to Course A and other resources on campus because of XXXXXXXXor for retaliatory motives. Furthermore the evidence supports the College's assertion that it restricted the Complainant's access to class and campus because XXclassmates and Instructor A felt threatened by XXXXXXXXXXXXXXXXXXXXXXXXXXXXin class. The College limited the ban to five days to allow Instructor A and XXclassmates to complete the course. The evidence does not suggest that the College's stated basis for XXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXOCR found credible Instructor A's testimony that XXXXXXXstudents were afraid not only after the Complainant's XXXpresentation, but when XXarrived in class on XX XX, and XXXXXXXXXXXXXXXXXXXXXXXX Furthermore, while neither Instructor A nor any other XXXXXDepartment instructor had XXXXXa student from a class in this manner before, the College provided documentation of at least one other student, a XXXXXXXstudent, whose XXX to a course in the XXXXDepartment was XXXXXbecause of XXXXXXXXXXXXXXXX, and who was XXXXXXXXXXXX from his course because of continued XXXXXXXX.

OCR considered the fact that the Complainant was referred to the Dean of Students to discuss her XXXXXXXXXXXXX by the Coordinator of Student Relations, which is consistent with the College's description of its practice for XXXXXXXXXXXXXXXXXXXXXXXX. Moreover, the evidence indicates that at the time of the referral the College intended to let the Complainant complete the course. The evidence suggests that the College later XXXXXXXXXXXXXXXXthe Complainant from Course A, but OCR finds no evidence that this decision was made because of the Complainant's XXXXXXX. Without similarly situated students who were treated more favorably, and without other evidence of discrimination based on XXXXXOCR is unable to substantiate the Complainant's assertion that her removal from Course A subjected XXto different treatment based on her XXXXXXXX

Lastly, other than XXX assertion, which was disputed by the College, that XXXwas prevented from registering for XXXcourses, the Complainant provided no evidence to corroborate XX claim.

In making a determination regarding compliance, OCR must often weigh conflicting evidence and determine whether the preponderance of the evidence substantiates the allegation. In this case, the preponderance of the evidence does not support the allegation that the College discriminated against the Complainant based on XXXXXXXor retaliated against XXas alleged, and has closed the remainder of allegation #1.

Allegation 2 – hostile environment based on XXXXXXXXXXXXXXXX

