



**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS**

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NORTH DAKOTA
WISCONSIN

December 22, 2014

Mr. Scott Kinney
President
Capella University
225 South 6th Street
9th Floor
Minneapolis, MN 55402

Re: OCR #05-14-2441

Dear Mr. Kinney:

This is to advise you of the disposition of the above-referenced complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR) on June 25, 2014, against Capella University (University) alleging discrimination. The Complainant alleged that Capella University (University) discriminated against her on the basis of disability (rheumatoid arthritis) and race (Native American) at a fieldwork practicum in the University's Masters of Science in Mental Health Counseling Program (Program) from July 8, 2013, to January 26, 2014, when staff at the fieldwork practicum site:

1. harassed and subjected her to discrimination on the basis of disability, and the University had notice of the harassment and discrimination but failed to respond appropriately; and,
2. subjected her to a hostile environment based on race, and the University had notice of the harassment but failed to respond appropriately.

OCR also considered whether the University subjected the Complainant to retaliation when the University dismissed her from the Program in February 2014 after the staff at the fieldwork practicum site improperly terminated her internship after she complained of race and disability discrimination to staff at the fieldwork practicum site and to the University.

OCR is responsible for enforcing 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, and Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d, and its implementing regulations, 34 C.F.R. Part 100. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance, and 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, the University is subject to these statutes and regulations.

Generally, OCR will take action only with respect to those complaint allegations that were filed within 180 days of the alleged discrimination or retaliation. Timely allegations may include those where the complainant alleges a continuing discriminatory policy or practice. In this case, based on information obtained after OCR opened the complaint for investigation, OCR determined that the allegations pertaining to incidents that occurred prior to December 27, 2013 were not timely filed. In this regard, the Program's fieldwork practicum in which the Complainant participated ran from July 8, 2013, to March 14, 2014. The Complainant filed her complaint on June 26, 2014, which is more than 180-days after some acts alleged during the period of the fieldwork practicum.

The Complainant requested a waiver of the 180-day filing requirement, stating that she did not file sooner because she was waiting for the outcome of complaints she filed with the Colorado Civil Rights Division (CCRD) and the Equal Employment Opportunity Commission (EEOC). OCR may grant waiver of the 180-day filing requirement for good cause shown, such as when the complainant filed a complaint within the 180-day filing period with another civil rights enforcement agency alleging the same discriminatory conduct that is the subject of the complaint filed with OCR and then filed the OCR complaint within 60 after the other agency completed its investigation or notified the complainant that it would take no further action. In this case, if it were the case that the same allegations in the OCR complaint were filed by the Complainant within the 180-day filing period with the CCRD and/or EEOC, it remains that the Complainant did not file with OCR within 60 days after learning on March 5, 2014 that no further action would take place. Under the circumstances, the Complainant's proffered reason for not filing the complaint with OCR within the 180-day filing period is not a basis for waiving the 180-day filing requirement. Therefore, OCR determined that it was appropriate for OCR to continue its investigation regarding the incidents of alleged discrimination and retaliation that occurred on December 27, 2013 and thereafter and to close its investigation regarding earlier incidents.

In accordance with Section 302 of OCR's *Case Processing Manual*, a complaint may be resolved at any time when, before the conclusion of an investigation, the recipient expresses an interest in resolving the complaint. Prior to the conclusion of OCR's investigation, the University requested to resolve the complaint.

On December 22, 2014, the University signed the enclosed agreement (Agreement) which, when fully implemented, will resolve the issues raised in the complaint. The provisions of the Agreement are aligned with the issues raised by the allegations and the information obtained during OCR's investigation and are consistent with the applicable regulations. OCR will monitor the University's implementation of the Agreement.

Please be advised that the University may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint

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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. In the event that OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

We wish to thank you and your staff, and particularly the University's counsel, Mr. Todd Sorensen, for the cooperation extended to OCR during the processing of this complaint. If you have any questions, please feel free to contact Miguel Figueras at 312-730-1578 or by e-mail at miguel.figueras@ed.gov.

Sincerely,

Ann Cook-Graver
Supervisory Attorney