



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

500 WEST MADISON ST., SUITE 1475
CHICAGO, IL 60661-4544

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June 9, 2016

Richard Senese, Ph. D.
Interim President
Capella University
225 South 6th Street, 9th Floor
Minneapolis, MN 55402

Re: OCR # 05-16-2073
Capella University

Dear Dr. Senese:

This is to notify you of the disposition of the referenced complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Capella University (University) alleging discrimination on the basis of race (African American). Specifically, the Complainant alleged:

- (1) While a student in the University's School of Business/Business Doctorate Program (Program), the University discriminated against the Complainant on the basis of race when, from March 20, 2013, to March 18, 2014, the Scientific Merit Reviewer (SMR) delayed review of, and ultimately rejected the Complainant's Dissertation Research Plan; and,
- (2) The University discriminated against the Complainant on the basis of race when it delayed processing of the Complainant's April 23, 2015 appeal of the University's determination of his internal grievance alleging discrimination by Program staff.

OCR is responsible for enforcing Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, and its implementing regulations, 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color and national origin by recipients of Federal financial assistance. As a recipient of Federal financial assistance from the Department, the University is subject to the provisions of Title VI. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

During its investigation of the complaint, OCR reviewed documents provided by the Complainant and the University. OCR also interviewed the Complainant and University staff. Based on a careful review of the evidence, OCR has closed the part of Allegation #1 related to the alleged discriminatory delayed review of the Complainant's Dissertation Research Plan. With respect to Allegation # 2 and the part of Allegation #1 alleging that the University discriminated against the Complainant based on race when it rejected the Complainant's Dissertation Research Plan, prior to the conclusion of OCR's investigation, the University expressed an interest in resolving these allegations. Subsequent discussion with the

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

University resulted in the University signing the enclosed agreement (Agreement), which, when fully implemented, will resolve the issues covered in the complaint with respect to Allegation #2 and the part of Allegation #1 pertaining to the alleged rejection of the Dissertation Research Plan. The provisions of the Agreement are aligned with the issues raised by these 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.

Procedural Background

On October 18, 2014, the Complainant filed OCR complaint #05-15-2090 (Complaint A). Complaint A contained the same allegation as Allegation #1 in the OCR complaint #05-16-2073. While the allegation was pending with OCR, OCR learned from the University that on November 17, 2014, the Complainant had filed a written discrimination grievance with the University. OCR reviewed the written grievance which alleged the same conduct as alleged in Complaint A. The University informed OCR that it was investigating this grievance, which OCR confirmed in a letter to the University dated March 18, 2015.

On March 18, 2015, OCR closed Complaint A under Section 110(a)(1) of OCR's *Case Processing Manual* (CPM), which provides for closure of a complaint where the complainant filed the same complaint allegations through the recipient's internal grievance procedures and OCR anticipates that all allegations will be investigated and that the remedy will be the same as the remedy that would be obtained if OCR were to find a violation and that there will be a comparable resolution process under comparable legal standards. OCR notified both the Complainant and the University of this determination and notified both that the Complainant could re-file his allegation with OCR within 60 days of the completion of the University's action. OCR also notified the Complainant and the University that OCR would not conduct its own investigation and instead would review the results of the University's determination and decide whether the University provided a comparable resolution process under comparable legal standards.

The University completed its investigation and notified the Complainant of its finding of no discrimination on April 15, 2015. The University explained to OCR that its investigation addressed the alleged delayed review of the Dissertation Research Plan and not the alleged rejection of this plan by the SMR because the Complainant had clarified to Learner Affairs that his grievance focused only on the alleged delay. On April 23, 2015, the Complainant appealed the University's finding. After not receiving an appeal determination from the University, the Complainant re-filed Allegation # 1 with OCR on December 9, 2015, and also filed Allegation #2.

Facts

The University's Non-Discrimination Policy

The University's non-discrimination policy (Policy) states that it does not discriminate on the basis of race, color, or national origin in its admission, enrollment, educational programs, employment policies or practices.¹

The Policy states that anyone may report to a faculty member or official directly associated with the activity or event, a University administrator, or the University statutory designee - Learner Affairs, an instance of alleged prohibited discrimination. Upon receipt of an allegation, a faculty member, official, administrator, or statutory designee will notify the office of Learner Affairs. Learner Affairs will evaluate the grievance. If the respondent is a University contractor or employee, Learner Affairs may attempt to resolve the grievance informally; otherwise, it refers such a grievance to the University's Human Resources Department (HR), which will conduct an investigation and if appropriate, establish a remedy, discipline offenders, and document all claims of discrimination pursuant to the Policy. Investigations shall be processed within 60 days, unless an extension is requested, or circumstances beyond the University's control require extension.

The Policy also states that appeals must be made in writing within 10 calendar days of the initial decision. Appeals shall be processed within 60 calendar days, unless an extension is requested, or circumstances beyond the University's control require extension.

Allegation # 1 - Delayed review and rejection of Complainant's Dissertation Research Plan

In summer 2009, the Complainant enrolled in the Business Doctorate Program. The Program consists of four phases: online coursework, colloquia, comprehensive examination, and dissertation. In order to earn a Program degree, a student must successfully complete all four phases. Having successfully completed phases one through three, the Complainant began his dissertation phase in winter 2011.

The dissertation phase is a rigorous process, requiring multiple levels of review, approval and revision. The University assigns each dissertation student a committee composed of three faculty members, one of whom serves as mentor. The mentor assists the student with the Program's 16 dissertation phase components, or milestones. Each quarter, the mentor and student create an Action Plan designed to progress through each milestone. A student failing to meet the terms of the Action Plan for two consecutive quarters may be administratively withdrawn pursuant to University policy requiring sufficient academic progress.

¹ http://www.capella.edu/content/dam/capella/PDF/discrimination_harassment_assault.pdf

On November 17, 2014, the Complainant wrote a letter to the President of the University alleging that Program staff caused an unreasonable delay in his dissertation phase.² The Complainant asserted that communication delays with his mentor/committee followed by a rejection of the Dissertation Research Plan by the SMR who had initially approved the same plan a year earlier, were causes for the unreasonable delay in his dissertation phase.³ The Complainant asserted that based on this information, his student rights were violated and “possible racial discrimination” prevailed.

On December 5, 2014, a representative from Learner Affairs contacted the Complainant regarding the November 17, 2014 letter. After discussing the letter, the Complainant stated that the way he was delayed in the dissertation process showed racial bias. On December 11, 2014, the Learner Affairs representative emailed to the Complainant the University’s non-discrimination statement, Policy, and the University’s Discrimination Complaint Form.

In a reply email to the Learner Affairs representative on December 20, 2014, the Complainant refused to complete the Discrimination Complaint Form and asserted that he had already provided enough information to substantiate his complaint. In the same message, the Complainant asserted that he was entitled to receive a doctoral degree based on the work that he had done over the last several years.

On December 23, 2014, the Learner Affairs representative contacted the Complainant and informed him that he routed the Complainant’s November 17, 2014 letter to University administration and that he would notify the Complainant of next steps in early January 2015. On January 5, 2015, University administration determined that because the allegation of discrimination was against University staff, HR would process the Complainant’s November 17, 2014 letter as a race discrimination complaint.

As part of the HR’s Senior Human Resources Specialist’s (HRS) assigned job duties, she conducts staff-to-student discrimination investigations. The HRS stated to OCR that she received the case file concerning the Complainant’s grievance from Learner Affairs on January 5, 2015 and began her investigation by reviewing the Complainant’s letter and exhibits, and conducting an interview of the Complainant.⁴ The HRS then pulled from the University’s computer server copies of all email, telephone, and letter communications between the Complainant and any University staff between 2010 and 2015. The HRS also pulled all electronic course room posts by the Complainant, his mentor, committee members

²At the time of the letter, the Complainant had completed milestones 1, 2, 3 and 4.

³The Research Plan was an eight-section document covering the following areas: Section 1 - Research Problem, Significance, Questions, Title; Section 2 - Overall Methodology and Approach; Section 3 - Framework, Constructs, Variables, Operational Definitions; Section 4 - Population and Sampling; Section 5 - Role of the Researcher; Section 6 - Instruments, Field Tests, Data Collection: Qualitative; Section 7 - Researcher’s Critical Analysis of Design; and Section 8 - References.

⁴The University gave the Complainant until January 21, 2015 to submit any other documents in support of his complaint, or identify any other witnesses. The Complainant did not respond.

and the SMR for that same period. From these materials, the HRS developed a timeline of the Complainant's progress in the dissertation phase, with a focus on communications between the parties, and whether the communications were delayed by University staff, by the Complainant, or by third parties.

The HRS then contacted University Dissertation Services and inquired about the Program's content, requirements, and average response timeframes. The HRS pulled all dissertation student communication records made by the Complainant's current and former mentor, committee members, and SMR to see if they responded faster when they acted in the same capacity for other Program students during the dissertation phase. Additionally, the HRS compared communication times of the Complainant's current and former mentor, committee members, and SMR to the average response times of other Program students' mentors, committee members and SMRs during the dissertation phase.

Overall, the HRS found that the Complainant had received faster and more comprehensive responses from the SMR, current mentor, and committee members than did other students assigned to those same staff members, and that the response times of the Complainant's current and former mentor, committee members, and SMR was consistent with the times of other mentors, committee members, and SMRs. The HRS also discovered that the Complainant's former mentor during the 2011-2012 academic year typically responded to Program students a week to ten days later than the average response time of the current mentor during the dissertation phase. The HRS also noted that the former mentor responded in a similarly slow manner to all of his students (regardless of race).⁵

In addition, the HRS interviewed the Complainant's current mentor, the committee members, and the SMR regarding their communications and experience with the Complainant. According to the HRS, the mentor and committee members attributed the delays to the Complainant's substandard writing quality and failure to make on-point edits in a timely fashion. The records provided by the University showed that the mentor sent emails to the Complainant regarding those exact issues on at least two occasions.

The Complainant asserted that the SMR delayed the process beginning in March of 2013; the evidence showed that as of March 7, 2013, the Complainant had only completed milestone 1 (Research Ethics Education) and milestone 2 (Topic Approval). Pursuant to Program policy, after completion of milestone 2, the Program was to assign one of its Qualitative Research Methodologists to review Section 1 of the Complainant's Dissertation Research Plan. According to the University, the Qualitative Research Methodologist's approval was not required for the passage of the Dissertation Research Plan. Rather, the Qualitative Research Methodologist's role was to prepare the Dissertation Research Plan for forthcoming rigorous reviews. The Complainant's assigned Qualitative Research Methodologist was the SMR.

⁵ The HRS indicated that this mentor was counseled about the slow responses in his performance review.

The HRS's investigation established that on March 20, 2013, the SMR expressed concern with Section 1 of the Complainant's Dissertation Research Plan. Specifically, the SMR observed a lack of relationship between the research purpose and the research problem and a lack of alignment between the research question and the research method. Of the four graded criteria for Section 1, the SMR rated the Complainant's Section 1 as "Developing" in each of three criteria and "Unacceptable" in the fourth.⁶ According to the SMR's comments, the Complainant's selected data gathering technique would not elicit enough data for a robust analysis, and the Dissertation Research Plan did not anticipate any need for additional data points. Therefore, the Complainant needed to resolve the SMR's concerns in order to complete milestone 5 (Scientific Merit Approval). The University provided these comments to the Complainant on March 13, 2013.

Almost one year later, the Complainant submitted his revised Dissertation Research Plan to the SMR for review on March 3, 2014. According to the University, the SMR reviewed the Plan and determined that the Complainant had failed to clarify the research problem and identify the gap in the literature, research, and or theory that would form the basis for the research purpose, research question, and proposed methodology. Specifically, according to the HRS, the SMR determined that the Complainant still had not addressed the SMR's concerns on all eight sections of the Complainant's Dissertation Research Plan. Out of 15 grading elements for the 8 Sections of the Research Plan, the Complainant received "Unacceptable" grades for 8 elements, "Developing" grades for 6 elements, and a "Proficient" grade for one element. The Complainant's overall grade was "Unacceptable"⁷ and the SMR returned the Complainant's Research Plan for Major Revisions.⁸ The SMR stated in her Reviewer Comments Section that the Complainant had not addressed some of the comments from the previous year. On March 7, 2014, the SMR returned to the Complainant the Dissertation Research Plan for "Major Revision."

The HRS concluded that, based on a preponderance of this evidence, the evidence was insufficient to show that the SMR, the current or former mentors, or committee members unnecessarily delayed the Complainant's academic progress in the Program on the basis of race. Additionally, there was no other evidence to indicate that the SMR, mentor, or committee members responded to non-African American dissertation students faster or more completely. Although it found that the former mentor responded to the Complainant slower than the SMR, current mentor, or committee members, the evidence substantiated that the slow response was typical for all of the former mentor's students, regardless of race.

⁶ Elements were graded "Proficient, Developing, or Unacceptable."

⁷ An overall "Proficient" grade would allow a student to complete milestone 5, an overall "Developing" grade would show sufficient academic progress for the quarter, and an overall grade of "Unacceptable" if not changed, would result in a non-satisfactory grade.

⁸ According to the University, "Major Revision" involves substantive changes, additions and corrections expected to take up to ten weeks.

The University informed the Complainant of its determination in writing on April 15, 2015. According to the University, investigation of the Complainant's November 17, 2014 grievance took 149 days because the Complainant submitted to the University President numerous letters raising additional issues of concern during the pendency of the HRS's investigation.

Allegation # 2 - Delay in processing appeal

According to the Policy, appeals shall be processed within 60 calendar days, unless an extension is requested, or circumstances beyond the University's control require extension. On April 23, 2015, the Complainant appealed in writing to Learner Services the University's April 15, 2015 determination. In the appeal, the Complainant expressed his overall disagreement with the University's April 15, 2015 determination; he did not point out specific errors in the determination. The University denied his appeal on January 4, 2016, or 256 days after the Complainant filed his appeal. The University indicated that Learner Affairs representatives promptly scheduled meetings with the HRS to discuss her findings and review her investigative file. However, the meetings were not convened until December 2015, because the HRS was frequently absent from work due to health issues between April and December 2015.

Legal Standards

The regulation implementing Title VI, at 34 C.F.R. § 100.3(a), provides, in relevant part, that no person shall, on the basis 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 receiving Federal financial assistance. The Title VI regulation, at 34 C.F.R. § 100.3(b)(1)(ii), also prohibits a recipient, on the basis of race, color, or national origin, from providing any service or other benefit to a student that is different, or is provided in a different manner, from that provided to other students.

Different treatment on the basis of race, color, or national origin is a form of prohibited discrimination. To determine whether different treatment occurred, OCR examines whether there were any apparent differences in the treatment of similarly situated students on the basis of race, color or national origin. If individuals were subjected to different treatment, then OCR determines whether the school can provide a legitimate, non-discriminatory reason for the different treatment and whether the proffered reason is a pretext for discrimination. OCR also examines whether there is any evidence to suggest that the school treated the individual(s) in a manner that was inconsistent with its established policies and procedures, or whether any other evidence of race, color or national origin discrimination exists.

Analysis and Conclusion

Allegation #1- Delayed review of Complainant's Dissertation Research Plan

Regarding the part of Allegation #1 related to the alleged discriminatory delayed review of the Complainant's Dissertation Research Plan, because the same allegation of discrimination was filed with and investigated by the University as alleged in the instant complaint, pursuant to Section 110(a)(2) of OCR's *Case Processing Manual*, OCR did not conduct a *de novo* review of this portion of Allegation # 1. Instead, OCR reviewed the results of the University's determination and considered whether the University provided a resolution process comparable to OCR's under comparable legal standards.

OCR reviewed the University's finding issued by HR. The HRS informed OCR that she investigated by collecting relevant documents from both parties, conducting interviews of the Complainant, the Complainant's current and former mentors, the committee, and the SMR. OCR noted that the University also provided the Complainant with additional time to submit any additional materials or identify any witnesses. OCR's review showed that the HRS created a timeline of events based on computer communications between the parties. The HRS also spoke with representatives of University Dissertation Services, and obtained comparative information in order to verify how much time the accused University staff took to communicate with the Complainant, how that time compared to University guidelines, and how those times compared to other similarly situated students. Using a preponderance of the evidence standard, the HRS concluded that the evidence was insufficient to show that the Complainant's mentors, committee and SMR subjected the Complainant to different treatment on the basis of race by unnecessarily delaying the Complainant's academic progress.

Based on this information obtained during the investigation, OCR has determined the University investigated the Complainant's internal grievance as it relates to the alleged discriminatory delayed review of the Complainant's Dissertation Research Plan and afforded the Complainant a process comparable to OCR's under comparable legal standards. OCR found no other information to suggest the Complainant was subjected to race discrimination in connection with the length of time taken to review the plan. Accordingly, we are closing this portion of Allegation #1 effective the date of this letter.

Resolution

Allegation #1 – Rejection of Complainant's Dissertation Research Plan
Allegation #2 – Delay in Processing Complainant's Appeal

In accordance with Section 302 of OCR's *Case Processing Manual*, a complaint allegation may be resolved at any time when, before the conclusion of an investigation, the recipient

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expresses an interest in resolving the complaint allegation. Prior to the conclusion of OCR's investigation, the University requested to resolve Allegation #2. It also requested to resolve the portion of Allegation #1 relating to the alleged discriminatory rejection of the Complainant's Dissertation Research Plan, i.e., the return to the Complainant of the Dissertation Research Plan for "Major Revision."

On June 6, 2016, the University signed the enclosed Voluntary Resolution Agreement which, when fully implemented, will resolve the issues raised in Allegation #2 and the part of Allegation #1 pertaining to the alleged rejection of the Complainant's Dissertation Research Plan. 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.

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. 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, intimidate, 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. 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.

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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 by phone at 312-730-1578 or by email at miguel.figueras@ed.gov.

Sincerely,

Ann Cook-Graver
Supervisory Attorney

Enclosure

cc: Todd Sorenson
Senior Corporate Attorney, Capella University
todd.sorensen@capella.edu