

April 24, 2014

XXXXXX XXXXXX, XXXXXX  
General Counsel  
111Anderson Hall  
Manhattan, Kansas 66506

Re: OCR Docket # 07142009

Dear XXXXXX:

On October 28, 2013, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint against the Kansas State University (University), Manhattan, Kansas, alleging discrimination on the basis of national origin (Islamic Republic of Iran). Prior to the conclusion of OCR's investigation into allegation 2 of this complaint, the University offered to resolve the allegation through an exchange of letters with OCR. OCR completed its investigation regarding allegation 1 of this complaint and determined there is insufficient evidence to conclude the University discriminated against the complainant on the basis of the complainant's national origin as alleged. This letter details OCR's investigation and findings.

Specifically, the complainant alleged the University discriminated against him on the basis of his national origin by:

1. treating him differently than similarly situated students when the Department of Housing and Dining cancelled his reservation for on-campus housing; and
2. expelling him from the University under the University's Threat Management Policy.

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 at 34 C.F.R. Part 100. Title VI prohibits recipients of federal financial assistance (FFA) from the Department from discriminating on the basis of race, color, or national origin.

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

In the remainder of this letter, OCR referred to you as “the Complainant.” To protect individuals’ privacy, OCR also did not use the names of employees, students, and other parties in this letter.

OCR applies a preponderance-of-the-evidence standard to determine whether the evidence is sufficient to support a particular conclusion. Specifically, 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.

In reaching a determination for allegation 1 of this complaint, OCR considered information and documentation the Complainant and the University submitted, including University policies and procedures and the Complainant’s academic records. In addition, OCR interviewed the Complainant by telephone.

Based on our investigation of allegation 1, OCR has concluded there is insufficient evidence to prove that the University discriminated against the Complainant on the basis of his national origin. As noted above, prior to the completion of OCR’s investigation of allegation 2 of this complaint, the University offered to resolve this allegation by entering into a Resolution Agreement with OCR. The legal and factual bases for OCR’s determination regarding allegation 1 are set out below.

### **Allegation 1 – Different Treatment on the Basis of National Origin**

The Complainant alleged the University discriminated against him on the basis of his national origin.

Specifically, the Complainant alleged the University treated him differently than similarly situated students when the Department of Housing and Dining cancelled his reservation for on-campus housing because of his national origin.

### **Legal Standard**

The regulation implementing Title VI at 34 C.F.R. § 100.3(a) provides 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 this part applies.” The Title VI regulation at 34 C.F.R. § 100.3(b)(1)(iii) specifically prohibits a recipient from subjecting an individual to separate treatment, on the ground of race, color, or national origin, in any matter related to his or her receipt of any service or benefit under the recipient’s program.

Different, or disparate, treatment is a legal theory that requires a finding of intentional discrimination on the basis of race, and evidence of discriminatory intent may be direct or circumstantial. OCR initially examines whether there is direct evidence of discriminatory bias by a recipient based on race. Direct evidence includes conduct or statements by persons involved in the decision-making process that may be viewed as directly reflecting the alleged discriminatory attitude. However, stray remarks in the educational environment, statements by people who are not decision-makers, and statements by decision-makers unrelated to the decisional process generally do not constitute direct evidence. Any direct evidence of discrimination must show that discrimination motivated the denial of an educational benefit or other adverse action.

In cases where there is no direct evidence of discrimination or the direct evidence is not strong, OCR analyzes the case using the general *prima facie* case for race discrimination which requires a showing of the following elements: 1) the complainant's race or national origin; 2) the complainant is otherwise qualified for the benefit in question; 3) the entity receives FFA; and 4) the entity alleged to have discriminated denied the complainant an opportunity to participate in or benefit from the entity alleged to have discriminated's services, programs, or activities, or otherwise discriminated against the complainant because of his race or national origin.

Under the burden-shifting framework, if a *prima facie* case is established, an inference of discrimination is created and OCR then provides the entity alleged to have discriminated an opportunity to rebut the inference by offering a legitimate, nondiscriminatory reason for the denial of benefit or other adverse action. OCR then examines the entity alleged to have discriminated proffered reason for its action to determine whether there is sufficient evidence to support a conclusion the proffered reason is actually a pretext for discrimination.

In determining whether the Complainant was treated differently than other students because of his national origin, OCR may consider how similarly situated students were treated. However, the burden of establishing a *prima facie* case of disparate treatment is not onerous and detailed comparative evidence is generally addressed at the pretext stage rather than the fourth element of the *prima facie* case.

### **Findings of Fact**

OCR investigated whether the University discriminated against the Complainant on the basis of his national origin by treating him differently than similarly situated students when the Department of Housing and Dining cancelled his reservation for on-campus housing. OCR made the following factual findings based on information the Complainant and the University provided.

### *Background Information*

- January 3, 2011, the Complainant was admitted to the University to pursue a doctoral degree in Mechanical Engineering.
- At the time of his admission, the Complainant resided in the Islamic Republic of Iran, the Complainant's country of origin.
- After completing the necessary requirements to enter the United States, the Complainant enrolled at the University during the fall of 2011.

### *Jardine Apartment Complex*

- The Jardine Apartment Complex (Jardine) is the University's on-campus apartment complex. Jardine houses more than 1,500 residents from over 50 different countries.
- Jardine houses undergraduate, graduate, and doctoral students, as well as married couples and families.
- Jardine has more than 700 apartments. Options include 1, 2, 3, and 4 bedroom apartments, as well as studios, lofts, and townhomes.
- Students reserve apartments at Jardine via the University's Resident Space Virtual Preference (RSVP) process.
- Students are encouraged to complete a four-step process in order to RSVP an apartment:
  - Step 1: Students are encouraged to complete an application for housing no later than February 3 for the upcoming school year.
  - Step 2: Students must identify their "group." A Student's group consists of the individuals or family members who will share the apartment with the applicant.
  - Step 3: Students may then "preference" an apartment in the complex.
  - Step 4: The housing agreement will then be emailed to the applicant and any group members. The Jardine agreement must be completed by March 1<sup>st</sup> or the space will be forfeited.
- Housing at Jardine is accommodated on a first-come, first-served basis, based on the date that each application is received. National origin is not a factor that is considered as part

of the application process and students are not asked to provide their race or national origin.

- During the 2011-12 school year, 22 Iranian students applied for housing at Jardine. Of those students, 18 were approved for housing initially and one additional student was assigned housing during the school year. Iranian Students received an 86.4 percent placement rate during the 2011-12 school year.
- During the 2011-2012 school year, Jardine received 1,760 housing applications and 1,115 students were assigned housing (63.4 percent placement rate).
- During the 2012-13 school year, 25 Iranian students applied for housing at Jardine. Of those students, 18 received housing at Jardine. Iranian students received a 72 percent placement rate during the 2012-13 school year.
- During the 2012-13 school year, Jardine received 1,881 housing applications and 1,185 students were assigned housing (63.0 percent placement rate).
- During the 2013-14 school year, 32 Iranian students applied for housing at Jardine. Of those students, 21 were approved for housing initially and eight additional students were assigned housing during the school year. Iranian students received a 90.6 percent placement rate during the school year.
- During the 2013-14 school year, Jardine received 1,745 housing applications and 1,092 students were assigned housing (62.6 percent placement rate).

#### *2012-2013 Housing Application*

- The Complainant first applied for a highly renovated apartment on February 27, 2012.
- April 19, 2012, the Complainant arrived at the housing office and inquired if he was on the list to receive a highly renovated apartment.
- Between April 20, 2012, and April 25, 2012, the Complainant repeatedly returned to the office and demanded that he receive a highly renovated apartment because of his status as a doctoral student. At that time, the Complainant was informed that he was only allowed to speak with the XXXXX about the status of his apartment application.

- May 1, 2012, the XXXXX explained to the Complainant that because his application was not received until nearly a month after the RSVP process began, there were no highly renovated apartments available. It was explained to the Complainant that he could try and find a student in a highly renovated apartment who needed a roommate.
- May 2, 2012, the Complainant spoke to another University employee who gave him the same response regarding his housing application.
- May 17, 2012, the Complainant was offered an alternative apartment but he declined the offer.
- June 29, 2012, the Department of Housing informed the Complainant that a highly renovated apartment would not be available for the 2012-13 school year and sent him a list of off-campus housing options.
- July 31, 2012, two single male residents who lived in a three bedroom highly renovated apartment, Building XXXXX, asked to add the Complainant to their lease for the fall 2012 semester. The XXXXX explained to the Complainant that the current residents were “grandfathered” into the unit but in the future the building the Complainant’s apartment was located in, XXXXX, was going to be reserved exclusively for family housing. The XXXXX explained to the Complainant that he would not be allowed to remain in the apartment after the 2013-14 school year, because the apartment would be reserved for family housing. The XXXXX also told the Complainant that the two residents were leaving the apartment after the fall 2012 semester and he would not be allowed to add new residents to the lease and would have to assume the entire amount of the rent or move to another apartment at the end of the fall 2012 semester.
- October 29, 2012, while the XXXXX was away on vacation, the Complainant approached the XXXXX and asked to add a roommate to the apartment for the spring 2013 semester. The XXXXX informed the Complainant that he was not allowed to add a roommate and he was required to move out of his current apartment at the end of the 2012-13

school year. The XXXXX then spoke with the XXXXX and received permission to allow the Complainant to add roommates to his apartment.

*2013-2014 Housing Application*

- In an interview with OCR on November 21, 2013, the Complainant stated he received confirmation that his housing reservation was accepted by the University's housing reservation system. The Complainant stated the XXXXX canceled his reservation request and would not provide him with a basis for this action other than stating that his apartment, XXXXX, was not an option for the Complainant.
- The University stated the Complainant approached the XXXXX again on February 5, 2013, and attempted to select his current apartment in the University's online reservation system. With the assistance of the XXXXX, the Complainant received the standard system generated email confirmation stating that his current apartment, XXXXX, was preferenced for July 1, 2013, to June 30, 2014.
- February 7, 2013, the XXXXX received an error message stating the Complainant's registration was not valid. The message stated the space was already reserved.
- February 22, 2013, the XXXXX discovered that the Complainant attempted to reserve his current apartment. XXXXX contacted the Complainant to inform him of the mistake and informed him that she would reserve another apartment for the Complainant, either traditional or renovated, depending on his decision. She reiterated to the Complainant that he was not going to be allowed to live in apartment XXXXX because it will be used for family housing.
- The Complainant did not return XXXXX's phone call. She attempted to reach him again by telephone on February 25, 2013.
- February 26, 2013, the XXXXX emailed the Complainant and indicated that he wanted to set up a time to discuss available apartments for the 2013-2014 school year. The XXXXX also reiterated to the Complainant that his current apartment was not an

- option for him the next school year, despite his conversations with the XXXXX. He asked the Complainant if they could sit down over the next two days to have a conversation on either February 27 or February 28.
- February 28, 2013, the Complainant responded to the XXXXX's request for a meeting with an email message stating, "I am busy this week, I will see you next week."
- March 22, 2013, the Complainant went to the XXXXX and attempted to add another student to his contract apartment. The XXXXX informed the Complainant that the other student could be added, but reiterated that they all must move out of the apartment on June 30, 2014.
- April 1, 2013, the Complainant met with the XXXXX and went over the different apartment options that were available to him for the 2013-14 school year.
- April 2, 2013, the Complainant contacted the XXXXX and informed him that the Department of Housing and Dining was kicking him out of his current apartment.
- April 3, 2013, after investigating the issue and speaking with the Department of Housing and Dining administrators, the XXXXX sent the Complainant an email stating that he supported the administrators' decision to reserving his current building, XXXXX, for family housing. The XXXXX informed the Complainant to contact the XXXXX and request either a one bedroom or two bedroom unit in another building and reiterated that the Complainant would not be allowed to stay in XXXXX.
- April 4, 2013, the XXXXX emailed the Complainant and provided him with four different housing options. The XXXXX stated that they needed to finish the leasing process for these apartments and informed the Complainant that he needed to decide on the apartment he wanted by no later than April 8, 2013, at 5:00 p.m.
- April 9, 2013, the XXXXX sent an email to the Complainant requesting that he respond to him with his apartment choice immediately.
- Later that day, the Complainant and the XXXXX discussed the Complainant's housing options. The Complainant asked to tour specific apartments but the XXXXX informed him that they could not because they were all currently occupied. The XXXXX extended the Complainant's deadline to make a decision until Friday, April 12, 2013.

- The Complainant did not respond to the XXXXX by April 12, 2014. On Tuesday, April 16, 2013, the XXXXX informed the Complainant that after speaking with both the XXXXX and XXXXX, the University would not renew his housing agreement for the next year.

### **Analysis and Conclusion**

The Complainant alleged the University discriminated against him on the basis of his national origin when the Department of Housing and Dining cancelled his reservation for on-campus housing. OCR has concluded the preponderance of the evidence did not establish that the Complainant was treated differently than other students based on his race or national origin.

The Complainant told OCR he used the University's housing reservation system and his housing reservation was canceled by the XXXXX without providing a reason for the cancellation other than to tell the Complainant that the apartment he was living in at the time, XXXXX, was not an option for the Complainant.

OCR reviewed numerous email messages to the Complainant, email messages between University staff members, and notes documenting meetings with the Complainant. The University's documentation established the Complainant was informed prior to the beginning of the University's 2013-14 housing reservation process that he would not be allowed to live in apartment XXXXX during the 2013-14 school year. The University stated the Complainant was advised at the time he entered into his 2012-13 housing agreement that XXXXX at Jardine was only going to be available for family housing during the 2013-14 school year. The Complainant was advised during numerous conversations that XXXXX's current tenants were "grandfathered" in under the old system, but after the 2012-13 lease period ended, XXXXX was going to be used for family housing.

The documentation showed that the Complainant went to the XXXXX, a staff member who did not know about the housing changes, and asked for her assistance in putting his reservation into the system. When XXXXX noticed that someone other than a family reserved the apartment in the system, she contacted the Complainant and informed him of the mistake and informed the Complainant to select another apartment. The XXXXX contacted the Complainant and met with him to discuss other options. The Complainant was ultimately given multiple deadlines to decide upon other available housing options, but did not provide timely responses to the housing administrators' requests. Eventually, the Complainant was informed that the University would no longer be renewing his housing contract for the 2013-14 school year.

OCR has concluded that the preponderance of the evidence does not support a finding that the University treated the Complainant differently or adversely on the basis of his race or

national origin. He was not denied an opportunity to participate or benefit from the University's services, programs, or activities or otherwise discriminated against on the basis of his national origin. He was given the opportunity to select an apartment that was not designated as family housing, but chose not to despite multiple attempts by the University to assist him with finding available options. There was no evidence to suggest the University cancelled his housing reservation or refused to give him housing because of his national origin. Moreover, data for the 2012-13 and 2013-14 school years revealed the University granted housing placement to Iranian students at a much higher rate than housing placement for all students. Therefore, OCR has concluded there is insufficient evidence to conclude the University's action was discriminatory. Accordingly, OCR is closing allegation 1 as of the date of this letter.

### **Allegation 2 – Different Treatment on the Basis of National Origin**

The Complainant alleged the University discriminated against him on the basis of his national origin by expelling the Complainant from the University under the University's Threat Management Policy.

Prior to the completion of OCR's investigation into allegation 2 of this complaint, the University submitted a signed letter containing an Agreement (copy enclosed) to OCR on April 11, 2014, that, when fully implemented, will address this allegation. The Agreement requires the University to remove the "Not Permitted to Reenroll" and "Administrative Dismissal" language from the Complainant's transcript; to revise the "Method of Operations" section of the University's Critical Incident Response Team ("CIRT") web page; to give students an opportunity to respond to allegations being considered by the CIRT and to document the student's response to the allegations; to provide students with a copy of the appeal procedures when expulsion is warranted; and provide the student with a written appeal decision affirming, overturning or modifying the CIRT's decision. The University is also required to provide CIRT training for administrators and other relevant personnel. Please consult the Agreement for further details.

OCR considers allegation 2 of this complaint resolved effective the date of this letter and will monitor the University's implementation of the Agreement. When OCR concludes the University has fully implemented the terms of the Agreement, OCR will close the complaint. If the University fails to carry out the Agreement, OCR may resume its investigation into Allegation 2 of this complaint.

This concludes OCR's investigation of the complaint and should not be interpreted to address the University's compliance with any other regulatory provisions 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 have the right to 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.

OCR is committed to prompt and effective service. If you have any questions, please contact XXXXX XXXXX, Attorney, at XXXXX (voice) or (877) 521-2172 (telecommunications device for the deaf), or by e-mail at [XXXXX.XXXXX@ed.gov](mailto:XXXXX.XXXXX@ed.gov).

Sincerely,

/s/ Maria North

Maria L. North  
Supervisory Attorney

Enclosure