



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS -- REGION VII

May 23, 2014

XXXXXX XXXXXX, Esquire
XXXXXX XXXXXX XXXXXX, XXXXXX
XXXXXX, XXXXXX XXXXXX

Re: OCR Docket # 07142015

Dear Mr. XXXXXX:

On November 27, 2013, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received the complaint against the Tabor College (College), Hillsboro, Kansas, alleging discrimination on the bases of race and national origin. For the reasons set out below, we have determined there is insufficient evidence to conclude the College discriminated against the Complainant on the bases of race and national origin as alleged.

Specifically, the Complainant alleged the College falsely accused him of smoking marijuana and discriminated against him on the bases of his race (African American) and national origin (Dominican) by disciplining him more severely than a Caucasian American student who committed a similar offense.

OCR is responsible for enforcing Title VI of the Civil Rights Act of 1964 (Title VI), 42 United States Code § 2000d, and its implementing regulation at 34 Code of Federal Regulations (C.F.R.) Part 100. Title VI prohibits discrimination on the basis of race, color, or national origin by recipients of Federal financial assistance (FFA).

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

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 in this complaint, OCR considered information the Complainant and the College submitted, including the College's policies prohibiting discrimination on the basis of race or national origin, grievance procedure, Community Life Covenant, and Student Code of Conduct. OCR conducted a site visit to the College and

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interviewed College officials, including the President, Vice President of Student Life, Director of Campus Ministries, members of the Community Life Council, resident directors, the football coach, and the Assistant Chief of the XXXXX Police Department. OCR also interviewed the Complainant and discussed our investigation with his attorney. The legal and factual bases for OCR's determination are set forth below.

Allegation

The Complainant alleged the College discriminated against him when it falsely accused him of smoking marijuana and discriminated against him on the bases of his race and national origin by disciplining him more severely than a Caucasian American student who committed a similar offense.

Legal Standards

The Title VI regulation at 34 C.F.R. § 100.3(a) states that no individual may be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination based on race, color, or national origin under any program or activity that receives Federal funds. The Title VI regulation at 34 C.F.R. § 100.3(b)(1)(i) through (iv) and (vi) specifically provides that a recipient shall not, on the basis of race, color, or national origin, deny an individual any services; provide any service to an individual which is different or is provided in a different manner from that provided to others; subject an individual to segregation or separate treatment in any matter related to the receipt of service; restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others; or deny an individual an opportunity to participate in the program or afford an opportunity to do so which is different from that afforded to others under the program.

In cases where there is no direct evidence of discrimination, or the direct evidence is not strong, OCR will determine whether the complaint raises an inference of discrimination by establishing a *prima facie* case. To determine whether a *prima facie* case for discrimination exists, OCR examined: 1) the race/national origin of the Complainant (or student); 2) whether the College receives Federal financial assistance, and therefore, is subject to Title VI; 3) whether the student is eligible for a particular benefit or program; and 4) whether the College denied the student the opportunity to participate in or benefit from the College's aids, services, or programs, or otherwise discriminated against the student because of the student's race or national origin, such as treating the student less favorably than a similarly situated student with respect to the benefit or program in question. If OCR finds evidence of different treatment, an initial, or *prima facie*, case of discrimination is established.

Under the burden-shifting framework set forth in the U.S. Supreme Court case of *McDonnell Douglas Corp. v. Green*,¹ if the evidence supports a conclusion that a *prima facie* case for discrimination exist, OCR provides the recipient an opportunity to offer a legitimate, nondiscriminatory reason for the different treatment. OCR then examines the recipient's proffered reason for its action to determine whether there is sufficient evidence to support a conclusion the proffered reason is actually a pretext, or cover up, for discrimination.

Findings of Fact

The Complainant stated he attended the College for the past three years on a football scholarship and planned to graduate in May 2014. On October 31, 2013, the Vice President of Student Life (Vice President) requested the Complainant meet with him in his office. The Complainant, the Vice Principal, and the Director of Campus Ministries were present for the meeting. The Complainant stated the Vice President informed him someone reported that he had been smoking marijuana so he was suspended from the College. The Complainant stated he denied smoking marijuana and requested to know who reported he had been smoking marijuana, but the Vice President would not give him this individual's name. The Complainant stated he asked to know what other evidence the Vice President had to establish he had been smoking marijuana and the Vice President informed him it was not necessary for the College to prove the Complainant had been smoking marijuana in order to take disciplinary action because the College was a private school. The Complainant stated the Vice President told him College officials did not want him at the College or even in the State any longer; they wanted him to leave and never come back.

The Complainant stated the Vice President also suggested he take a drug test which he agreed to do but the Vice President changed his mind and refused to allow the Complainant to take a drug test.

The Complainant stated he believes he was discriminated against based on his race and/or national origin when College officials failed to follow its discipline policies and procedures and disciplined him more harshly than similarly situated Caucasian American students. He stated the policies and procedures state that a student will receive a warning for a first offense of using an illegal substance. Since this was the first time the College was taking disciplinary action against him, he should have received a warning instead of a suspension. The Complainant stated the football coach's son, a Caucasian student, was caught smoking marijuana by the city police during the summer of 2013 and was only required to sit out of one game and was not suspended. Additionally, the Complainant stated the College also failed to provide him with any due process or appeal rights.

¹ 411 U.S. 792, 802-804 (1973).

The Complainant stated the Vice President attempted to convince him to withdraw from the College but he refused to withdraw because he had done nothing wrong.

The President told OCR the Complainant called him after his meeting on October 31, 2013, with the Vice President and the Director of Campus Ministries. The President met with the Complainant off-campus at Wendy's on October 31st because the Complainant was no longer allowed on campus.

The Complainant stated he moved out of town soon after his meeting with the Vice President because he saw the President and the Vice President drive past his place of residence and it unnerved him.

In its written response to OCR, the College denied the Complainant's allegation that the College discriminated against the Complainant based on his race or national origin. It wrote, in relevant part:

The complainant was not suspended for "smoking marijuana" as indicated in the complaint, but instead for the distribution and sale of illegal drugs. The evidence supporting this conclusion was shared with complainant on 10/31/13 during a meeting with [Vice President]. The evidence included statements from a current student and the XXXXX Police Department. The reports of the complainant selling illegal drugs and the seizure of a mail package addressed to the complainant that contained over 7 grams of marijuana met the standard of preponderance of the evidence that the complainant distributed and sold marijuana. It was the determination of the discipline process that this conclusion was a serious concern and a threat to the campus community, which warranted the use of the "Summary Disciplinary Response" as outlined in the [College] Student Handbook. The Community Life Council met soon after to review the evidence used in the Summary Response and affirmed the decision to suspend the complainant for the remainder of the 2013-14 academic year.

In the follow up letter to the Community Life Council meeting dated November 19, 2013, the complainant was reminded of the appeals process outlined in the Student Handbook. The complainant did not take advantage of this process and chose to not appeal the decision of the Community Life Council.

It is also worth noting that even though [the College] determined that suspension was warranted for the safety of the community, the College provided avenues for the complainant to continue his education. The option to withdraw was offered as a way for the complainant to have other options to attend classes at another institution in the spring 2014 semester. The College also decided to not dismiss the complainant. As with all the discipline cases submitted, the goal is to create a path for the student to be restored back into the community.

The October 31, 2013 letter provides a path for consideration for readmission in the fall of 2014.

During his interview with OCR, the Vice President explained that Hillsboro, Kansas, is a small town and the town newspaper publishes any police activity that occurred during the week. He said the Assistant Chief typically calls to notify him of serious or significant issues before these issues are published in the newspaper. On October 22, 2013, a student reported to the Vice President that the Complainant had attempted to sell marijuana on campus. The Vice President asked the student to write a statement and give it to him. While the Vice President was waiting for the student to submit a written statement, the Assistant Chief called him on October 31, 2013, expressing his concerns about marijuana being distributed by the Complainant. The Assistant Chief told the Vice President about the package of marijuana intercepted by the Postal Service and other student statements alleging the Complainant sold marijuana. Subsequent to this conversation with the Assistant Chief, the Vice President contacted the President and requested the President speak with the Assistant Chief. The President called the Assistant Chief and received the same information. The President and the Vice President decided to utilize the College's summary disciplinary response² because they believed it was important the Complainant be removed from campus promptly.

The Vice President stated to OCR that he and the Director of Campus Ministries met with the Complainant on October 31, 2013. He told the Complainant about the package addressed to him which was intercepted by the Postal Service and about the statements the police had obtained which alleged the Complainant was selling marijuana. The Vice President stated a student also separately reported to him that the Complainant was selling marijuana. The Vice President denied telling the Complainant he was being suspended for using marijuana; the Complainant was accused of selling marijuana. He stated he did not offer the Complainant a drug test because he was not accused of smoking marijuana. The Vice President said selling marijuana is a much more serious offense than smoking or possession of marijuana and that the disciplinary action taken against the Complainant was consistent with the student code of conduct.

The Vice President informed OCR he told the Complainant the College was suspending him and he was no longer allowed on campus; however, he could choose to withdraw from the College rather than have a suspension on his transcript. The Vice Principal explained that a suspension rather than an expulsion would allow the Complainant to enroll elsewhere. The Vice President stated he gave the Complainant a day to consider his offer to allow him to withdraw from the College. The Vice President stated he also told him the XXXXX police wanted to speak with him and he did not know whether that meeting would result in an

² The summary disciplinary response is used to address incidents of a serious nature. The summary disciplinary response allows the President and the Vice President to review evidence and make disciplinary decisions quickly. The decision is then reviewed later by the Community Life Counsel.

arrest but he did not think the XXXXX police would bother to seek out the Complainant if he left town.

The Vice President informed OCR that when the Complainant returned the next morning (November 1, 2013), he declined the offer to withdraw from the College, so the Vice President handed the Complainant the letter suspending him from the College. The suspension letter indicated the Complainant was suspended for the remainder of the 2013-14 academic year; however, the letter also informed the Complainant he would be allowed to reapply to the College after the 2013-14 academic year provided he met certain provisions. Later that same day the Complainant reconsidered his decision and asked if he could withdraw from the College. The Vice President agreed to put a hold on the suspension (not officially enter the suspension into the College computer system). The Complainant informed the Vice President he already left town but he would come back to the College on Monday, November 4, 2013, to officially withdraw.

On Tuesday, November 5, 2013, the Vice President received a call from the Complainant's brother who stated the Complainant would be coming in to withdraw. The Vice President informed the brother that the Complainant was running out of time to accept the Vice President's offer to allow him to withdraw from the College. The Vice President stated he did not say much to the Complainant's brother because of student privacy concerns.

On Thursday, November 7, 2013, the Complainant sent the Vice President a text saying he would be in the next day, Friday, November 8, 2013, to withdraw from the College. The Vice President stated this text message was the last communication he had with the Complainant. The Vice President stated he processed the suspension (officially entering the suspension onto the Complainant's transcript) on Monday, November 11, 2013.

According to the Vice President, the Community Life Council met on November 15, 2013. The Vice President stated he presented the evidence against the Complainant to the Council. They reviewed the decision to suspend the Complainant based on selling illegal drugs and confirmed the suspension. A letter was sent to the Complainant on November 19, 2013, informing him the Community Life Council affirmed the earlier discipline decision; the letter also referenced the College appeal process published in the student handbook and stated the Complainant could call the Vice President's office if had questions about the appeal process. The Vice President stated he did not receive any communication from the Complainant regarding an appeal.

The Vice President denied taking disciplinary action against the Complainant based on his race or national origin. He acknowledged that both the offense of possessing an illegal substance and the offense of selling an illegal substance are level three offenses in the Student Handbook that may result in suspension. The Vice President stated the purpose of sectioning misconduct into different levels is to enable students to better comprehend the

College's expectations for student behavior and to know in advance the possible disciplinary response to behavior that falls outside the standards. The Vice President explained the policy still allows the College to tailor the discipline based on the individual student. The Vice President stated he believed selling marijuana was a more serious offense than possessing or using an illegal substance because of the potential harm to other students; therefore, he and the President believed a harsher discipline, i.e., removal from the College, was necessary. The disciplinary action taken against the Complainant was consistent with the College's Student Code of Conduct.

The Vice President denied driving by the Complainant's place of residence after the October 31, 2013 meeting when he advised the Complainant he was suspended from the College.

In his interview with OCR, the President stated there is no formal agreement between the College and the XXXXX Police Department addressing when the College will be notified of an incident involving a student. The President explained the College does not have its own on campus security, so it relies on the local police department to address public safety concerns. The President stated the XXXXX Police Department does not contact the College about all police activity involving a College student, such as if a student is caught off campus smoking marijuana at a party. Usually, the College is contacted by when the police need to come on campus for an investigation.

The President stated that every student at the College signs a life style covenant agreeing to live by a certain standard. The covenant applies to all aspects of a student's life during the academic year; however, if a violation of the covenant occurs during the summer break, the College has no control over the student. Any discipline for conduct occurring during summer break would not imposed by the Department of Student Life. For example, when two football players were arrested during the past summer at a party for underage drinking of alcohol the football coach used the football team discipline standard to discipline the players. If the same incident had occurred during the academic year; the College's Department of Student Life and the football coach would have worked together to determine the appropriate discipline.

The President confirmed the Vice President and the Assistant Chief informed him of reports that the Complainant was selling marijuana and that multiple students said they purchased marijuana from the Complainant. Both he and the Vice President decided to help the Complainant salvage the remainder of the fall 2013 semester but that suspension was necessary because they believed he was putting the lives of students in jeopardy.

The President stated the Complainant asked to speak with him after the October 31, 2013, suspension meeting with the Vice President; they met at an off-campus Wendy's restaurant. During the meeting, the Complainant pleaded with the President to not suspend him because he did not smoke or sell marijuana or have any involvement with drugs. He told the

President he just wanted to complete school and did not have a home. The President encouraged him to withdraw from the College so he did not have a suspension on his record and could maintain a clean transcript so he could enroll at a different college. The Complainant refused to withdraw from the College. The President also tried to help him salvage the remainder of the fall 2013 semester by asking the Complainant's professors whether he could finish his classes without being on campus. One professor stated it would be possible for him to complete the course off campus, but his other professors said it was not possible. In one class, the professor reported he was already making an F grade and another professor stated it was not possible for him to finish the course off campus because of the types of projects students were required to complete.

The President stated the administration works to help students succeed and goes to great lengths to help students be successful. He stated the Vice President waited to formally suspend the Complainant for 10 days to give the Complainant an opportunity to withdraw from the College with a clean record. The Complainant failed to come in to withdraw even after he informed the Vice President that he planned to withdraw. In addition, the President explained the Complainant was not permanently suspended as he alleged. If that were the case, the College's letter to the Complainant would have used the word "expelled" rather than suspended. Instead the College's letter advised the Complainant he was suspended for the 2013-14 academic year and provided him with an avenue for re-admission if he met certain requirements.

The President stated there are no similarly situated students to compare to the Complainant. He stated he did not recall within the six years he has been President of the College any other student being accused of selling marijuana or any illegal substance. All other drug related student suspensions have been for the use of an illegal drug.

The President denied driving past the Complainant's place of residence after the October 31, 2013 suspension meeting; however, he stated he has frequent contact with the Mayor of XXXXX, a real estate agent who owns or manages most of the property where students who reside off campus live. After the Complainant told the Vice President that he would withdraw from the College but then did not show up, the President asked the Mayor if she knew whether the Complainant was still in town.

The President stated he was not present during the suspension meeting between the Complainant and the Vice President but he thought the Director of Campus Ministries attended the meeting.

The Director of Campus Ministries confirmed he was present during the October 31, 2013, meeting between the Complainant and the Vice President. He stated this was the first meeting he attended when a student was being suspended. He stated he was called to sit in on the meeting as a witness because the Vice President could not locate any resident

directors. The Director of Campus Ministries stated he recalled the Vice President informing the Complainant that a package of marijuana addressed to him had been received by the Postal Service and he was being suspended for selling marijuana. The Complainant denied having any knowledge about the package. When the meeting concluded, he and the Vice President talked about the situation. The Vice President stated he was concerned about the Complainant but at the same time his actions could not be allowed. The Director of Campus Ministries stated he agreed with the Vice President's decision based on the evidence presented. He stated it appeared to him from the Complainant's body language and tone of voice that he was pretending to have no knowledge of the package or why he was being accused of selling marijuana.

In his interview with OCR, Resident Director A stated he has been a part-time resident director for the past two years. On November 1, 2013, he along with Resident Director B were asked to sit in on the meeting between the Vice President and the Complainant. During the meeting the Vice President discussed the suspension with the Complainant, including the evidence considered in making the disciplinary decision, i.e., the report that the Complainant was selling marijuana and the package intercepted by the Postal Service containing marijuana and addressed to the Complainant. Resident Director A stated he recalled the Complainant continually asking to see the evidence and stating the package was not his. The Vice President gave the Complainant the option of withdrawing from the College several times and had a document ready for him to sign if he chose to withdraw. The Vice President explained to him that withdrawing from the College would allow him to continue his education elsewhere but the Complainant refused to withdraw. Resident Director A stated he did not recall the Vice President stating the Complainant was being disciplined for using marijuana. While he acknowledged he did not have access to all the information, Resident Director A stated from what he heard during the meeting, he personally agreed with the disciplinary taken by the Vice President.

Resident Director B stated in his interview with OCR he has been a full-time resident director for 3 years. Resident Director B stated he was present during the November 1, 2013, meeting between the Complainant and the Vice President. Resident Director B confirmed the information provided by Resident Director A regarding the offense the Complainant was alleged to have committed and the evidence the Vice President stated he considered in making the disciplinary decision.

The football coached acknowledged during his interview with OCR that his son was charged over the summer with underage possession of alcohol but that the charges were later dropped. He stated he implemented his own discipline policy since the incident occurred during the summer and he required his son to sit out one football game. The football coach stated that if the incident had occurred during the academic year, he would have abided by the College policy.

OCR interviewed two (Professor A and Professor B) of the four members of the Community Life Council. The Community Life Council's role is to review discipline decisions involving suspension or expulsion. Both Professor A and B stated the Vice President told the Council about the Complainant approaching a student on campus to sell marijuana and the package of marijuana intercepted by the Postal Service. Both Professor A and B stated they believed the decision to suspend the Complainant was warranted because distributing or selling marijuana is a more serious offense than using an illegal substance. Both Professor A and B stated they thought the Vice President strived hard to be fair and never observed him take any disciplinary action they perceived as discrimination based on race or national origin.

OCR attempted to interview the student who reported the Complainant attempted to sell marijuana on campus, but this student declined to be interviewed by OCR.

The College submitted a copy of the Community Life Covenant in effect for the 2013-14 academic year which every College student signs and agrees to follow. The Community Life Covenant states in relevant parts:

3. We strive to live with character.

We believe that living in a Christian educational community includes striving together to promote and develop virtuous personal character.

Therefore, we commit to pursuing Christian growth and maturity; developing a life of virtue integrity and honesty; ongoing self-examination; honoring the dignity of self and others, including restraint from harassment or discrimination of any kind, and from the use and possession of all forms of pornographic materials; the wise use of words, including their use to build others up, rather than to tear down; the wise stewardship of personal and community resources (such as time, finances and property), including restraint from gambling; demonstrating care for ourselves and others by refraining from the use, possession or sale of illegal drugs, alcohol and tobacco products (including the inappropriate use of medication) and through promoting the overall safety and well-being of all members of the community; and submitting to the laws of the governing authorities.

...Students enrolled in the traditional, undergraduate program are called to abide by the lifestyle expectations listed above when the student is enrolled and [the College] is in session, from the first day they arrive at school each fall semester through the end of the second semester, including all breaks, and any time they participate in a [College] program. When students are in the presence of their parents/guardians off-campus, they are considered to be a part of their family unit and under the direction of their parents/guardians.

OCR reviewed the College Student Handbook (Student Handbook) for the 2013-14 academic year. The Student Handbook states in relevant part:

Level Three: *These behaviors may result in suspension from the college for one or more semesters, including indefinite dismissals, on the first occurrence. These include, but are not limited to, the following:*

- *Possession, use distribution or sale of illegal drugs, including controlled prescription drugs and steroids.*

OCR reviewed the October 31 and November 19, 2013, letters to the Complainant from the College. The October 31, 2013 letter states, in relevant part:

This letter is in follow up to our conversation today regarding your involvement with marijuana. The following is the “Summary Discipline Response” for incidents mentioned above:

You will be suspended for the remainder of the fall 2013 semester and the spring 2014 semester. This suspension will begin immediately.

As a part of the suspension, you will not be permitted to be on campus for the length of the suspension, including the residence halls, campus houses, and sporting events. If you enter the [College] property, local law enforcement will be contacted.

We highly recommend that you move forward with professional help in the areas of substance abuse and other related issues. This will be an important time to address these issues. All of these difficulties can be overcome.

If you would like to be considered for readmit for future semesters, you will need to submit a written request at least one month prior to the first day of class. Along with the written request, I would encourage you to submit evidence that you have followed through with recommendations mentioned above. Your request will be reviewed by a committee on campus to determine if request to return will be granted.

The November 19, 2013, letter to the Complainant states, in relevant part:

This letter is in follow up to the October 13, 2013, letter regarding your suspension under the Summary Discipline Response action described in the Student Handbook.

In accordance with the procedures set forth in the Student Handbook, the Community Life Council has met and reviewed the documentation related to your suspension. The Community Life Council has affirmed the decision of the Summary Discipline Response.

If you have questions regarding this process or the appeal process, please refer to the Student Handbook or contact the Student Life Office.

OCR reviewed the discipline records of other students who were disciplined for involvement with an illegal substance during the 2012-13 and 2013-14 academic years. All of the students were disciplined for using or possessing an illegal substance; none of the students were disciplined for selling an illegal substance. The races of the students who were disciplined were as follows: three Hispanic, one American Indian, five Caucasian, two African American, one mixed race, and two of unknown race.

OCR interviewed the XXXXX Assistant Chief of Police (Assistant Chief). The Assistant Chief stated that the College does not have its own campus security, so the XXXXX police department is responsible for providing security at the College. He stated the police received numerous reports of the smell of marijuana coming from the apartment where the Complainant lived as well reports of a considerable amount of come-and-go traffic. These factors caused the police department to question the Complainant's activities. The Assistant Chief stated the Complainant's apartment was already identified by the police as a "place to watch" before the College took any action against him. The Assistant Chief said that while the Complainant's apartment was still under surveillance, an official with the U.S. Postal Service (Postal Service) notified the police that they intercepted a package addressed to him which contained marijuana. The Assistant Chief stated he does not always contact the College when the police have interaction with a student, but he does when student safety is a concern or when the police need to come on campus to conduct an investigation. The Assistant Chief stated he informed the Vice President his department suspected the Complainant was selling marijuana out of concern for student safety and not because of his race or national origin.

On April 24, 2014, OCR staff members contacted the Complainant's attorney to share the information obtained during the onsite visit to the College. The Complainant's attorney was asked whether he or the Complainant wished to provide any additional documentation or evidence to rebut the response provided by College officials. The Complainant's attorney agreed to provide OCR with a response within two weeks. To date OCR has not received any additional documentation or communication from the Complainant or his attorney.

Legal Analysis and Conclusion

OCR initially examined whether there was direct evidence of discriminatory bias by the College based on the Complainant's race or national origin. Direct evidence includes conduct or statements by persons involved in the decision-making process that may be viewed as directly reflecting the discriminatory attitude. The Complainant did not provide any evidence of racially related comments or conduct. None of the documentation reviewed by OCR revealed any inappropriate comments about the Complainant's race or national origin and OCR was unable to find any direct evidence that actions taken by College officials were motivated by the Complainant's race or national origin.

When, as in this case, there is no direct evidence of discrimination, OCR will next determine whether an inference of discrimination by establishing a *prima facie* case of race discrimination exists. To do so, OCR examined whether the College denied the Complainant the opportunity to participate in its College programs, or otherwise discriminated against him because of his race or national origin by treating him less favorably than a similarly situated student of a different race or national origin.

The preponderance of the evidence established that the Complainant was disciplined based on the College's determination that he was selling an illegal substance; not for using an illegal substance as the Complainant alleged. The President, Vice President, Director of Campus Ministries, two resident directors, and two Community Life Council members all stated the Complainant was disciplined for selling an illegal substance, not for using an illegal substance. The individuals also confirmed that the Complainant was informed of the basis for his suspension.

OCR's investigation established that all the other students who received drug related discipline during the 2012-13 and 2013-14 academic years (14 total) were disciplined for using or possessing an illegal substance, not for selling an illegal substance, and at least nine of these students were non-African American (two of these 14 students were African American, two were of unknown race and one student self-identified of mixed race).

The Complainant stated that the football coach's son, a Caucasian, was caught by law enforcement over the summer 2013 using an illegal substance but was not suspended by the College; instead, he was only required to sit out of one football game.

The evidence obtained during the investigation established that the football coach's son was involved in the underage use of alcohol during the summer 2013 when the College was not in session. The College President stated the Life Style Covenant which requires students to live by a certain standard only applies during the academic year and if a violation of the Covenant occurs during the summer when the College is not in session, the College has no control over the student. The Student Handbook contained a copy of the Life Style Covenant and the provision mentioned by the President. The football coach confirmed the Life Style Covenant was not in effect when his son was caught drinking alcohol; therefore, he used his discipline policy for the football team and did not allow his son to play in one football game. The football coach stated if the incident had occurred while the College was in session, the College's discipline policy would have been applied to his son. Based on these facts OCR finds there were no other non-African American students who were similarly situated to the Complainant and OCR cannot establish that the College treated the Complainant less favorably than similarly situated students of another race or national origin. Accordingly, OCR cannot establish that a *prima facie* case of discrimination exists.

OCR also analyzed whether the disciplinary action taken against the Complainant was consistent with its discipline policies and procedures. Those policies classify using an illegal substance and selling or distributing an illegal substance as Level 3 offenses. However, the discipline policy allows individuals responsible for making disciplinary decisions to exercise discretion to determine the appropriate discipline based on the individual circumstances of each case and the needs of the student.

Even if the preponderance of the evidence had established a *prima facie* case of discrimination, the College articulated a legitimate non-discriminatory reason for the discipline imposed on the Complainant. The College officials considered the sale and distribution of illegal drugs to be a more serious offense than using an illegal substance because of the potential harm to other students. The Complainant alleged the College permanently suspended him. However, the preponderance of the evidence established that the Complainant was suspended for remainder of the 2013-14 academic year with an opportunity to reapply if he met certain conditions, including seeking professional help in the area of substance abuse and other related issues.

OCR could not find any evidence to support the Complainant's statement that the President and Vice President drove by the Complainant's place of residence or attempted to convince the Complainant to leave town. The President and Vice President both admitted they encouraged the Complainant to withdraw from the College so he could attend college elsewhere with a clean transcript. The Vice President admitted informing him the XXXXX police wanted to speak with the Complainant and was not certain whether an arrest would occur at that meeting. The Vice President also told the Complainant he did not believe the XXXXX police would seek out the Complainant if he left town. The President also admitted he asked the Complainant's landlord or apartment manager whether she knew if the Complainant was still in town because he knew the Vice President was still waiting for the Complainant to withdraw from the College as he had indicated.

OCR's investigation did not find any evidence that the reasons given by the College officials for suspending the Complainant for selling an illegal substance on campus was a pretext for unlawful race or national origin discrimination. The fact that the College waited 10 days to allow the Complainant the opportunity to withdraw from the College with a clean record and gave him the opportunity to reapply after the 2013-1014 academic year further supports a conclusion that the reasons articulated by the College for suspending him were not a pretext for unlawful race or national origin discrimination.

OCR has determined that a preponderance of the evidence does not support a conclusion that the College treated the Complainant differently on the basis of race or national origin than students of a different race or national origin by disciplining him more harshly than other similarly situated students.

Although OCR considers the individual complaint closed as of the date of this letter, during the investigation OCR identified compliance concerns regarding the College's notice of nondiscrimination and combined grievance procedure. The College voluntarily agreed to resolve OCR's compliance concerns and has submitted a signed Agreement (copy enclosed) on May 21, 2014, that, when fully implemented will resolve the compliance concerns identified by OCR during the course of investigating the complaint. The Agreement requires the College to: 1) modify and publish its notice of non-discrimination to include the name or title, address, and telephone number of the College employee(s) designated to coordinate efforts to comply with and carry out responsibilities under Title VI; 2) revise and publish its grievance procedures to ensure persons filing complaints are afforded prompt and equitable grievance procedures; 3) conduct training for staff with responsibilities under the College's grievance procedures; and 4) provide OCR with documentation evidencing the OCR approved grievance procedures are being implemented and students receive a prompt and equitable response to complaints alleging race or national origin discrimination. Please refer to the Agreement for further details.

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

This concludes OCR's investigation of the complaint and should not be interpreted to address the College'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 have the right to file a private suit in Federal court whether or not OCR finds a violation.

Please be advised that the College 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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OCR is committed to prompt and effective service. If you have any questions, please contact XXXXX XXXXX, Attorney, at (816) 268-XXXX (voice) or (877) 521-2172 (telecommunications device for the deaf), or by e-mail at XXXXX.XXXXX@ed.gov.

Sincerely,

/s/Kelli Douglas

Kelli Douglas
Supervisory Attorney

Enclosure