

May 8, 2015

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Re: OCR Docket # 07142246

Dear XXXX:

On July 22, 2014, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint against the Missouri Baptist University (University), Saint Louis, Missouri, alleging discrimination on the basis of race. For the reasons set out below, we have determined there is insufficient evidence to conclude that the University discriminated against the complainant as alleged in the complaint.

The complainant alleged the University discriminated against her on the basis of race (African American) when her spring 2014 Advanced Elementary Reading Disorders (EDRD 573) instructor treated her differently than other students, resulting in her failing EDRD 573.

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, 34 C.F.R. Part 100. Title VI prohibits discrimination on the basis of race, color or national origin by recipients of Federal financial assistance.

As a recipient of Federal financial assistance from the Department and a public entity, the University is subject to these laws. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

In the remainder of this letter, the complainant is referred to as “the Complainant.” To protect individuals’ privacy, the names of employees, students, and other parties also were not used in the 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 in this complaint, OCR considered information submitted by the Complainant and the University. OCR received copies of documents and written information from the University and interviewed University personnel. OCR also conducted

interviews with the Complainant. The legal and factual bases for OCR's determination are set forth below.

Allegation 1

The Complainant alleged the University discriminated against her on the basis of race (African American) when her spring 2014 Advanced Elementary Reading Disorders (EDRD 573) instructor treated her differently than other students, resulting in her failing EDRD 573.

Legal Standard

The Title VI implementing regulations, at 34 C.F.R. § 100.3(b)(1), prohibit recipients from excluding an individual from participation in, denying an individual the benefits of, or otherwise subjecting an individual to discrimination with respect to the services, activities, or privileges provided by the recipient because of the individual's race.

In considering allegations that a recipient has discriminated on the basis of race, OCR looks for evidence of discriminatory intent. Discriminatory intent can be established either through direct evidence (i.e., statements, documents, or actions that clearly evidence a discriminatory intent), or through indirect (also known as circumstantial) evidence (i.e., a set of facts from which one may infer a discriminatory intent).

Absent direct evidence that a recipient discriminated on the basis of race, OCR applies a different treatment analysis under which OCR must determine whether the facts support a *prima facie* case of racial discrimination. A *prima facie* case exists if a preponderance of the evidence indicates that a recipient treated one person differently than one or more similarly situated persons of another race. If a *prima facie* case of different treatment is established, OCR must then determine whether the recipient had a legitimate, non-discriminatory reason for its action(s) that would rebut the *prima facie* case against it. If one or more legitimate, non-discriminatory reasons for the different treatment are identified, OCR must then determine whether the recipient's asserted reasons for its actions are pretext for racial discrimination. Ultimately, however, the weight of the evidence must support a finding that actual discrimination occurred.

Findings of Fact

The Complainant began taking graduate level education courses at the University in 2009. During the spring 2014 semester, the Complainant was enrolled in EDRD 573.

The Complainant alleged the instructor for EDRD 573 (instructor) treated her differently on the basis of her race by grading her papers more harshly than other students and by not returning the Complainant's phone calls.

OCR interviewed the instructor who provided the following details of the course requirements and each assignment. EDRD 573 is a 16 week course, with the class meeting four times during semester. The students are required to tutor a student who is struggling in reading for 90 hours over the course of the semester. In addition to the other assignments, the instructor observes each student during a tutoring session.

The Complainant’s grades for each of the course assignments are as follows:

Assignment	Points awarded to Complainant/Points possible
Personal narrative on diversity experiences	40/50
Literacy interview paper	75/75
Content area lesson plan	93/100
Observation #1	97/100
Observation #2	96/100
Parent packet	55/60
Research review of best practices using American Psychological Association (APA) style	67/75
Observation form	25/25
Share and write-up of website	25/25
Attendance/participation	100/100
Case study	0/500

According to the information provided by the instructor, other student’s in the class received lower scores than the Complainant on some assignments. The instructor told OCR the Complainant was the only African American student in the class and the other students were identified as white.

OCR asked the instructor to explain each of the seven (7) assignments for which the Complainant did not receive full credit. The instructor stated that a rubric or scoring guide was used when grading all of the assignment for each student and the graded papers were returned to the students. The instructor provided the following specific information about the Complainant’s assignments:

1. **Personal narrative on diversity experience:** The instructor said this assignment is divided into three parts: 1) the student describing how diversity impacted his or her literacy experiences as a child (20 points), 2) the student describing how diversity impacted his or her literacy experiences as a teacher (20 points); and 3) the student describing his or her overall feeling of literacy development and how diversity applies to it (10 points). The students completed the assignment in class and points were not deducted for spelling and grammar. The instructor told OCR she did not recall why the Complainant was not credited for 10 points for this assignment. The

Complainant received the lowest grade in the class on this assignment, but two other students received 43/50 points and 45/50 points.

2. **Content area lesson plan:** The Complainant had seven (7) points deducted for this assignment, and two other students received lower scores than the complainant; one student received 72/100 points and the other received 89/100 points.
3. **Observation #1 and #2:** The observation scores are the result of the instructor's observation of each student during two tutoring sessions. The 100 points for each observation are divided in half, with 50 points based on the lesson plan provided for the session and 50 points based on the student's reflection following the observation. The instructor said the Complainant's three (3) missed points and four (4) missed points could have been for spelling and grammar mistakes in her reflection. Two other students received lower scores, specifically 86/100 and 92/100 on Observation #1.
4. **Parent packet:** The Complainant had five (5) points deducted for this assignment, but three other students received lower scores than the Complainant, specifically 41/60 points, 50/60 points and 51/60 points.
5. **Research review of best practices:** The instructor said that most of the eight (8) points were deducted because the Complainant did not use APA style for the paper, particularly on the headings and title page. The instructor said she discussed this assignment with the Complainant after the grades were awarded and explained why points were deducted and provided a link to information about APA style to the Complainant.
6. **Case study:** Prior to the case study, the Complainant had 673 points out of 710 points possible, or a 95%. The Complainant received zero points on the case study and was given an "F" for the course for violating the University's Academic Honesty and Integrity policy by plagiarizing another student's work.

According to the University, the Student's case study was the fourth time the Complainant was determined to have committed plagiarism. According to the University's plagiarism policy, when a student is found in violation of the policy, the following consequences are permissible: a failing grade on the work in question, failure in the course, or dismissal from the University. According to the graduate program requirements, an F in any course results in dismissal from the graduate program.

According to the University, in the summer of 2013, the Complainant plagiarized an assignment but the instructor allowed her to redo the assignment and complete the course. During the fall 2013, the Complainant plagiarized her personal narrative on diversity experiences assignment in EDRD 573. Rather than giving the Complainant an "F" on the assignment or in the course, both of which would have been permissible under the

University's Academic Honesty and Integrity policy, the instructor allowed the Complainant to redo her paper. The next assignment in the fall 2013 class was the literacy interview paper, which the Complainant was again found to have plagiarized. Following this incident, the second incident of plagiarism in EDRD 573, the instructor gave the Complainant an "F" in the course. The instructor sent the Complainant an email on October 2, 2013, stating the following:

After much discussion and deliberation, a decision has been made regarding the plagiarism issue. The first night of class, you stayed in the computer lab after [Student 1] had finished her diversity paper. You used a copy of her paper to finish yours. The similarities were so blatant that I asked you to redo the assignment. I was willing to give you another chance on that. But then when I read your interview assignment, it was nearly verbatim with [Student 1's] interview paper. Your only explanation was that the two reading specialists involved knew one another, so they would give similar answers. That would not explain why the papers were formatted the same and also word for word the same in most areas. I now know that this paper was [Student 1's] interview paper from the summer semester. This assignment was in [Student 1's] case study, to which you had complete access. Missouri Baptist University policy regarding plagiarism is plain and made known to all students through the handbook. You recall that I sent a link to that policy in my first email. The decision has been made for you to receive an F in this course. You no longer need to complete any assignments for the course or attend any further classes. The grade will be entered at the end of the semester. You may, should you choose, appeal this decision at the end of the semester once the grade is posted. You see that I have copied the dean on this email. She is fully aware of the situation and in full support of the decision.

The dean, mentioned in email above, sent an email to other administrators on October 16, 2013, further summarizing the decision regarding the Complainant, which states:

I have met with both the instructor and the student. The student claims 'I didn't know what I was doing was wrong.' Essentially she copied almost word for word half of one of her classmate's papers. Her excuse is that the instructor told them that they could look at someone else's paper to see how it is formatted. This student also turned in an interview that was word-for-word the same as another student's paper. She claims that they interviewed the same person and that the interviewee simply emailed them the answers to the interview questions.

As a result of the failing grade, the Complainant was dismissed from the graduate education program in the fall of 2013. On October 27, 2013, the Complainant submitted a written letter of appeal to the Graduate Affairs Committee, her appeal was successful, and she was readmitted to the program. The Complainant was required to retake and complete the EDRD 573 course and enrolled in the course for the spring 2014.

The instructor said the Complainant performed well in the course for most of the semester and had an “A” leading up to the case study assignment. The Complainant, however, was found to have plagiarized nearly 80 percent of her case study assignment, was given an “F” for the course, and was dismissed from the graduate education program.

The instructor and dean met with the Complainant on June 2, 2014, to discuss the Complainant’s case study and the plagiarism finding. The instructor’s written summary of the meeting, also dated June 2, 2014, states the following:

[The Complainant], [instructor] and [dean] met at 4:00 p.m. to discuss the grade of ‘F’ assigned to [the Complainant] as a result of plagiarism. [The dean] started the meeting thanking [the Complainant] for coming to campus to discuss the matter. [The dean] turned the conversation over to [the instructor]. [The instructor] showed [the Complainant] her case study notebook which was the assignment in question. She reviewed the notebook showing [the Complainant] all of the highlighted areas. [The instructor] highlighted words in [the Complainant’s] case study that were plagiarized from another student, [Student 1]. In Fall 2014 [the Complainant] had [the instructor] for the same class, EDRD 573 Advanced Elementary Reading Disorders. [The Complainant] plagiarized in Fall 2014 using work belonging to [Student 1]. [The Complainant] denied the plagiarism claim. She asked questions regarding the assignment, but did not give justification regarding why so much of her paper looked the same as [Student 1’s]...[The Complainant] gave [the instructor] as formal written grade appeal.

The Complainant again appealed her dismissal, but her appeal was unsuccessful.

The Complainant told OCR that at the beginning of the course the instructor informed all students that they could use case study models from other students. The Complainant said she knew Student 1 was previously a student in the class and that she and Student 1 had worked together in the same school district. She thought Student 1’s model would be good to use when putting together her case study project. The instructor confirmed that she suggested the class review Student 1’s case study as an example, but said that the Complainant’s case study was copied almost verbatim from Student 1’s case study. Upon reviewing the Complainant’s case study, she initially recognized that the information contained in the case study was not consistent with the instructor’s observations of the Complainant’s tutoring sessions. When the instructor compared the Complainant’s case study to Student 1’s case study, she discovered a majority of the Complainant’s case study was copied from Student 1’s case study. She highlighted these sections and the University provided a copy of this document to OCR.

In the Complainant’s appeal of her dismissal, she mentioned concerns similar to those raised in her OCR complaint; specifically, the Complainant stated the instructor did not respond to her phone calls and graded her papers differently than her classmates. The Complainant did not assert this treatment was based on her race. The Complainant told OCR she never raised an allegation of race discrimination with the dean and the dean and instructor told

OCR that the Complainant never communicated to either of them that she felt she was being discriminated against on the basis of race or treated differently because of her race. The instructor told OCR that she did not grade any of the Complainant's assignments differently than she graded any of the other students' assignments. She said a rubric or scoring guide was used when grading all assignments for the course and all students were provided a copy of the rubrics or scoring guide. The instructor told OCR the Complainant was aware of each of her grades during the semester and did not question the instructor about any of the grades received, except for the APA assignment. The Complainant told OCR that she received some of the scoring sheets for her assignments in the class.

Regarding the Complainant's communications with the instructor, the Complainant told OCR she contacted the instructor several times by telephone and left her voicemail messages asking her to return her calls. The Complainant said she contacted the instructor to discuss assignments for the class. She said the instructor only spoke to her over the telephone one time during the semester; she said that the instructor responded by email on one occasion.

OCR also interviewed the instructor about her communication with the Complainant outside of class. The instructor said the Complainant contacted her by telephone three or four times during the course of the semester. She said that no other students in the course called her; the other students communicated with her by email. The instructor recalled having a least one telephone conversation with the Complainant. The instructor said that when the Complainant contacted her by telephone and left a message, she would either call or email the Complainant back. She said there may have been some messages she did not respond to by telephone, but that if she did not call the complainant back, she emailed her. She said she would respond by email if she received the message in the evening or if she did not have time to have a conversation. The University provided copies of nine (9) emails the instructor sent to the Complainant during the course of the semester regarding coursework and scheduling observations.

Analysis and Conclusion

Where, as here, there is no direct evidence of discrimination, OCR must determine whether the facts support a *prima facie* case of race discrimination. A *prima facie* case exists if a preponderance of the evidence shows that a recipient treated a person differently than one or more similarly situated persons of a different race. If a *prima facie* case of different treatment is established, OCR must then determine whether the recipient had a legitimate, non-discriminatory reason for its action(s) which rebuts the *prima facie* case.

OCR found insufficient evidence to support the allegation that the instructor treated the Complainant differently by grading the Complainant's assignments more harshly than her classmates and by not returning her phone calls. Prior to the final assignment, the Complainant had only 37 total points deducted from her assignments out of 710 points possible, giving the Complainant an "A" at that time. Although the instructor could not recall exactly why points were deducted on certain assignments, she told OCR that a rubric

or scoring guide was applied to all assignments and that she did not grade the Complainant's assignments more harshly than other students. While the Complainant was the only African American student in the class, students of other races received lower grades on every assignment except the personal narrative on diversity experience and the case study. The Complainant did not receive any points for her case study because of the instructor's determination that the complainant's work contained plagiarized material. The instructor told OCR that the Complainant knew her grades throughout the semester and did not complain about the points deducted, except for the APA style assignment. The Complainant's case study was not graded more harshly than other students; rather, she was found to have plagiarized the assignment and was given zero points for the assignment as a result. Given the fact that the Complainant had only a minimal number of points deducted on the seven assignments for which she did not receive full credit, the instructor's statement that she applied a rubric to each assignment and the fact that students of other races received lower grades than the Complainant on several of the assignments, OCR finds a preponderance of the evidence established that the Complainant was not treated differently on the basis of race.

Additionally, OCR found insufficient evidence to conclude the instructor treated the Complainant differently by not returning her phone calls. OCR could not compare the Complainant's telephone communication with the instructor to communication with any other students because the instructor stated that the Complainant was the only student who contacted her by telephone. Although the instructor told OCR she did not respond to all of the Complainant's phone calls with return phone calls, she stated that if she did not return the Complainant's call, she responded by email. The Complainant told OCR she spoke to the instructor one time on the telephone and said that on occasion the instructor responded to her by email. The instructor told OCR that she responded by email if she received the Complainant's phone message late in the day or if she did not have time to have a conversation. Documentation provided by the University indicates the instructor and the Complainant communicated throughout the semester via email. OCR did not find any evidence that the instructor's method of response was influenced by the Complainant's race.

Based on its investigation, OCR has concluded there is insufficient evidence to establish that the University discriminated against the Complainant on the basis of race as alleged in the complaint. Accordingly, OCR is closing the Complainant's allegation as of the date of this letter.

During the course of OCR's investigation, however, OCR discovered compliance concerns with the University's notice of nondiscrimination. OCR also discovered that the University does not have grievance procedures in place to address complaints of race, color, national origin, disability, age and sex discrimination. Prior to the completion of OCR's investigation, the University submitted a signed Agreement (copy enclosed) on April 20, 2015, that, when fully implemented, will resolve this issue. Please consult the Agreement for further details.

OCR considers the 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 the investigation.

This resolution letter and Agreement set 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.

If you have any questions regarding this matter, please contact XXXX, Equal Opportunity Specialist, at (816) XXX XXXX (voice) or (877) 521-2172 (telecommunications device for the deaf), or by email at XXX.XXXX@ed.gov.

Sincerely,

Joshua Douglass
Chief Attorney

Enclosure