



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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December 4, 2014

Mr. George Burnett, President
Northcentral University
10000 E University Dr.
Prescott Valley, AZ 86314

Re: Northcentral University
OCR Case Number: 08-14-2116

Dear President Burnett:

We are notifying you of our decision in this case. The Complainant alleged the University retaliated against him for engaging in OCR's Early Complaint Resolution (ECR) process¹ and for filing a complaint of alleged retaliation with the University in November 2013.

Specifically, the Complainant alleged:

1. The Dissertation Committee Chair (Chair) retaliated against the Complainant by ceasing to review the Complainant's submissions and ceased communicating with the Complainant after December 3, 2013, resulting in further delay of his progress.
2. The University retaliated by threatening legal action against him for filing complaints alleging new incidents of retaliation by the Chair.
3. The University retaliated by initiating a Student Conduct charge against him in December 2013.
4. The University retaliated by dismissing him from the University.
5. The University retaliated when it enrolled the Complainant in a course (DIS9503B) then collected financial aid loan money and retained those funds despite informing the Complainant that he should not have been enrolled because he had been charged under the code of conduct.

Through this investigation, OCR determined that the preponderance of the evidence supports a conclusion that the University retaliated against the Complainant as alleged under 1-4 above. Upon being advised of these findings, the University voluntarily agreed to enter into a resolution agreement to resolve the matter. A copy of the signed agreement is enclosed with this letter.

¹ The Complainant also alleged five other instances of retaliation during the same period (OCR Complaint 08-14-2023). OCR completed a full investigation of these additional allegations and determined there was insufficient evidence that the University retaliated as alleged.

With regard to the fifth allegation of retaliation, we found insufficient evidence to establish that the University retaliated as alleged. The reasons for our conclusions are set forth in this letter.

We investigated this complaint pursuant to Title VI of the Civil Rights Act of 1964 and its implementing regulation at 34 Code of Federal Regulations Part 100, which prohibit discrimination on the basis of race, color, or national origin in programs and activities that receive Federal financial assistance from the U.S. Department of Education. Individuals filing a complaint, participating in an investigation, or asserting a right under Title VI are protected from intimidation or retaliation by 34 C.F.R. § 100.7(e). As a recipient of Federal financial assistance, the University is subject to this law and regulation.

Background

The Complainant began attending the doctoral program at the University, in XXX. As a wholly distance learning institution, the University maintains administrative offices in Phoenix, Arizona while staff members located throughout the United States provide instruction and mentoring.

In June 2013 the Complainant filed a complaint with OCR² alleging discrimination on the basis of national origin (Syria) related to his Spring 2013 Comprehensive Final Exam course, which he had failed and retaken beginning in April 2013. During OCR's investigation of his complaint, in June 2013, the Complainant successfully passed his second attempt of the course.

In July 2013, after successfully passing the course, the Complainant moved to the dissertation phase of his doctoral work. The Complainant was assigned to a dissertation committee, which was comprised of the Dissertation Committee Chair (Chair) who served as the primary contact, and a Subject Matter Expert (SME). The overarching role of the committee is to facilitate the candidate's progress throughout the dissertation phase, including reviewing work submitted by the candidate, referred to as dissertation milestones. Once the committee determines the candidate's work on a milestone document is satisfactory, the committee forwards the candidate's body of work to the next step in the review process, the Graduate School (GS). The GS reviews the submitted work and, if approved by the GS, the candidate is allowed to proceed to the next milestone. If the GS determines the submission requires revision, the submission is sent back to the candidate and committee for improvement, but is only done so a maximum of three times. Although the candidate is required to submit an anticipated timeline for completion of his dissertation to his committee at different times in the process, there are no time frames established for completing individual milestones. The first dissertation milestone that requires approval before progressing to the next step is the Concept Paper (CP).

The Complainant submitted the first draft of his CP to his Chair on August 20, 2013. The Chair reviewed the CP and returned it to the Complainant on August 27, 2013. This back and forth of CP submissions, reviews, revisions, and resubmissions between the Complainant and the Chair was ongoing throughout the first course of dissertation work, course DIS9501B, and into the second course, DIS9502B, which began on October 7, 2013.

On October 31, 2013, the Complainant and the University entered into a mediation agreement to resolve his previous OCR complaint.

² OCR Complaint 08-13-2170

On November 7, 2013, the Chair submitted his review of the Complainant's October 25th submission. Frustrated with the Chair and his "limited words" and instructions to "work on sections that have been included in previous versions of the CP", the Complainant complained to his Academic Advisor (Advisor). In his complaint to his Advisor³, the Complainant complained about the Chair and made a request for a committee change. The Advisor responded to the Complainant on November 11, informing him the information he provided had been forwarded to the Graduate School for review and encouraged the Complainant to continue working with his Chair in the meantime. The Complainant resubmitted a revised version of his CP to his Chair on the same day.

On November 21, 2013 the Assistant Dean of the Graduate School (Dean) informed the Complainant, the Advisor, and the Chair, that the Graduate School Leadership Team (Team) carefully reviewed correspondence and feedback from the Chair. Based on the Team's review it was decided it was best for the Complainant to remain with his committee, and that they determined the Complainant was receiving substantive feedback from the Chair. The Assistant Dean reminded the Complainant that doctoral research is a nonlinear process and it was important to review the *Doctoral Candidacy Resource Guide*, to communicate with his Chair, and that the CP must be completed before moving forward.

The Complainant immediately sent correspondence to the Chair about the Team's decision, some of which the Chair believed to be defamatory. In his first correspondence to the Chair on November 22, 2013, the Complainant complained directly to the Chair that the University had "ignored my logical and reasonable concerns and ignored the change requests and forced me to keep working with you, while you are completely ignoring my communications", "It is very obvious and clear that I pay to NCU to get the highest quality of systematic discrimination, retaliation, negative behaviors, attitudes, and tactics in reverse," and "It is really a shame to see this from doctoral level professors." The Chair responded to the Complainant's note, stating that he had no comment other than to say that the Complainant did not understand the process in which he was engaged.

The Complainant then wrote to the Chair again on November 22 and on November 26, 2013, accusing the Chair and the Team of practicing "serious discrimination, retaliation, negative behaviors, attitudes, and tactics systematically against me." The Complainant closed the November 26 letter by asking the Chair whether he was "willing to work with him, stop all negative acts, urgent help with the CP to move to next milestones ASAP, timely manner responses without any ignorance..." and if yes, to schedule a Skype call based on the Ombudsperson recommendation.

Earlier in the same day (November 26), and before the Complainant had written the Chair, the Complainant was informed by the University's Ombudsperson that his concerns about the Team's decision not to change his committee had been raised to her and she had reviewed the information. The Ombudsperson told the Complainant that all committee change request decisions are final and he would have to continue working with his Chair. The Ombudsperson further provided the Complainant tips for success and explained that although the Complainant

³ In November 2013, the Complainant sent numerous emails, as described in the Background section, where the Complainant raised the issue of discrimination and retaliation. We determined these emails are also considered protected activities in addition to the protected activity of his participation in ECR in October 2013.

wanted specific examples to understand what is being requested by the Chair, the process is not like feedback in content courses; that he'll have to answer many of his own questions.

In his November 27 response to the Ombudsperson, the Complainant raised concerns that the Chair was insulting him in the online course room and had rejected his request for a Skype call as the Ombudsperson had suggested. The Complainant then filed an informal complaint with the Accreditation Council for Business Schools and Programs (ACBSP).

On December 2, 2013 the Ombudsperson responded to the Complainant and informed him a second review had been completed based on his concerns and the University was offering two options. The first option was to remain with his current committee and the second was for an alternative pathway for completion of his dissertation. If the Complainant agreed to the second option, to be assigned to the "pathway to completion project," the Complainant would be assigned a new Chair who would partner with him to achieve his milestones by certain dates pursuant to a learning contract and would be able to complete his dissertation within one year.

The Complainant declined both offers of the University on December 3, 2013, and reinforced his arguments against the behaviors of the Chair in a lengthy email to the Ombudsperson. The Complainant stated strongly in his email to the Ombudsperson "To save your and my time I am telling you **THE ONLY SOLUTION** for this serious case that I will accept. This is the only solution that will ensure a positive conclusion for this case." Following this statement the Complainant listed conditions, which included, among other items, such provisions as graduating by June 2014, feedback that is provided all at once instead of one at a time, help with milestones without any negative intentions or actions, approval of his CP immediately (in a few days/1 week maximum).

On December 3, 2013, the Chair returned his review of the Complainant's November 11, 2013 CP. This was the last interaction the Chair had with the Complainant for the course, which ended on December 30, 2013. This also marked the last time the Chair downloaded any work from the Complainant, including weekly progress reports and a December 5 CP submission, until December 18, 2013.

The next day, December 4, 2013, the Complainant filed a complaint with the Arizona Board for Private Postsecondary Education (AZPPSE) because he was frustrated by what he believed to be comments made on content that had been part of his CP in versions as early as his first submission on August 20.

In response to being notified by the AZPPSE of the Complainant's complaint on December 4, University Counsel informed the Complainant via email that the University was aware of his complaints to ACBSP and AZPPSE, and based on his actions he had violated the terms of the October 2013 mediation agreement. In his email to the Complainant, Counsel informed the Complainant "Your violation of the settlement agreement places you in violation of the Code of Conduct and the law. As a result, should you violate the agreement in any other manner we will proceed with legal action to enforce the agreement and you will be dismissed from the institution." After a brief debate between the Complainant and Counsel concerning their interpretations of the terms in the agreement and the Complainant's attempts to clarify that the complaint allegations were new, Counsel told the Complainant "As a lawyer, I am not going to

argue with you on your interpretation of the law. On the next offense you will be brought up on Code of Conduct charges.”

On December 5, after correspondence with Counsel, the Complainant submitted his revised CP to his Chair, specifically addressing the seventy feedback comments made by the Chair.

On December 10, absent communications or feedback from the Chair, the Complainant emailed his Advisor again and informed her that the Chair was not downloading his work, that the inaction by the Chair was intentional and part of a “systematic retaliation plan.” The Complainant restated to the Advisor the terms he provided to the Ombudsperson on December 3 (graduation by June 2014, approval of the CP within one week, feedback all at once, etc.). There is nothing to indicate that the Advisor responded to the Complainant.

On December 11, the Ombudsperson emailed the Complainant reminding him that he needed to make a decision before assisting him further. The Complainant responded, again declining the offer of switching to an alternative plan and new committee because he felt his work was quality and the inaction of the Chair was intentional.⁴ As a result of clarifying he would never accept an alternative path, the Ombudsperson replied to the Complainant thanking him for “indicating your desire to remain with the Graduate School.”

On December 12, the Complainant sent an email to a large number of recipients in the University asking them to consider one question, which , “How can I finish my studies when the GSDC (Chair) is NOT downloading my academic work AND while both the GSDC and the Advisor are NOT responding to my messages and communications?” There is no evidence to indicate that any representative responded to the Complainant’s email and question.

On December 15, the Ombudsperson filed a Suspected Code of Conduct Violation form against the Complainant with the University. As a suspected violation the Ombudsperson indicated:

“[Complainant] previously entered into a binding legal agreement with the University not to file any complaints with outside agencies. On 11/07/2013, [complainant] began a series of escalations which continued throughout the month and into December. This included a complaint to the ACBSP in direct violation with his previous agreement not to do so. Since then, he has continued to send harassing and escalated complaints to stakeholders within the University.”

As a requested outcome on the violation form the Ombudsperson requested that the “Complainant be dismissed from the University.”

On December 16, the Complainant wrote the University Provost and informed him the Chair was not downloading his work and neither the Chair nor his Advisor was responding to him. The Provost did not respond to the Complainant.

On December 18, pursuant to a request by the Assistant Dean of the Graduate School (Dean), the Chair shared copies of “aggressive” communications from the Complainant with the Dean. Additionally, the Chair submitted to the University a Suspected Code of Conduct Violation form

⁴ The Complainant believed a new path would result in a delay to graduating by June 2014 and would result in additional costs related to financial aid.

concerning the Complainant. The Chair indicated on the form that the Complainant (from Oct-Dec 2013):

“Has exhibited behavior contrary to NCU norms for acceptable academic conduct. Specifically, [Complainant] has behaved in an intimidating, aggressive, and insulting manner – going beyond the bounds of normal decency – as illustrated by the email and other communications attached to this form.”

On December 20, 2013, the Complainant was issued a Code of Conduct Charge letter. The letter described his offenses as a “violation of the October 2013 Waiver and abusive and threatening written behavior.” The Complainant was further informed the charge would be going before the Code of Conduct Committee Review Board (Committee) for adjudication on January 7, 2014.

On January 7, 2014, the Committee met and voted unanimously that the Complainant did violate the Code of Conduct and recommended dismissing the Complainant from the University. On January 29, 2014 the Complainant was provided the Committee’s Complainant Code of Conduct Decision Letter, officially dismissing him from the University.

Retaliation Analysis

In analyzing a retaliation claim, we determine whether: the individual engaged in a protected activity of which the recipient had knowledge; the recipient took adverse action against the individual; a causal connection existed between the protected activity and the adverse action; and, whether the recipient has a legitimate, non-retaliatory, non-pretextual reason for its action.

We determined the Complainant engaged in protected activity when he participated in the ECR process. As a participant in that process, the University had knowledge of this protected activity. We also determined that communications from the Complainant to various University staff members alleging new instances of discrimination and retaliation by the Chair since participating in the ECR process also constitute further protected activity for which the University had knowledge.

Legal Issues

1. Whether the Chair retaliated against the Complainant by ceasing to review the Complainant’s submissions and ceasing communicating with the Complainant after December 3, 2013.

The Complainant next alleged his Chair retaliated against him by ceasing reviewing his submissions and ceasing communicating with him after December 3, 2013.

Although the University did not articulate a reason for taking the action it did in its position statement, the Assistant Dean (Dean) and the Chair confirmed during the investigation that the Dean instructed the Chair to stop communicating with the Complainant. As it relates to downloading the Complainant’s work, the University contended the Complainant’s work was actually downloaded for the course in which the Complainant was enrolled, albeit a week after it was submitted. We confirmed the University’s statement and therefore focused on the Complainant’s communication allegation.

We found that the course the Complainant was enrolled in with the Chair was scheduled to end on December 30, 2013. We determined that since there were more than three weeks remaining in the online course and the Chair was the only University instructor involved providing the Complainant any instruction or guidance on his CP at that time, any restriction on communication or lack of review of the Complainant's work constitutes an adverse action. Additionally, we note that the University has a policy requiring the Chair to respond to the Complainant's submission within 21 days of the date of the submission. Based on the close proximity in time between the date of the protected activity and the adverse action, we are able to infer a causal connection.

We next determined whether the recipient has a legitimate, non-retaliatory reason for its action. The Dean explained that he instructed the Chair to stop communicating with the Complainant to protect the Chair from the Complainant's confrontational and threatening communications.

In evaluating the University's stated reason, we first noted that the University did not warn the Complainant about his behavior, which would have been a reasonable first step in correcting the Complainant's behavior. This is particularly true as the Dean stated in his interview that the University typically warns a student of his/her behavior when the University has concerns, prior to making a code of conduct charge. Second, we noted that the University did not instruct the Complainant to stop communicating with the Chair, and instead permitted the Complainant to continue to communicate directly to the Chair. Had the University truly been concerned with the Complainant's allegedly confrontational and threatening communications, a reasonable step would have been to tell the Complainant to stop communicating with the Chair and to direct the Complainant to a designated point of contact for the Complainant to communicate with regarding his CP. We also noted that the University did not inform the Complainant that it had instructed the Chair to stop communicating with the Complainant.

We determined based on the weight of the evidence that the stated reason for taking the action, to protect the Chair from harmful communications from the Complainant, was not legitimate and non-retaliatory. Thus, we found that the University retaliated as alleged.

2. Whether the University retaliated against the Complainant by threatening legal action.

The Complainant alleged the University retaliated by threatening legal action against him for filing complaints alleging new incidents of retaliation. The Complainant provided OCR with a copy of email threads he had with the University's Counsel (Counsel). We reviewed the emails and found Counsel initiated the conversation on December 4, 2013. In the December 4th email, Counsel informed the Complainant that the University was aware of his complaints to both the AZPPSE (Filed on December 4th) and the ACBSP (filed on November 27, 2013), and that based on his actions, he had violated the terms of the October 2013 mediation agreement. Counsel stated, "Your violation of the settlement agreement places you in violation of the Code of Conduct and the law. As a result, should you violate the agreement in any other manner we will proceed with legal action to enforce the agreement and you will be dismissed from the institution."

We found the action of the Counsel was meant to have a chilling effect on the Complainant's efforts to assert his rights, including his Title VI rights, and therefore constitutes a materially adverse action. We note also that the Complainant's AZPPSE and ACBSP complaints are

protected under Title VI. Based on the close proximity in time between the protected activity and the threat of legal action and dismissal from the University, we are able to infer a causal connection.

We provided the University the opportunity to provide its position concerning the allegation and to provide any documentary evidence that may refute the Complainant's claims. The University responded to our request on January 9, 2014, denying the University had "made any threats of legal action against the Complainant for filing complaints" and stating the University has "referred to the settlement agreement facilitated by OCR in hopes to maintain a positive learning environment for all involved." The University also provided copies of emails as requested. However, OCR noted the University excluded from its submission the email thread containing the December 4th threatening email. We brought the omission of these emails to the attention of the University, notifying them we were aware of their existence as the Complainant had already provided them. In response to our notice the University supplemented their response with their copy of the same email thread.

We once again provided the University and Counsel an opportunity to clarify its position during our site visit to the University and to provide a legitimate and non-retaliatory reason for its email. Counsel elected not to clarify why he chose to use the language he did, but stated that he felt the complaints were a continuation of the complaint that was resolved in mediation on October 31, 2013. In an effort to understand what Counsel knew of the Arizona complaints prior to the December 4th email, OCR gave Counsel several opportunities to clarify his knowledge. However, Counsel gave no indication that he had any direct knowledge of the allegations of the Arizona complaints or that he had even read the complaints or notice of the allegations. Rather, he was notified of the existence of the complaints and proceeded to send the December 4th email.

We also note that in the email thread, the Complainant clarified that he understood that he could not file complaints concerning old allegations but argued that the agreement did not preclude him from filing complaints alleging new instances of retaliation and discrimination. Counsel responded to the Complainant's assertions stating, "As a lawyer, I am not going to argue with you on your interpretation of the law. On the next offense you will be brought up on Code of Conduct charges." Additionally, when OCR explained to Counsel that the Complainant complained about new incidents, Counsel refused to comment.

We finally note that, in the December 4th email, Counsel inferred that the Complainant would be dismissed from the University. Our investigation established that even if brought up on code of conduct charges, any recommendation to dismiss a student from the University for violating the conduct policy would first be made by the Conduct Committee and the final decision is made by the University Provost, not Counsel for the University. Moreover, there are less severe sanctions available under the University's disciplinary process. However, in this instance, Counsel predetermined the outcome.

Based on the University's failure to provide a legitimate non-retaliatory reason for its action, and the available evidence, we conclude that the action of the Counsel was meant to have a chilling effect on the Complainant's efforts to assert his rights under Title VI. Thus, we found the University retaliated against the Complainant on December 4, 2013 by threatening legal action and dismissal from the University.

3. *Whether the University retaliated by initiating Code of Conduct charges against the Complainant for asserting his rights by filing new allegations of discrimination and retaliation.*

The Complainant alleged the University retaliated against him by initiating Code of Conduct violation charges against him. On December 20, 2013, the University issued the Complainant a Student Code of Conduct Charging Letter (Charging Letter) informing him he had violated the Code of Conduct. Because the charges against the Complainant formed the basis for his dismissal from the University, we concluded the University's action of charging him was materially adverse. Also, we are able to infer a causal connection based on the close proximity in time to the established protected activity.

We provided the University the opportunity to proffer a legitimate non-retaliatory reason for its action. Although the University once again did not provide a succinct statement, position, or reason for its actions, the University provided copies of emails sent by the Complainant to various University staff and a copy of the agreement to support the charges it levied against the Complainant in the Charging Letter. In the absence of a clear and concise reason for its action, we deferred to the Charging Letter and the submitted evidence to make determinations as to whether the reason for charging the Complainant was legitimate and non-retaliatory. The Charging Letter specifically stated, "Violation of October 2013 Waiver and abusive and threatening written behavior" as the offenses committed.

With respect to the University's stated reason on the Charging Letter that the Complainant engaged in abusive and threatening written behavior, we found the Code of Conduct contains a provision against such behavior and thus, forms the basis for a legitimate, non-retaliatory reason. In contrast, the Code of Conduct does not contain any language or provision that allows the University to cite a student with a suspected violation of a waiver or mediated agreement. Therefore, we found that the decision to charge the Complainant under the Code of Conduct for an alleged breach of a waiver or mediated agreement is not a legitimate reason⁵. Nevertheless, we continued with our analysis of both reasons to determine whether the stated reasons on the Charging Letter were pretext for retaliation.

Our investigation established that although there was one Charging Letter, there were two Suspected Code of Conduct Violation Forms (Violation Forms) completed for the Complainant that were combined into one Charging Letter. The Ombudsperson filed the first conduct Violation Form on December 15, 2013. As a suspected violation, the Ombudsperson indicated that the Complainant "previously entered into a binding legal agreement with the University not to file any complaints with outside agencies. On 11/7/2013, [Complainant] began a series of escalations which continued throughout the month and into December. This included a

⁵ Based on conflicting interpretations of what constituted a violation of the mediation agreement (escalations in the University versus to external agencies), we provided University Counsel an opportunity to interpret the terms of the agreement as it relates to complaints by the Complainant, whether new or old. The University elected not to provide an interpretation. Consequently, OCR made its determination based on the evidence available and statements made by the Ombudsperson. We note the University does not have a Code of Conduct charge that applies in this instance and we agree with the Complainant's interpretation of the terms of the agreement. The agreement does not preclude the Complainant from filing complaints alleging new instances of retaliation or discrimination against the University through the University's grievance process.

complaint to the ACBSP⁶ in direct violation with his previous agreement not to do so. Since then he has continued to send harassing [sic] and escalated complaints to stakeholders within the University. Please see the attached communications regarding and from [Complainant].” As an outcome, the Ombudsperson requested that the Complainant be dismissed from the University. The Chair submitted the second Violation Form on December 18, 2013, and had written that the Complainant “has exhibited behavior contrary to NCU norms for acceptable academic conduct. Specifically, [Complainant] has behaved in an intimidating, aggressive, and insulting manner – going beyond the bounds of normal decency – as illustrated by the email and other communications attached to this form.” The Chair did not request a specific outcome for his complaint.

As specified in both the Chair and the Ombudsperson’s Violation Forms, they alleged generally that the Complainant sent inappropriate communications. As such, we first analyzed the communications offense the University alleged the Complainant committed.

We interviewed the Chair. The Chair stated that although the Complainant’s course communications were “mildly irritating and defamatory,” he was not that bothered by them. When asked why he initiated the charge, he stated, “I didn’t.” The Chair then explained that he was asked by the University on December 17, 2013, to share communications from the Complainant that he found to be aggressive, which he did. We found his statement credible because the communications he cited to were sent prior to December 3, 2013. This indicated to us that the Chair’s delay in submitting the form (December 18) was due to the fact that he was not so bothered by the communications that he desired to file a complaint. The Chair additionally stated that he had no particular desire to file the charge and that he had hoped the Complainant would “just buckle down and get it done.” The Chair’s actions further support his statement that he desired to continue to work with the Complainant, as evidenced by his December 3rd review of the Complainant’s work where the Chair put in extra effort in reviewing the Complainant’s submission and making substantially more recommendations for changes. Hence, the action to file the code of conduct charge was not initiated by the Chair, but rather by the University as a means of collecting sufficient evidence to make the charge against the Complainant.

As further evidence that the charges were initiated by the University, we interviewed the Advisor, because the Ombudsperson cited a November 7, 2013 email from the Complainant to the Advisor as an example of an email in support of her charges. However, the Advisor stated that she did not have any concerns about any emails, including the November 7, 2013 email.

The Ombudsperson explained that the decision to include the violation relating to communications was based on the aggregate of the Complainant emails in November and December 2013, and not based on one or two specific examples. As part of the “aggregate” of emails submitted in support of the violations, there were emails to the Advisor, the Chair, and to the Ombudsperson. We analyzed the emails and found that the tone of the Complainant’s emails in some examples could be considered confrontational, demonstrative, and demanding. However, we noted that in some instances but not all, the correspondence that precedes the evidence submitted against the Complainant demonstrates that the University was not fully addressing the Complainant’s concerns likely causing the Complainant’s frustrations to rise.

⁶ Accreditation Council for Business Schools and Programs

Additionally, some of the Complainant’s correspondence was sent during the time in which the Chair was not allowed to communicate with the Complainant and the Complainant was complaining about his lack of response. We found that the University’s failure in these instances to adequately address the Complainant’s concerns exacerbated an already tenuous situation, which helps to provide context for the Complainant’s emails that included bold letters, capitalization, and demands by the Complainant to the Chair, the Advisor, the Ombudsperson, and eventually the President of the University and other members of the leadership team.

We requested that the University provide examples of similarly situated students who the University initiated Code of Conduct charges for engaging in the same type of behavior as the Complainant. The University provided examples of six students since December 2012 who were charged for communications that were in violation of the same provisions of the Code of Conduct⁷. For each student the University provided copies of the email evidence, violation forms, charging letter, and Committee meeting notes. Based on our analysis of the information the University provided, we found the University initiated charges for similar conduct as the Complainant. However, we note that for the one student whose actions were most similar to that of the Complainant’s the student was given a written warning before a Violation Form was completed. In the Complainant’s case, he did not receive a warning.

The Ombudsperson also alleged the Complainant “violated the October 2013 Waiver” on her Violation Form. The Ombudsperson explained that she was at first unaware that the agreement existed and that she first found out about the agreement and the potential breach when she and University Counsel met to discuss an email the Complainant sent to the University President and other leadership team members on December 12, 2013. Thus, she included this as a charge with the communications violation.

We note the timing of the Ombudsperson’s filing of the Violation form is particularly concerning, and raises the suspicion that she filed the Violation form because of the Complainant’s alleged breach of the agreement, rather than that the Complainant allegedly sent harassing and intimidating communications. The Ombudsperson filed the Violation form 2 days after she learned of the Complainant’s agreement with the University. Additionally, we note that the Ombudsperson also filed the Violation form 2 days after the Complainant’s allegedly “harassing [sic] and escalated complaints to stakeholders within the University.” We also note that the Ombudsperson was fully aware of the Complainant’s allegedly harassing and intimidating communications as early as November 2013, as many of the communications she cited were emails from the Complainant to the Ombudsperson, and that she did not file the charges until after December 12th.

Our investigation also revealed that the Ombudsperson has been inconsistent with her statements as to what the Complainant had done in breach of the mediation agreement. The Ombudsperson asserted to OCR the violation occurred when the Complainant filed with the ACBSP. However, testimony she gave on behalf of the University to AZPPSE on March 24, 2014 indicates that it was the Complainant’s internal complaint to the University President and several other members of the leadership team that triggered the violation. In her testimony, the Ombudsperson explains that the Complainant “sent an escalation email to the University President and several others on

⁷ Of the six students, two identified as Asian, one identified as African American, one identified as White, and the last two identified as “undisclosed.”

the senior leadership team...so again in violation of what we perceived was this agreement that we had with him to not continue this rash of escalations.” We found that the Ombudsperson’s testimony confirms that she, a representative of the University, took action against the Complainant for sending an “escalation” email to the University President.

We also note that the Ombudsperson exhibited other credibility concerns. During an interview with the Ombudsperson, OCR inquired why she recommended dismissal of the Complainant, as opposed to other disciplinary actions that are available under its policy. She stated that it is a typical recommendation, because it was a breach. However, our records indicate the University has never encountered a similar incident, such as where a student breached an agreement. Additionally, when pressed further, the Ombudsperson did not know if she had ever filed Code of Conduct charges or recommended dismissal for any other student.

Finally, we are mindful of Counsel’s December 4th email to the Complainant where he stated, “...should you violate the agreement in any other manner, we will proceed with legal action to enforce the agreement and you will be dismissed from the institution.” We note that the Ombudsperson filed the Violation form two days after she met with Counsel and learned of the agreement, and the Complainant’s alleged escalation email to the University President which the Ombudsperson stated was a breach of the agreement.

Based on the evidence, we determined the reason and supporting evidence provided by the University for initiating the charge against the Complainant was not legitimate and non-retaliatory. Consequently, we determined that the University retaliated as alleged.

4. Whether the University retaliated by dismissing the Complainant from the University

The Complainant alleged the University retaliated by unanimously voting to recommend dismissing him from the University on January 7, 2014, a decision which was upheld by the University Provost on January 29, 2014.⁸ We determined the action of the University was materially adverse and inferred a causal connection based on the close proximity in time to the protected activity. We next reviewed the reason for the University’s action.

The University stated the decision of the Committee was based on the evidence made available to them in the January 7, 2014 meeting (copies of emails), and that the Complainant was dismissed for his behavior in his communications. We interviewed the members of the Committee and they corroborated the details provided by the University that the Complainant was dismissed based on his communications.

Although we would typically defer to the University in cases involving disciplinary actions and concur that some of the Complainant’s communications may have been inappropriate, we will not defer to the University based on our findings regarding other allegations included in this letter. The Committee’s decision cannot be isolated for analysis because fundamentally the appearance of the Complainant’s case before the Committee is the culmination of a series of events that we have determined were retaliatory (restricted communications, threatened legal action and dismissal, filing of conduct charges for reasons we determined were not legitimate).

⁸ The Committee recommended dismissal but the Provost did not make his determination until January 29, 2014. Therefore, the Complainant was officially dismissed from the University on January 29, 2014.

We therefore end our analysis here and conclude the University engaged in a pattern of retaliation which resulted in the Complainant's dismissal from the University.

5. Whether the University retaliated against the Complainant when it enrolled him in a course (DIS9503B) then collected financial aid loan money and retained those funds despite informing the Complainant that he should not have been enrolled because he had been charged under the code of conduct.

The Complainant alleged the University retaliated when it enrolled him in course DIS9503B, collected financial aid loan money, and then retained the funds despite acknowledging he should not have been enrolled.

The University denied it improperly retained funds meant for the Complainant, but that it actually returned all unused funds disbursed by the Department of the Treasury for the Complainant after crediting his account for the course.

The University and the Complainant submitted copies of the Complainant's final balance (ledger) with the University. We reviewed the ledger and confirmed that the ledger indicates that the University did invoice the Complainant for the cost of tuition for the course on December 30, 2013, accepted a financial aid disbursement payment on January 15, 2014, and upon notifying the Complainant of the error on January 24, credited the Complainant's account on January 28, 2014 the cost of tuition (\$2,380). The record demonstrates the credit was applied against the Complainant's account, reducing the Complainant's financial liability to the University. As to whether it impacted his financial aid liability to the Department of the Treasury, the University explained that the Complainant received a disbursement and is therefore responsible for settling his financial aid status independently. The accounting procedure done to reach a final balance is a requirement for the return of Title IV funds specifically and not a reflection of the Complainant's financial aid liability.

We provided the Complainant the opportunity to provide additional information. The Complainant could not provide additional information, but explained that he had expected that the credit would have been returned to him in the form of a check or a similar form of disbursement.

Based on the information available, we determined there was insufficient evidence to establish the University retaliated against the Complainant to as alleged. Therefore, our analysis ends, and we find insufficient evidence to establish that the University retaliated in this instance.

Conclusion

OCR is closing the investigative phase of this case effective the date of this letter. The case is now in the monitoring phase. OCR will closely monitor the recipient's implementation of the enclosed resolution agreement (Agreement) to ensure that the commitments made are implemented timely and effectively and that the recipient's policies and practices are administered in a nondiscriminatory manner. When the Agreement is fully implemented, all of the compliance concerns found in this investigation will have been resolved consistent with the requirements of Title VI, and their implementing regulations. If the University fails to

implement the Agreement, OCR will take appropriate action, which may include enforcement actions, as described in the Agreement.

This concludes OCR's investigation of this 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. The Complainant may have a 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.

This letter is a letter of findings issued by OCR to address an individual OCR case. Letters of findings contain fact-specific investigative findings and dispositions of individual cases. Letters of findings are not formal statements of OCR policy and they 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.

If you have any questions, please contact XXX, Attorney Advisor at XXX or by email at XXX. You can also reach me at XXX or by email at XXX.

Sincerely,

/s/

Thomas M. Rock
Supervising General Attorney

Enclosure

CC: XXX