



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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REGION VIII

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September 6, 2022

Franklin K. Schoeneman, Chairman/CEO  
Empire Beauty Schools  
396 Pottsville/St. Clair Highway  
Pottsville, PA 17901

*Via email only to [officeofpresident@empire.edu](mailto:officeofpresident@empire.edu)*

Re: Empire Beauty Schools  
OCR Case Number: 08-20-2284

Dear Mr. Schoeneman:

On July XX, 2020, the United States Department of Education (Department), Office for Civil Rights (OCR) received a complaint alleging Empire Beauty Schools (School) discriminated against the Complainant on the basis of sex and age, and retaliated against him. Specifically, the Complainant alleged that the School barred him from campus for 14 days based on sex and age and retaliated against him by withdrawing him from the Phoenix campus after he filed an internal complaint of discrimination based on age, race and sex.

Because OCR has jurisdiction and the complaint was filed timely, OCR initiated an investigation of this complaint pursuant to Title VI of the Civil Rights Act of 1964 (Title VI) 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 Department; Title IX of the Education Amendments of 1972 (Title IX) and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in education programs and activities that receive Federal financial assistance from the Department; and the Age Discrimination Act of 1975 (Age Discrimination Act) and its implementing regulation at 34 C.F.R. Part 110, which prohibit discrimination on the basis of age in programs or activities that receive Federal financial assistance from the Department. Additionally, individuals filing a complaint, participating in an investigation, or asserting a right under the statutes cited above are protected from retaliation, intimidation, or coercion by recipients of Department funds and public educational entities.

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

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

## **Investigation Summary**

On May XX, 2021, OCR notified the School and the Complainant that OCR opened the allegations for investigation. The investigation consisted of reviewing records and information from the Complainant and School, interviewing the Complainant, and interviewing the School's XXXX).

After carefully considering all of the information obtained during the investigation, OCR determined that there is insufficient evidence that the School discriminated against the Complainant as alleged. However, during the course of the investigation, OCR identified a compliance concern which the School voluntarily resolved in the attached resolution agreement (Agreement). The reasons for OCR's conclusions are set forth in this letter.

## **Findings of Fact**

The Complainant is a Black male who was 41 years old at the time of the alleged discrimination. He was enrolled in the School's Northwest Phoenix campus, beginning in October 2018 until June 2020. During the course of his attendance, the School frequently counseled the Complainant regarding attendance concerns. The documentation provided to OCR demonstrates that the School provided repeated warnings regarding a drop in the Complainant's attendance rate, encouraged the Complainant to attend regularly, and required the Complainant to provide an explanation for his attendance. Despite concerns about his attendance, the Complainant successfully completed classes from October 2018 until March 2020, when the School suspended classes in person due to the COVID-19 pandemic.

Students returned to in-person classes beginning on June XX, 2020, after the School implemented a "COVID-19 Preparedness Plan" (Plan). The Plan outlines the School's expectations for staff in response to the COVID-19 pandemic. Specifically, the Plan identified a point of contact for administering the Plan; indicated that the Plan was based on guidance from the Centers for Disease Control and Prevention (CDC) and the State of Arizona; encouraged staff to self-quarantine if exposed to COVID-19; required social distancing and mask-wearing; and, explained that "[a]ll...students...will also be advised not to enter the workplace if they are experiencing symptoms or have contracted COVID-19." In addition to the Plan, the Director explained to OCR that students exposed to COVID-19 were advised to request a COVID-19 leave of absence, which would not subject the student to the School's normal "14-day out" policy.<sup>1</sup>

The Complainant attended the School for class the evening of June XX, 2020. According to a class roster, there were 13 students enrolled in the class, including the Complainant. Of the 13

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<sup>1</sup> The School's "14-day out" policy requires that a student with 14 consecutive absences be dropped from enrollment. However, the COVID-19 leave of absence would not result in a student's disenrollment from the School. The School informed OCR that their recordkeeping of leaves of absence does not allow the School to track this distinction. However, the School indicated that there were no students at the Student's campus in 2020 who were suspected of COVID-19 exposure but were not required to take a leave of absence.

students enrolled in the Complainant’s class, the documentation demonstrates the Complainant was the only male student and was one of two individuals in the program aged 40 or older, and one of seven aged 30 or older. During class on June XX, 2020, the Complainant and the 12 other students were discussing COVID-19. The Complainant told OCR that he and the students discussed possibly being sick in the months prior to COVID-19 being declared a pandemic. He also told OCR that no one in the class said they had been diagnosed with COVID-19 or tested for it. In its data response, the School indicated that the Complainant allegedly made a comment stating that his family may have had COVID-19, a member of his family still was not feeling well, and that the Complainant may be suffering from persistent symptoms. According to the School, two students expressed concern to the staff regarding the Complainant’s statements and that he wasn’t wearing a mask, despite being exposed to COVID-19. The School provided emails and notes from two students who shared their concern regarding the Student’s possible COVID-19 exposure.

On June XX, 2020, the XXXX of the School’s Northwest Phoenix Campus (XXXX) called the Complainant to inquire about the Complainant’s statements. The Complainant told the XXXXXXXX that he had not said that he or his family had tested positive for COVID-19.

On June XX, 2020, the Complainant arrived at the School for class. The XXXX went outside the building to meet the Complainant and informed him that she tried to call before class but did not receive a response. The XXXX told the Complainant he would need to quarantine for fourteen days and that the Complainant could not return to campus without proof of a negative COVID-19 test, per CDC guidelines and the School’s policies. The Complainant explained to OCR that he “angrily informed” the XXXX that he would file suit against the School as a result of being required to involuntarily quarantine while other students were not. After returning to his car, the Complainant attempted to enter the School through the side door to request a formal notification that he was being placed on a leave of absence. The XXXX locked the side-door once she returned inside the building. The Complainant further explained to OCR that he “open-hand smacked” the glass door three times in a “knocking fashion”, stated that he needed paperwork for his leave of absence, and the XXXX assured the Complainant that she would provide him the necessary paperwork by email. The records provided by the School indicate that a School staff member observed the Complainant yelling through the windows after the XXXX directed him to self-quarantine, including that he said he would file a lawsuit, that he “felt targeted for his skin color”, and that he was cursing and screaming in the windows.

On June XX, 2020, the Complainant contacted the School’s corporate offices and spoke to the XXXX. The Complainant stated to the XXXX that he felt as if the reason for his leave of absence was discriminatory, as no other students were asked to take a leave of absence. According to the Complainant, the XXXX told him he could not be on the School’s Phoenix Northwest Campus until he had taken a COVID-19 test or waited a 14-day period. The XXXX stated she would investigate the events that occurred and follow up by the end of the day. At the end of the day, the XXXX followed-up and said she was unable to investigate due to some people not being on campus when she called.

The Complainant provided OCR with an email dated June XX, 2020 that he indicated he filed with the School's XXXX. In the email, the Complainant addressed the School's President and wrote that experienced "outright racism" and believed he had been discriminated against because he was the only black male student. He further requested in the email that the President inquire about his interactions with the XXXX so that he may dispute any claim that he was an "angry black man." The Complainant's statements focused on denying ever testing positive for COVID-19, or participating in a class discussion thereof, and reiterated that the class discussion was concerning illnesses occurring prior to the official declaration of the pandemic. The Complainant did not address whether a class discussion regarding a recent exposure to COVID-19 had occurred. The School, however, never viewed this as a formal complaint of discrimination, but rather a disciplinary issue.

On June XX, 2020, the XXXX offered the Complainant the opportunity to enroll in the School's Chandler, Arizona campus, citing that the Complainant and instructors had underlying animosity that could not be resolved. The XXXX explained the decision in an interview with OCR, stating the Complainant made several comments to instructors he had issues with, such as "you're already in trouble with corporate – you're getting demoted."

On June XX, 2020, the Complainant returned to the School's Phoenix Northwest campus. He told OCR that he needed to attend a class prior to June XX, 2020, to retain status as an active student to avoid being disenrolled. The Complainant was informed the XXXX was not there and that the Complainant would need to return another day to speak with her.

On June XX, 2020, the XXXX emailed the Complainant to inform him he had been withdrawn from the Phoenix Northwest Campus and should not return, but was offered a reenrollment opportunity at the Chandler campus. In the withdrawal noticed it cited that it was due to the Complainant's inappropriate behavior. The School informed OCR that no other students were withdrawn from the campus in 2020 for disciplinary reasons.

## **Different Treatment on the Basis of Sex**

### ***Legal Standard***

Under the Title IX regulations at 34 C.F.R. §106.31(a) and (b), a recipient may not treat individuals differently on the basis of sex with regard to any aspect of services, benefits, or opportunities it provides. Section (b) states that a recipient may not, on the basis of sex, subject any person to separate or different rules of behavior, sanctions, or other treatment in providing an aid, benefit, or service. To determine whether a student has been discriminated against on the basis of sex under Title IX, OCR determines whether there is evidence that the student was treated differently than students of the other sex under similar circumstances, and whether the treatment has resulted in the denial or limitation of education services, benefits, or opportunities. If there is such evidence, OCR examines whether the recipient provided a nondiscriminatory reason for its actions and whether there is evidence that the stated reason is a pretext for discrimination. For OCR to find a violation, the evidence must establish that the recipient's actions were based on the student's sex.

The regulation implementing the Age Act, at 34 C.F.R. § 110.10(a), provides that no person shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. In determining whether a recipient has subjected an individual to discrimination on the basis of age, OCR considers whether the recipient treats similarly-situated individuals differently on the basis of age. If evidence of different treatment is found, OCR then determines whether the reasons offered by the recipient for the different treatment are legitimate, non-discriminatory reasons and whether they are merely a pretext for unlawful discrimination. Additionally, OCR examines whether the recipient treated the particular individual in a manner that was consistent with its established policies, practices and procedures, and whether there is any other evidence of discrimination based on age.

The Title VI regulations, at 34 C.F.R. §100.7(e), prohibit recipients from intimidating, coercing, or retaliating against individuals because they engage in activities protected by Title VI. The Title IX regulations, at 34 C.F.R. §106.71, incorporate 34 C.F.R. §100.7(e) of the regulations implementing Title VI and prohibits recipients from intimidating, coercing, or retaliating against individuals because they engage in activities protected by Title IX. The Age Act regulations, at 34 C.F.R. § 110.34(a), prohibit recipients from intimidating or retaliating against any person who attempts to assert a right protected by the Act or its implementing regulations.

### *Analysis*

OCR first looked to determine whether there were any apparent differences in the treatment of the Complainant and similarly situated individuals on the bases of sex or age.

Of the 13 students enrolled in the Complainant's program, the documentation demonstrates the Complainant was the only male student. While the Complainant asserts that he was treated differently on the basis of sex, the evidence fails to demonstrate this. OCR found that the School responded to concerns about the Student's potential exposure to COVID-19 by requiring him to self-quarantine or provide a negative COVID-19 test. The documentation does not demonstrate that the other members of the class were treated preferentially based on their sex ; rather, the other students were not asked to take a leave of absence because there were no reports or concerns of potential exposure to COVID-19. No other students, male/female, were asked to take the leave of absence based on reports of exposure by their peers. Based on the lack of similarly situated students being treated preferentially, OCR determined there is insufficient evidence that the School treated the student differently on the basis of sex.

Additionally, of the 13 students enrolled in the Complainant's program, the documentation demonstrates the Complainant was one of two individuals in the class aged 40 or older, but one of seven aged 30 or older. OCR found that the School responded to concerns about the Complainant's potential exposure to COVID-19 by requiring him to self-quarantine or provide a negative COVID-19 test. The documentation does not demonstrate that the other members of the class were treated preferentially based on their ages; rather, the other students were not asked to take a leave of absence because there were no reports or concerns of potential exposure to

COVID-19. No other students younger than the Complainant, were asked to take the leave of absence based on reports of exposure by their peers. Based on the lack of similarly situated students being treated preferentially, OCR determined there is insufficient evidence that the School treated the student differently on the basis of age.

Assuming the evidence demonstrated different treatment had occurred, the School offered a legitimate non-discriminatory reason for its action. The School's reason for asking the Complainant to take a leave of absence was to prevent other staff and students in the School from being exposed to COVID-19. OCR's review of the School's application of its Plan and policies, as well as the interviews conducted, did not present evidence that the School's actions were pretext for discrimination on the basis of sex or age. The School's requirement that the Complainant take a leave of absence or present a negative COVID-19 test was consistent with its Plan and student policies, as well as contemporaneous CDC guidance. The School had recently returned to in-person learning after having been out of the classroom for approximately three months as a result of the COVID-19 pandemic and its COVID-19 leave of absence policy prevented a withdrawal in the event a student must self-quarantine. OCR's investigation did not reveal evidence indicating the School's actions were otherwise a pretext for discrimination.

Based on the preceding information, OCR found that the evidence fails to demonstrate that the School treated the Complainant differently than similarly situated students on the bases of sex or age.

## **Retaliation**

### ***Legal Standard***

In analyzing a retaliation claim, OCR first determines whether: the individual experienced an adverse action caused by the recipient; the recipient knew the individual engaged in an activity protected by the laws OCR enforces or believed the individual might engage in such an activity in the future; and a causal connection existed between the adverse action and the protected activity. If OCR determines that a causal link exists between any adverse action and any protected activity, OCR next determines whether the recipient has a legitimate, non-retaliatory, reason for its action; and whether such reason is a pretext for retaliation.

### ***Analysis***

OCR first considered whether the Complainant engaged in a protected activity. OCR determined the Complainant's phone calls to the XXXX and emails to the School, in which he stated he had experienced "outright racism" and was not an "angry black man", alleging discrimination on the bases of race, sex, and age, minimally amount to actions taken to further a right guaranteed by the statutes and regulations enforced by OCR. Therefore, OCR determined the Complainant engaged in a protected activity.

OCR also determined the Complainant was subjected to an adverse action when he was told he

was withdrawn from the course and was advised he could continue his education at the School's Chandler campus. Additionally, there is sufficient evidence of a causal connection between the close proximity in time between the complaint with the XXXX and the adverse action.

OCR next determined whether there is a legitimate non-retaliatory reason for the adverse action. In an interview with the XXXX, the School acknowledged offering the Complainant the option to enroll at a different campus. Further, the School explained in its response to OCR that it withdrew the Complainant from the Northwest Phoenix campus due to his inappropriate behavior, and not in response to his protected activities. Based on the Complainant's and the School's description of the in-person interactions between the Complainant and staff at the Northwest campus, as well as OCR's review of the Complainant's communications with the School, OCR determined that the School provided a legitimate, non-retaliatory reason for the Complainant's withdrawal.

OCR then considered whether the reason was genuine or a pretext for retaliation, or whether there were multiple motives for the adverse action. The Complainant contends that the School retaliated against him for filing an internal complaint of discrimination based on age, race and sex and that is why he was withdrawn from the Northwest Phoenix campus. The School contends that the Complainant's behavior on June XX, 2020 was aggressive and frightened staff. The Complainant did not agree that his behavior during the interaction was inappropriate. The evidence failed to demonstrate that the School would have withdrawn the Complainant from the Northwest Phoenix campus had the interaction with the XXXX not occurred. Rather, the evidence demonstrates that the Complainant successfully completed almost two years of course work at his campus, during which time staff had frequently supported his efforts to improve his attendance. Further, the School indicated that no other students were withdrawn from the campus for disciplinary reasons in 2020. OCR's investigation did not otherwise reveal evidence that the School's actions were pretext for retaliation.

Based on the above, OCR determined that there is insufficient evidence that the Complainant's withdrawal was pretextual or that multiple motives existed for the adverse action. Therefore, OCR determined that there is insufficient evidence that the Complainant was retaliated against as alleged. OCR did, however, find a compliance concern during the course of its investigation. The compliance concern is discussed below.

### **Failure to Respond to Allegations of Discrimination**

As described above, during the course of OCR's investigation into the Complainant's allegations of discrimination and retaliation, OCR noted compliance concerns regarding the School's compliance under Title VI, Title IX, and the Age Act.

### ***Legal Standards***

The Title IX regulation, at 34 C.F.R. § 106.8(b), requires recipients to adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints alleging any action that

would be prohibited by Title IX. In evaluating whether a recipient's grievance procedures are prompt and equitable, OCR reviews all aspects of a recipient's policies and practices, including the following elements that are critical to achieve compliance with Title IX: notice to students and employees of the procedures, including where complaints may be filed; application of the procedure to complaints alleging discrimination and harassment carried out by employees, other students, or third parties; provision for adequate, reliable, and impartial investigation of complaints, including the opportunity for both the complainant and respondent to present witnesses and other evidence; designated and reasonably prompt timeframes for the major stages of the complaint process; notice to both parties of the outcome of the complaint and any appeal, if available; and assurance that the recipient will take steps to prevent recurrence of any sex discrimination or harassment found to have occurred, and to correct its discriminatory effects on the complainant and others, if appropriate.

Similarly, the Age Discrimination Act regulation, at 34 C.F.R. § 110.25, requires recipients to investigate complaints of age discrimination, provide notice of the provisions of the Act, and adopt and publish grievance procedures. Specifically, the Act requires the: designation of responsible employee to coordinate its efforts to comply with and carry out its responsibilities under the Age Discrimination Act and regulations; notification to a recipient's beneficiaries, in a continuing manner, of information regarding the provisions of the Age Discrimination Act and regulations; and, adoption and publication of grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by the Age Discrimination Act or regulations.

Finally, the regulations implementing Title VI, at 34 C.F.R. Section 100.3(a)-(b), prohibit discrimination based on race, color, or national origin by recipients of Federal financial assistance. Recipients are responsible under Title VI and the regulation for providing students with a nondiscriminatory educational environment. Harassment of a student based on race, color, or national origin can result in the denial or limitation of the student's ability to participate in or receive education benefits, services, or opportunities.

A violation of Title VI may be found if a recipient has created or is responsible for a racially hostile environment – i.e., harassing conduct (e.g., physical, verbal, graphic, or written) that is sufficiently severe, pervasive, or persistent so as to interfere with or limit the ability of an individual to participate in or benefit from the services, activities, or privileges provided by a recipient. Once a recipient has notice of a racially hostile environment, the recipient has a legal duty to take reasonable steps to eliminate it. The appropriate response must be tailored to redress fully the specific problems experienced at the institution as a result of the harassment. In addition, the responsive action must be reasonably calculated to prevent recurrence and ensure participants are not restricted in their participation or benefits as a result of the racially hostile environment.

### *Analysis*

Based on OCR's review of the documentation available during the investigation and the information obtained during interviews with School staff, OCR has concerns regarding the School's response to the Complainant's complaint of discrimination.



First, OCR notes that the School’s process for filing a formal discrimination complaint is unclear. The XXXX explained several ways one could file a complaint – by reporting a complaint to anyone in the school, calling a phone number or filing a form on the website. However, when the Complainant made several phone calls and emails to the XXXX, the XXXX stated the Complainant never filed a formal complaint under Title IX. The Complainant provided an email on June XX, 2020, where he stated he was experiencing “outright racism” at the School and that he had communicated this since February and March of 2020. Further, in a call on June XX, 2020, the Complainant stated he was the only male student who is Black. Despite these allegations from the Complainant to the School, the School did not investigate his complaint as a complaint of discrimination, rather, it was treated as a disciplinary issue in response to the possible COVID-19 exposure.

Prior to the conclusion of the investigation, OCR discussed its concerns with the School regarding the School’s compliance with Title IX, Title VI, and the Age Discrimination Act, including the concerns outlined above. The School subsequently notified OCR that it was interested in voluntarily resolving OCR’s compliance concerns through a Section 302 resolution agreement (Agreement). The School voluntarily signed the Agreement on [DATE].

## **Conclusion**

OCR thanks the School for being willing to voluntarily address the compliance concerns identified. A copy of the signed Agreement is attached. When the Agreement is fully implemented, the issue will be resolved consistent with the requirements of Title VI, Title IX, the Age Discrimination Act, and their implementing regulations. OCR will monitor implementation of this Agreement through periodic reports from the School about the status of the Agreement terms. OCR will provide the School with written notice of any deficiencies regarding implementation of the terms of the Agreement and will require prompt actions to address such deficiencies. OCR will provide the Complainant with a copy of OCR’s monitoring letters. If the School fails to implement the Agreement, OCR will take appropriate action, as described in the Agreement.

This concludes OCR’s investigation of this complaint and should not be interpreted to address the School’s compliance with any other regulatory provision or to address any issues other than those addressed in this letter. The case is now in the monitoring phase. The monitoring phase of this case will be completed when OCR determines that the School has fulfilled all terms of the Agreement. When the monitoring phase of this case is complete, OCR will close this case and send a letter to the School, copied to the Complainant, stating that this case is closed.

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.

Individuals filing a complaint or participating in our resolution process are protected from retaliation by Federal law.

For service complaints under the Age Discrimination Act, the complainant may file a civil action under the Age Discrimination Act in federal court but only after he or she has exhausted administrative remedies. Administrative remedies are exhausted when either of the following has occurred: (1) 180 days have elapsed since the filing of a complaint with OCR and OCR has made no finding, or (2) OCR issues a finding in favor of the recipient. If OCR fails to make a finding within 180 days or issues a finding in favor of the recipient, OCR will promptly notify the complainant of this fact and of his or her right to bring a civil action for injunctive relief. OCR's notice must also contain the following information: that a civil action can be brought only in a United States district court for the district in which the recipient is found or transacts business; that a complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but that these costs must be demanded in the complaint filed with the court; that before commencing the action, the complainant shall give 30 days' notice by registered mail to the Secretary, the Secretary of Health and Human Services, the Attorney General of the United States, and the recipient; that the notice shall state the alleged violation of the Age Discrimination Act, the relief requested, the court in which the action will be brought, and whether or not attorney's fees are demanded in the event the complainant prevails; and that the complainant may not bring an action if the same alleged violation of the Age Discrimination Act by the same recipient is the subject of a pending action in any court of the United States.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, OCR will seek to protect, to the extent provided by law, personal information, which if released, could constitute an unwarranted invasion of privacy.

OCR apologizes for the delay in processing this complaint and appreciates the School's cooperation throughout the investigation. If you have any questions, please contact XXXX, the Equal Opportunity Specialist assigned to this complaint, at (303) 844-XXXX, or by email at XXXX@ed.gov. You also may contact me at (303) 844-XXXX.

Sincerely,

/s/

Michael D. Todd  
Supervisory Attorney

Enclosures – Resolution Agreement (signed)

Cc: XXXX