



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

50 BEALE ST., SUITE 7200
SAN FRANCISCO, CA 94105

REGION IX
CALIFORNIA

May 16, 2016

Ms. Linda Rose
President
Los Angeles Southwest College
1600 West Imperial Highway
West Athens, California 92617

(In reply, please refer to # 09-15-2068.)

Dear President Rose:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed against Los Angeles Southwest College (Recipient). The complainant¹ alleged that the Recipient discriminated against her based on national origin² when it denied her admission to the Recipient's nursing program and failed to respond adequately to her complaint of discrimination.

OCR opened this complaint for investigation under the authority of Title VI of the Civil Rights Act of 1964. Title VI prohibits discrimination on the basis of race, color, and national origin. The Recipient receives Department funds and is subject to the requirements of Title VI.

OCR gathered evidence through interviews with the complainant, Recipient staff, and Recipient administrators. We also reviewed documents and records submitted by the complainant and the Recipient. Based on the evidence, OCR determined that the Recipient was out of compliance with Title VI with respect to the allegations investigated in this complaint. The applicable legal standards, relevant facts, and basis for OCR's conclusions are summarized below.

¹ OCR informed the District of the identity of the complainant in our letter notifying the College of the complaint. We are excluding her name here to protect her privacy.

² The Complainant is Nigerian and a member of the XXXXXX Tribe. The Director of Nursing at Southwest College is Nigerian and a member of the XXXX Tribe. These tribes reside today in Nigeria and have resided there long before the nation of Nigeria was established. There is a history of animosity and tension between the two groups. Federal courts have consistently held that the term "national origin" used in the context of employment discrimination under Title VII of the Civil Rights Act of 1964 does not just apply to modern nation-states. Instead, the courts, using the regulations implementing Title VII, have held that an individual's "*place of origin*," or that of his/her ancestor, is sufficient to come within the scope of the statute. In consideration of this and other applicable case law, OCR acknowledged that the Complainant has alleged national origin discrimination within OCR jurisdiction.

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

Legal Standards

Under the Title VI regulations at 34 C.F.R. §100.3(a) and (b), a Recipient may not treat individuals differently on the basis of race, color, or national origin with regard to any aspect of services, benefits, or opportunities it provides. Section (b) (1) states that a Recipient may not, directly or through contractual or other arrangements, on the basis of race, color or national origin:

- (i) deny an individual any service, financial aid or other benefit.
- ii) provide an individual any service, financial aid or other benefit that is different, or is provided in a different manner, from that provided to others.
- (iii) subject an individual to segregation or separate treatment in the receipt of any service, financial aid, or other benefit.
- (iv) restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit.
- (v) treat an individual differently in determining whether he or she satisfies any admission, enrollment, eligibility or other requirement which must be met to receive any service, financial aid, or other benefit.
- (vi) deny an individual an opportunity to participate, or afford an opportunity to participate which is different from that afforded others.
- (vii) deny a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program.

To determine whether an individual has been discriminated against on the basis of national origin under Title VI, OCR looks at whether there is evidence that the individual was treated differently than individuals of other national origins under similar circumstances, and whether the treatment has resulted the denial or limitation of 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 preponderance of the evidence must establish that the Recipient's actions were based on the individual's national origin.

The following facts gathered during the investigation were relevant to OCR's conclusions:

- In 2012 the Complainant applied as a transfer student to the Recipient's nursing program, after having been enrolled in a nursing program at another college. The Complainant is of Nigerian descent and XXXXXX tribal affiliation.
- The Complainant was denied admission to the College's nursing program. She then filed an "unlawful discrimination complaint" with the Los Angeles Community College District, in May or June 2014, alleging, among other things, that she had been

denied admission to the program based on her XXXXXX tribal affiliation. She alleged that this decision was made by the nursing program director who is also Nigerian, but is from the XXXX tribe.

The internal discrimination complaint was investigated by a College District (District) compliance officer. OCR reviewed all of the records collected by the District compliance officer, her witness interviews and her investigative report to the College President; the decision letter provided to the Complainant; the administrative review and appeal records; and documentation of communications between College staff members and the Complainant and her father. OCR interviewed the complainant, the District compliance officer, the director of the College nursing program, and the dean responsible for the College nursing program.

- OCR noted the following relevant information from the District compliance officer's written report:
 1. The compliance officer's investigation found that there is a strong sense of tribal identification in the Nigerian XXXXXX and XXXX tribes in the United States, as well as locally. Several witnesses stated that the two tribes are competitive and hostile towards each other.
 2. The nursing director who is from the XXXX tribe makes the final decision on all applications to the program. The nursing director told the compliance officer that the reason the Complainant was denied admission to the program is because she did not meet all admission requirements. The Complainant submitted a required transfer form as part of her official application to the College, as required by the College's policy. The form asked the director of Complainant's former nursing program to respond to the question, "As Director of the program, do you recommend this student proceed in the study of nursing?" The director stated that the "No" box was checked in response to this question, and this made the Complainant clinically unsafe. Therefore the Complainant did not meet the admission requirements.
 3. The Complainant notified the College that the form was submitted without the "No" space checked. In the section in which the transferring institution is asked whether it would recommend the student proceed in the study of nursing, the institution marked the form "N/A- unable to assess." Witnesses interviewed stated that they heard the nursing director initially acknowledge that the "No" space was *not* checked on Complainant's form.
 4. The compliance officer obtained another copy of the transfer form from the Complainant's prior school and found that the form was completed as stated by the Complainant. The compliance officer determined that someone in the

nursing department had tampered with the transfer form, by checking the “No” box after the Complainant submitted the form.

5. The Complainant stated she asked an administrator from her former college to submit a letter on her behalf to the College nursing program during her admission process. The Complainant’s prior school issued a letter dated June XX, 2012 explaining that the Complainant was “not involved in any incident that compromised patient safety.” The nursing director denied receiving this letter. The compliance officer determined that the letter had in fact been received by the College.
6. The nursing director told the compliance officer that when more completed applications were received than available spaces, a lottery was used to select students. The compliance officer noted that this violates applicable College District regulations.
7. The nursing director stated that all applicants are notified by the department in writing of decisions on their applications, including the Complainant. However, the compliance officer found that the Complainant was never notified in writing of the denial. The Complainant was notified orally.
8. The compliance officer’s report indicated clear credibility concerns regarding the nursing director’s statements, including evidence suggesting that she had disparaged the Complainant’s sister, a previous student in the program, and possibly violated FERPA by discussing her academic record with fellow church members. In her interview with the compliance officer, the director denied speaking to the church member about this, but the church member confirmed that she had. In another instance, the nursing director initially claimed to not know certain witness, but later acknowledged that her son was in fact married to this person’s daughter.
9. The nursing director made the decision to admit her own daughter to the nursing program as a transfer student. The compliance officer found evidence of possible unethical behavior and protocol concerns relating to the admission of the nursing director’s daughter into the nursing program.
10. The college dean responsible for the nursing program told the compliance officer that there were concerns about student files that may have been tampered with including that of the Complainant, her sister, and the daughter of the nursing program director. He stated that he was curious to know why the Complainant was not admitted to the College since she was subsequently admitted to the XXXX nursing program.

11. The investigation concluded that the Complainant was not discriminated against based on her ethnic group identification or ancestry. The findings stated that Complainant did not meet all requirements for admission as a transfer student and therefore her denial of admission was in compliance with College policy and Chancellor guidelines. The determination affirmed the nursing director's decision not to admit the Complainant, even though it found that the decision was based on an altered form that provided inaccurate disqualifying information.

- Ultimately, the College President sent a letter to Complainant dated August XX, 2014 concluding that the investigation did not support the Complainant's allegations. After an unsuccessful administrative review per District and College policy, the Complainant appealed to the District Board of Trustees, which denied her appeal at its meeting on December X, 2014.

OCR gathered the following additional information from interviews with Recipient staff:

- The nursing program director told OCR that the only other person who would have had access to the Complainant's tampered transfer form was an office assistant who simply opens the mail.
- The nursing director told OCR that the Complainant was not accepted into the program because of the lack of a recommendation on the transfer form from Complainant's former school. This was demonstrated by the "No" answer on the transfer form (the tampered section of the form). She stated that if the form had been checked "N/A" this would have been the same as checking "No" because the "Yes" box was not checked. She stated that the transfer form also showed that there was a clinical safety issue with the Complainant. The nursing director acknowledged that the only reason she had for suspecting the Complainant of posing a clinical safety issue was the "No" answer on the transfer form. She also stated that the Complainant's application was incomplete. When asked what was missing, she stated that this meant that the transfer form was not appropriately filled out - the "Yes" box was not checked.
- When asked whether she had changed the Complainant's transfer form, the nursing director stated that she could not have possibly changed the transfer form since she did not keep the forms in her office, but in an adjacent office.
- After the Recipient learned that the transfer form had been tampered with, no action was taken by the Recipient regarding the decision to deny the Complainant admission. The nursing director remains the sole person responsible for determining admission for incoming students into the program.

Conclusion and analysis

OCR determined that the compliance officer conducted a prompt and thorough investigation of the Complainant's allegation of discrimination based on national origin. However, the investigation revealed that a preponderance of the evidence gathered supported that the Complainant had been discriminated against based on national origin. Therefore, OCR found that the investigation failed to use the correct legal standard when making its determination that the Complainant had not been subjected to discrimination under Title VI.

The nursing program director makes the final decision on which students to admit to the College's nursing program and her only proffered reason for denying the Complainant admission as a transfer student was based on one section of the Complainant's transfer form, submitted as part of her application. The evidence gathered in the investigation by the compliance officer clearly indicated that the transfer form was changed subsequent to its submission to the Recipient. Additionally, the Complainant's former college sent a letter to the nursing program stating, the Complainant was "not involved in any incident that compromised patient safety" which the nursing director denied receiving despite clear evidence it had been received by the nursing department. Based on the nursing director's statements during the internal investigation and to OCR, the Complainant would have been granted admission to the program if the transfer form had not had the box checked "No," because the only information to support the Complainant's lack of clinical safety, the reason for her denial, was based on a falsified form and was contradicted by the letter from Complainant's former program.

According to the internal investigation, the nursing director's statements to the College compliance officer denying knowledge of the falsified form and of the letter from the Complainant's former program were found to lack credibility. The nursing director was one of only two people who had access to the submitted transfer forms, and the evidence discovered in the investigation supported that the nursing director had motive to tamper with the Complainant's form. The College's investigative report found that there is a strong sense of tribal identification in the Nigerian XXXXXX and XXXX tribes in the United States and also documented manifestations of significant animus between the XXXX tribes, both historically and present today locally. The investigation further substantiated that the nursing director had made negative statements about the Complainant's sister's academic record in a public arena at their church which brought shame to their family. Additionally, the investigative report found definitively that the nursing director did not tell the truth in several statements she made to the compliance officer which led the compliance officer to report that she lacked credibility overall. Witnesses also stated that the nursing director knew that the transfer form did not originally have the "No" box checked. While the report did not conclude with certainty that the nursing director tampered with the Complainant's transfer form, it did find that

“someone in the nursing department tampered with the complainant’s transfer form in her file, which was an official form.”

Nevertheless, the Recipient determined that the basis for denying admission to Complainant was not based on national origin. The Recipient accepted the nursing director’s rationale for the denial, lack of clinical safety, even though the investigation found that the form upon which the nursing director relied in making this decision had been altered within the nursing department and was contradicted by the letter from the former Complainant’s prior nursing program.

Based on the above, OCR determined that the Recipient’s own investigation revealed that a preponderance of the evidence supported that the reason proffered by the Recipient for denying the Complainant admission into the program was pretext for discrimination, and that the Recipient is in violation of the Title VI regulation at 34 C.F.R. §100.3(a) and (b) (1) (v). In this case, the Complainant was subjected to discrimination in the denial of her admission to the program, and the Recipient failed to adequately respond to notice of the discrimination.

To resolve the noncompliance found in this case, the Recipient agreed to take the steps in the enclosed Resolution Agreement. OCR will monitor the Recipient’s implementation of the agreement. When fully implemented, the resolution agreement is intended to address all of OCR’s compliance concerns in this investigation. OCR will monitor the implementation of agreement until the Recipient is in compliance with the Title VI regulation at 34 C.F.R. §100.3(a) and (b) (1) (v).

This concludes OCR’s investigation of the complaint and should not be interpreted to address the Recipient’s compliance with any other regulatory provision or to address any issues other than those addressed in this letter. We are closing the complaint as the date of this letter, and notifying the complainant simultaneously. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

This letter sets forth OCR’s determination in an individual OCR case. This letter is not a formal statement 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.

Please be advised that the Recipient 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 complainants 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, it will seek to protect, to the extent provided by the law, personal information that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact Robert Danese, the investigator assigned to this case, at (415) 486-5512.

Sincerely,

/s/

Sara Berman
Team Leader

Enclosure