



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

REGION IX  
CALIFORNIA

50 UNITED NATIONS PLAZA  
MAIL BOX 1200; ROOM 1545  
SAN FRANCISCO, CA 94102

June 3, 2019

David M. Carlisle, MD, PhD  
President and CEO  
Charles R. Drew University of Medicine and Science  
1731 E. 120th St.  
Los Angeles, CA 90059  
[president@cdrewu.edu](mailto:president@cdrewu.edu)

(In reply, please refer to OCR Docket Number 09-15-2128)

Dear President and CEO Carlisle:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against Charles R. Drew University of Medicine and Science (University). The Complainant alleged that the University discriminated against him on the basis of age.<sup>1</sup> Specifically, OCR investigated whether the University failed to adequately and appropriately respond to the Complainant's complaint, including his appeal, filed with the University on September X, 2014 that the University dismissed him from the XXXXX XXXX XXXXXX (XXX) XX XXXXXXXX XX Nursing program on the basis of his age (XX). OCR also conducted its own investigation of the Complainant's underlying allegations of age discrimination.

OCR is responsible for enforcing the Age Discrimination Act of 1975 (AgeDA), 42 U.S.C. §6100 *et seq.*, and its implementing regulation at 34.C.F.R. Part 110, which prohibit discrimination based on age in programs or activities that receive Federal financial assistance from the U.S. Department of Education (the Department). The University is a recipient of financial assistance from the Department. Therefore, OCR has jurisdiction to investigate this matter under the AgeDA and its implementing regulation.

To investigate this complaint, OCR conducted interviews and reviewed documents and other information provided by the Complainant and the University. After a careful review of the information gathered in the investigation, OCR concluded that the University failed to provide the Complainant with a prompt and equitable response to his complaint of discrimination on the basis of age, in violation of the AgeDA and its implementing regulations. OCR also found that the preponderance of the evidence did not support a conclusion that the University dismissed the Complainant from the XXX program on the basis of his age. The applicable legal standards, factual findings, and resolution of this matter are summarized below.

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<sup>1</sup> OCR previously provided the Recipient with the identity of the Complainant. We are withholding his name from this letter to protect his privacy.

## Factual Findings

The following facts are relevant to OCR's analysis:

### *Background*

The University is a private university located in South-Central Los Angeles. The Complainant, who was XX at the time the complaint was filed with OCR, enrolled in the University's XXX program in the XXXXXX 2013 semester. The Complainant was the oldest student in his entering cohort; all but XXXXX of the XX students in his entering cohort were less than 40 years old.

The Complainant was placed on academic probation after his first semester in the XXX program and was required to repeat two courses in which he had received passing grades. He remained on probation for all but one of his subsequent semesters and was subject to a series of learning plans and contracts. He was ultimately terminated from the program in August 2014, after his XXXXX semester in the program.

The Complainant filed an Academic Grievance on September X, 2014, alleging that he had been subjected to age discrimination throughout his enrollment in the XXX program. He also alleged that he was not provided necessary support, and that his grades had been miscalculated. He asked that his academic dismissal be rescinded, and that a failing grade be raised to a 'X' or above. In his complaint to OCR, the Complainant alleged that he was subjected to discrimination by the University, and ultimately dismissed from the Nursing program, on the basis of his age, and that the University had failed to appropriately respond to his internal complaint of discrimination. His OCR complaint included several of the same allegations as his internal complaint.

### *University's Grievance Procedures*

At the time of the Complainant's dismissal in August 2014, the 2013-2014 University Catalog included a detailed procedure for filing formal and informal complaints of harassment on the basis of sex, race, religion, disability, sexual orientation or age, but no other policy explicitly provided for the investigation of complaints of other forms of age discrimination. Beginning with the 2017-2018 University Catalog, the above described procedures were replaced with more detailed notice of the University's policy prohibiting sexual harassment and sexual assault.

The Student Handbook for the School of Nursing (Student Handbook) in effect at the time of the Complainant's dismissal also included an Academic Grievance Process for academic issues associated with course, classroom, or clinical instruction during the course of semester, and a Non-Academic Grievance Procedure for general complaints that did not involve academic matters, including complaints against other students, faculty, staff, administration, or any policy of the School of Nursing. Both procedures required students to meet with the involved faculty member or the Director of Student Affairs to discuss the grievance within three to five days after the incident giving rise to the grievance, before filing a written grievance. Once a written complaint was filed, both procedures required a Student Affairs Committee to review the

complaint within five days and make a recommendation to the Dean/Associate Dean; the Director of Student Affairs was then required to notify the student or affected faculty member of the Committee's decision. Both procedures allowed either party to appeal the decision to the Dean within two days and required the Dean to respond within two to ten days. Neither procedure referred to discrimination, and neither explicitly required an investigation.

The Academic and Non-Academic grievance procedures for the School of Nursing described in the 2018-19 catalog are substantially similar to those described above.

*Complainant's Enrollment at the University*

The Complainant enrolled in the XXXXX XXXX XXXXXX XX Nursing (XXX) program in the XXXXXX semester of 2013. Students in each admissions cohort<sup>2</sup> initially enrolled in the same courses; the "standard timing" for the Complainant's cohort called for enrollment in four courses during the first semester of enrollment, and three courses, including an eight-unit clinical course, each succeeding semester, for a total of XXXX semesters of study. Students who passed these courses in the normal progression received their XXXXXX XX Nursing degree in XXXXXX 2014.

At the time of the Complainant's enrollment, both the Dean of the School of Nursing (Interim Dean) and the Associate Dean for Academic Affairs (Interim Associate Dean) held their positions on an interim basis.

The Complainant enrolled in four courses during his first semester, a total of 15 units. He received 'XX' grades in XXXXXXXXXXXXXXXX XX XXXXXXXX (a six-unit course) and XXXXXXXXXXXXXXXX (a four-unit course), a 'XX' grade in XXXXXXXXXXXXXXXX (a three-unit course), and a 'X' in XXXXXXXXXXX XX XXXXXXXXXXXXXXXX XXXXXXXX (a two-unit course). His total grade point average (GPA) at the end of the XXXXXX 2013 semester was XXXX.

At the time the Complainant enrolled, the Student Handbook stated, in relevant part: in order to pass a course, students must obtain a cumulative grade of 75% ('C+'); a cumulative GPA of 'B' or better is required to progress in the program; students may repeat courses and substitute a subsequent higher grade only where they earn less than a 'C+' ; a graduate student is subject to academic probation if a cumulative GPA of at least a 'B' is not maintained; and the University will disqualify a graduate student who is on academic probation if the student does not raise the cumulative GPA to a 'B' by the end of the two subsequent regular semesters (exclusive of summer sessions).

By letter dated April XX, 2013, the Interim Associate Dean informed the Complainant that a review of his academic transcript indicated that he had not earned the 3.0 GPA required to continue enrollment in the XXX program. The Interim Associate Dean further stated that according to the Student Handbook, the Complainant was being placed on academic probation based on his 'XX' grades in two courses in the XXXXXX 2013 semester. The letter included a

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<sup>2</sup> All students admitted during the same semester are considered a "cohort."

revised curriculum of study for the Complainant, in which he would repeat the 2 courses in which he had received a 'XX' grade and enroll in only two courses each semester. Pursuant to this schedule, the Complainant would have completed XXXXXXXXXXXX degree after XXXXX semesters. The Complainant signed and returned the letter indicating agreement with the revised curriculum on XXX X, 2013.

The Complainant informed OCR that, at the time he received the letter, he was scheduled to begin the next XXXXXXXXXXXX course, XXXXXXXX XXXXXXXX XXXXXXXX - XXXXXXXX XXXXXXXX XXXXXXXX XXXXXXXX - at the XXXXXXXX XXXXXXXXXXXXXXXXXXXX Hospital (XX Hospital) in May 2013. According to the Complainant, the Interim Associate Dean removed him from the scheduled course and told him that there were four students from previous cohorts who needed to take the XXXXXXXX course and that there was not space for him to continue. The Complainant informed OCR that these four students were younger than he.

The Complainant alleged in his complaint to OCR that he was forced to accept the revised curriculum, and that the interaction embarrassed and humiliated him. He informed OCR that another student had told him that other students who had received 'XX' grades had not been required to repeat them.

The Interim Associate Dean informed OCR that the Complainant had requested to repeat the two courses in which he received 'XX' grades so that he could raise his overall GPA to the required 3.0. She denied requiring him to repeat those courses and also denied removing him from the XXXXXXXX placement or telling him that other students needed his space in the course.

OCR found that four students in the Complainant's cohort completed their first semester (XXXXXX 2013) with a GPA of less than 3.0; all of them were placed on probation and assigned a reduced schedule for the following semester. Four other students in the Complainant's cohort received 'XX' grades during their first semester; none were required to repeat the course. All of these students were 35 years old or younger during that semester. Ten other students in the same cohort received one or more 'XX' grades during their first year; only one was required to repeat a course. At least one student in the previous cohort who received a 'XX' grade in a XXXXXXXX course during her first year was required to repeat the course. OCR also found that no other student received two 'XX' grades during their first semester.

The XXXXXXX 2013 semester GPA, XXXX, listed on the Complainant's transcript, did not take into account the 'XX' grades. When the Complainant's two 'XX' grades were incorporated into his GPA after the first semester, his GPA was well below that of any other student in his cohort.

The Complainant received a 'X' and a 'XX' in two XXXXXXXXXXXXXXXXXXXX courses during the XXXXXXX 2013 semester. His XXXXXXX 2013 cumulative GPA was XXX (which did not include the two 'XX' grades from the XXXXXXX 2013 semester), and he was taken off probation. In the XXXX 2013 semester, the Complainant retook the two XXXXXXX 2013 courses and received a 'X' and another 'XX'. His XXXX 2013 cumulative GPA was XXXX. He was placed on probation again but allowed to enroll in XXXXXXXX for the XXXXXXX 2014 semester.

The Complainant alleged to OCR that the Interim Associate Dean served as a XXXXXXXXXXXX XXXXXXXXXXXX when he retook one of the XXXXXXX 2013 courses. According to the Complainant, although the other professors in the class gave him positive feedback, the Interim Associate Dean often refused to sign off on his competence in required skills, and made comments indicating that his skills were “old fashioned” and “old.” He stated that these remarks were made during one-on-one assessments. The Interim Associate Dean informed OCR that the Complainant had not performed the assessed skills correctly, even when she gave him extra time, and she denied telling him that his skills were old fashioned or old.

By letter dated January XX, 2014, the Interim Associate Dean again informed the Complainant that a review of his transcript showed that he had not earned the required 3.0 GPA to remain in the program. The letter informed him that he would be permitted to “retake” three courses in which he had not previously enrolled. He was also instructed to meet with the Director of the University Learning Resource Center (LRC Director) to develop a weekly remediation plan.

The Complainant informed OCR that he attempted repeatedly to locate the LRC Director but was unable to find her, and that he was therefore unable to get the help he needed. The Interim Associate Dean confirmed to OCR that the LRC Director had taken a leave during a portion of the time when the Complainant was enrolled, and that no substitute was assigned to her position. According to the Complainant, he was not informed the LRC Director’s absence or provided with alternative resources to help him develop a remedial plan.

Pursuant to the January 2014 letter, the Complainant enrolled in three courses during the XXXXXXX 2014 semester. He received ‘X’ grades in two of these classes, and received a ‘X’ in XXXXXXX, resulting in a cumulative GPA less than 3.0. He was placed on probation again. The Interim Associate Dean informed the Complainant by letter that in order to prepare students to pass the National Council Licensure Examination (NCLEX-RN), a requirement for licensure as a registered nurse, it was important that students meet all program requirements.<sup>3</sup> The letter acknowledged that the University had provided the Complainant exceptions to some requirements, and proposed a learning contract<sup>4</sup> which required the Complainant to take a preadmission test, including a remediation module, and to participate in the NCLEX preparation program with his cohort. It also required him to repeat XXXXXXX during the XXXXXXX 2014 semester and stated that, unless he raised his cumulative GPA to a 3.0 by the end of the XXXXXXX 2014 semester, he would be dismissed from the program. On XXXX X, 2014, the Complainant signed the letter agreeing to the terms of the learning contract.

The University provided documentation to OCR showing that it had developed a learning contract for another student (Student 2) in XXXXXXX 2014 because her cumulative GPA had been

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<sup>3</sup> According to the website of the California Board of Registered Nursing, all applicants for licensure must have completed an educational program meeting all California requirements before sitting for the exam. According to the same website, 55.17% of nursing students at the University passed the NCLEX-RN during the 2014-15 academic year (the year when the Complainant’s cohort would have taken the exam).

<sup>4</sup> Under the “Retention” provision of the Student Handbook discussed above, the Complainant would have been subject to dismissal when he failed to attain a cumulative GPA of 3.0 at the end of the XXXXXXX 2014 semester, XXX XXXX semesters after he was initially placed on probation.

below 3.0 for more than two semesters. The Interim Associate Dean told OCR that the Student's learning contract was completed by the University provost and an administrator from the office of admissions, based on the learning contract they had developed for Student 2. OCR reviewed Student 2's learning contract and found that the terms were substantially similar; in fact, the Complainant's contract seemed to have been cut and pasted from Student 2's. OCR found that Student 2 raised her GPA to XXXX at the end of the XXXXXX 2014 semester and graduated in XXX 2015.

The Complainant informed OCR that the University's learning contract requirements were unfair for the following reasons: 1) the requirement to take a preadmission test and remedial exercise did not address his learning difficulties and used valuable study time; and 2) he was not permitted to take the NCLEX preparation class with his cohort, as required in the learning contract. He stated that NCLEX preparation would have assisted him with the final examinations in his nursing classes, but that his requests to obtain such assistance were denied.

University administrators informed OCR that, despite the requirements of his learning contract, the Complainant would not have been qualified to take the NCLEX preparation class with his cohort, because he had not taken several of the courses that they had completed. They stated that Complainant was scheduled to take the NCLEX preparation class with a later cohort.

The Complainant informed OCR that he requested to take XXXXXXXX XXXXX XXXXXXXX, an XXXXX-unit XXXXXXXX course, during the same semester that he repeated XXXXXXXX as a way to raise his GPA, but was not allowed to do so. According to the Complainant, several students in his cohort and earlier cohorts, who were younger than he, were permitted to take XXXXXXXX and XXXXXXXX XXXXX XXXXXXXX simultaneously during the XXXXXX 2014 semester. OCR reviewed the transcripts of four students that the Complainant had identified. One of these students completed the two courses during the XXXXXX 2014 semester; another enrolled in both but withdrew. Neither of these students had previously failed a course or been on probation, and both began the XXXXXX 2014 semester with a GPA of XXXX or above. A third student who had previously failed XXXXXXXX, retook it during the XXXXXX 2014 semester and also took another lower-unit course. The fourth student interrupted the standard course progression to take other courses during the XXXXXX 2014 semester.

The Complainant enrolled in XXXXXXXX for a second time, and in two additional X-unit courses, during the XXXXXX 2014 semester. Although he received an 'X' and an 'XX' in the other courses, he again received a 'X' in XXXXXXXX. His cumulative GPA at the end of the XXXXXX 2014 semester was XXXX. OCR verified that this GPA was correctly calculated. On August XX, 2014, the University dismissed the Complainant from the XXX Program because he had failed to maintain a 3.0 cumulative GPA for more than two semesters and had failed XXXXXXXX twice.

OCR found that the Complainant was on probation for four of the five semesters of his enrollment at the University. Only one other student in his cohort was on probation as often; that student was dismissed XXXXX XXX XXXXXXXX 2014 semester. Student 2 was the only other

student on probation after the first 2 semesters. OCR also found that no other student in the Complainant's cohort had received less than a 'X' grade when he or she retook a course.

### Complainant's Grievance to the University

#### *Grievance*

On September X, 2014, the Complainant filed an academic grievance with the University alleging discrimination for the following reasons: 1) During the XXXXXX 2013 term, he was removed from XXXXXXX and a XX Hospital and replaced by a younger student; he was forced to sign a remedial letter because his 'XX' grades made him ineligible to advance to XXXXXXX; 2) While repeating a course during the XXXX 2013 semester, the Interim Associate Dean stated that his skills "were old, real old" and she would not pass him; and 3) the University refused to allow him to take XXXXXXX and another XXXXX-unit course simultaneously, but allowed several younger students to do so.

The Complainant's grievance also raised allegations that the University had required him to sign letters and learning contracts as a condition of continued enrollment, which included promises of academic support but failed to provide the academic support, and that the University dismissed him before his grades were finalized.

#### *University's Response to the Complainant's Grievance*

The Director of Student Affairs (Director) informed OCR that the School of Nursing Student Affairs Committee (Committee) met on September XX, 2014, to discuss the Complainant's grievance and his academic history and assess whether he could be successful, in light of his performance to date. According to the Director, the Complainant was not allowed to meet with the Committee, because the Committee discussed multiple students in their meetings. She stated that the Committee was aware that the grievance included an age discrimination allegation, but that they did not address that allegation because they understood it would be forwarded to the Interim Dean. On September XX, 2014, the Director sent an email to the Complainant, informing him that the Committee had met to discuss his appeal, but a final decision was pending verification of his GPA.

After the Committee met, the Director contacted the Interim Dean to clarify why the Complainant was required to retake courses for which he received a passing grade – 'XX' – during his first semester. The Director concluded that the Interim Associate Dean had required the Complainant to repeat courses to allow him the opportunity to raise his GPA and remain in the program. She also concluded that his GPA, as calculated in his transcript, was accurate.

On November X, 2014, the Complainant met with the Director, who informed him that the Committee had denied his grievance, but that he could appeal their denial to the Interim Dean. On the same day, the Director emailed the Complainant a formal notification regarding his "academic appeal." The email stated that the Committee had denied his request to return to the program based on his failure in multiple courses and his low GPA. It concluded with a suggestion that the Complainant meet with the Interim Dean for a final resolution of his "appeal"

and re-instatement to the XXXXXX 2015 XXX program. Neither the September XXXX nor the November XXX email mentioned the Complainant's allegations of age discrimination.

The Complainant informed OCR that he met with the Interim Dean on December X, 2014. According to the Complainant, during the meeting, the Interim Dean refused to discuss discrimination and told him that he needed to take up any allegation of discrimination with "Personnel," but did not refer him to a specific individual or office. The Interim Dean informed OCR that she asked the Complainant if he believed he had been subjected to discrimination and he responded that he did not. She stated that she told the Complainant that if he believed he had been subjected to discrimination, she would need stop the discussion and refer him to the University's Title IX office.

Shortly after the Complainant met with the Interim Dean, the Director sent him letter, thanking him for meeting with the Interim Dean regarding the appeal of his academic dismissal. The letter stated that, based on the Complainant's continued failure to maintain a 3.0 GPA and his failure of XXXXXXX twice, his academic dismissal from the program was being upheld. The letter did not mention his allegation of age discrimination.

In a letter dated September XX, 2015, the University's Counsel told OCR that the University had "begun the necessary documentation and investigation of [the Complainant's] complaint of discriminatory treatment." On October X, 2015, the University Title IX Coordinator called and emailed the Complainant informing him that the age discrimination allegation raised in his academic grievance dated September X, 2014 was being investigated. The Complainant informed OCR that on October X, 2018, he met with the Title IX Coordinator to discuss his age discrimination complaint. According to the Complainant, he has not received any further information or response to his allegations of age discrimination from the Title IX coordinator or from the University.

In an email to OCR dated March XX, 2017, the University's Counsel described his investigation of the Complainant's Academic Grievance alleging age discrimination. Counsel stated that he had reviewed relevant documents, interviewed the Interim Associate Dean, and determined that the University did not discriminate against the Complainant based on his age.

### Legal Standards

The regulations implementing the AgeDA at 34 C.F.R. §110.10(a) state 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 of a recipient of Department funds. Under §110.10(b) a recipient may not treat individuals differently on the basis of age with regard to any aspect of the services, benefits, activities, or opportunities it provides.

The AgeDA regulations, at 34 C.F.R. §110.25, establish procedural requirements that are important for the prevention and correction of age discrimination. These requirements include designation of an employee responsible for compliance with the AgeDA, notification to beneficiaries of the provisions of the act and the identity and contact information for the

responsible employee, and adoption and publication of grievance procedures providing for the prompt and equitable resolution of complaints of age discrimination.

Where the allegations filed with OCR have been investigated through a recipient's internal grievance procedures, OCR first thoroughly reviews all documentation of the recipient's investigation and resolution of the complaint to determine whether the recipient provided a resolution and remedy using legal standards that meet the AgeDA and Title VI and a comparable process that meets OCR's requirements. If OCR finds that that the recipient has met these requirements, OCR generally will not conduct its own independent investigation.

### Analysis and Conclusion

#### *University's Grievance Procedures*

OCR examines a number of factors in evaluating whether a recipient's grievance procedures provide for a prompt and equitable resolution, and whether the investigation and resolution of an individual's complaint of discrimination met these standards. These factors include whether the procedures provide for an adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence; designated and reasonably prompt timeframes for major stages of the complaint process; notice to the parties of the outcome of the complaint; and an assurance that steps will be taken to prevent recurrence of any discrimination and to correct its effects.

During the time that the Complainant was enrolled, the University had no grievance procedures that explicitly addressed complaints of discrimination on the basis of age, other than complaints of harassment, or that provided for an investigation of such discrimination complaints. The complaint procedure most applicable to the Complainant's situation was the Academic Grievance Process. This procedure did not require that grievances be investigated.

#### *University's Investigation of the Complainant's Grievance*

Pursuant to the University Academic Grievance Process, the Complainant submitted an academic grievance on September X, 2014. The first allegation of his grievance was a statement that the University administration had practiced age discrimination against him. His complaint detailed three instances of alleged age discrimination and concluded with a statement that he had not been allowed to graduate with his cohort because of the discrimination and the failure of the administration to treat him as an equal. OCR concluded that this grievance constituted a complaint of age discrimination and that it was filed in compliance with the only clear information provided in the University catalog or the Nursing Student Handbook concerning the filing of such complaints.

The University did not initially investigate the Complainant's age discrimination complaint, but instead treated it as an appeal from the Complainant's dismissal from the nursing program. Pursuant to the grievance procedures, the Director referred the complaint to the Committee. The Committee did not consider the age discrimination allegations in the complaint because, according to the Director, the Committee believed that the discrimination allegations would be

forwarded to the Interim Dean. Instead, the Committee discussed the Complainant's academic history and whether he could be successful. The Director of Student Affairs obtained some clarifying information about the Student's grades before informing him of the Committee's decisions; these clarifications also did not address the age discrimination allegations. The Complainant was not allowed to address the Committee.

Pursuant to the Academic Grievance process and the instructions of the Director, the Complainant appealed the Committee's findings to the Interim Dean. The Complainant informed OCR that the Interim Dean told him that she could not address his allegations of discrimination, which would need to be considered by Human Resources. The Interim Dean told OCR that she had informed the Complainant that any allegations of discrimination would need to be referred to the University's Title IX office and that the Complainant stated that he did not believe he had been subjected to discrimination. In light of the Complainant's consistent allegations of age discrimination and the Interim Dean's errors in recalling other details of the Complainant's case, OCR concluded that the Complainant's account of the meeting was more credible than that of the Interim Dean. No further steps were taken to address the Complainant's allegations of discrimination, and the Complainant's dismissal was upheld.

Approximately a year later, after the Complainant had filed his OCR complaint, the University began an investigation into the Complainant's age discrimination complaint, and the University Title IX Coordinator met with the Complainant regarding his complaint. As of October 2018 the Complainant had received no further contact from the Title IX Coordinator.

Approximately two and a half years after the Complainant filed his age discrimination complaint with the University, on March XX, 2017, the University's Counsel informed OCR that he had completed the investigation of the Complainant's age discrimination complaint and concluded that the Complainant had not been subjected to discrimination, but had instead been removed from the XXXXXXXX class, and ultimately dismissed from the University, because of his grades.

Based on review of the facts described above, OCR concluded that the University's Academic Grievance process did not provide the Complainant with a prompt and equitable resolution of his allegations of age discrimination. OCR found that the Director followed the grievance process by meeting with the Complainant and forwarding his complaint to the Committee for review. However, the grievance process did not require that complaints of discrimination be addressed, investigated and resolved. As a result, the Committee did not address the Complainant's allegations of age discrimination because, according to the Director, the Committee believed those allegations would be directed to the Interim Dean. The Interim Dean, in turn, informed the Complainant that his allegations of discrimination would need to be forwarded to another office. Due to the University's absence of grievance procedures that explicitly address complaints of discrimination based on age, the Complainant's discrimination claims were not addressed until after he filed his complaint with OCR. As described above, the University's investigation of the Complainant's age discrimination complaint lasted over two years.

Based on the discussion above, OCR concluded that the University's investigation of the Complainant's age discrimination complaint was neither prompt nor equitable, in large part because of the absence of procedures that provide for the prompt and equitable resolution of

discrimination on the basis of age. OCR therefore concluded that the University did not comply with the grievance procedure requirements of the AgeDA regulations.

*OCR's Investigation of the Complainant's Underlying Allegation of Age Discrimination*

When an allegation filed with OCR has been the subject of an internal complaint addressed to a school or university, OCR begins by reviewing the school's investigation to determine whether it meets OCR's standards. Where there was no investigation, or when an investigation does not meet OCR standards, OCR conducts its own investigation of the underlying discrimination. In this case, the Complainant's complaint to OCR raised several of the same allegations as those included in his internal grievance. OCR concluded that the University's investigation did not meet OCR standards for the reasons set forth above. For this reason, OCR conducted its own investigation of the underlying allegations of age discrimination. OCR investigated each of the instances of age discrimination that the Complainant alleged in his OCR complaint.

*Removal from XXXXXX 2013 Clinical Placement*

In April 2013, the Interim Dean informed the Complainant that, because of two 'XX' grades in his first semester classes, his course load would be reduced for the following semester, he would be required to retake two courses, and he would not be allowed to enroll in XXXXXXXX, the next XXXXXXXX course in the normal XXX progression, until XXXXXX 2014. The letter explaining this decision stated that he was being placed on probation because of his 'XX' grades even though, at the time the letter was written, a 'XX' was considered a passing grade. He alleged that the Interim Dean had decided to delay his progress in order to allow a younger student to claim his place in a XXXXXXXX placement at the XX Hospital.

OCR found that the 2012-13 School of Nursing Student handbook stated that a XX was a passing grade and that four other students, all of them younger than the Complainant, received 'XX' grades during their first semester without being required to repeat the course. OCR also confirmed, however, that if the 'XX' grades had been included in his GPA, the student would have completed his first semester with a XXXX GPA; and that all students in his cohort with a GPA under 3.0 were placed on probation and subject to a temporarily reduced course load.

OCR found that the Complainant was the only student in his cohort to receive two 'XX' or lower grades during the first semester of the XXX program and that, if those grades had been allowed to stand, his GPA would have been XXXX points lower than that of any other student in the cohort.

OCR concluded that, although the Complainant was treated differently from younger students in his cohort, he was not situated similarly to them, in that his grades were significantly lower than theirs. The Interim Dean's letter misstated the standard for imposing probation and failed to explain why the Complainant was being required to repeat courses for which he had received passing grades. However, OCR concluded that the preponderance of the evidence did not establish that the Complainant was treated differently on the basis of his age with respect to his removal from the XXXXXX 2013 clinical placement.

### *Age-Related Remarks*

The Complainant alleged that, while XXXXXXXX XX XX XXXXXXXXXXXXX, the Interim Dean called his skills old and old fashioned, while other instructors gave him passing marks on tests of the same skills. The Interim Dean denied that she had made these remarks but stated that she was concerned about his ability to perform required tasks. OCR notes that the alleged remarks did not refer directly to the Complainant, and at most, might suggest that the Interim Dean viewed the Complainant's skills as dated. The preponderance of the evidence did not establish that the remarks were made, or that the Interim Dean assessed the Complainant's skills based on his age.

### *Failure to Provide Promised Supports and Services*

The Complainant alleged that he was instructed to obtain specified support from the University in XXXXXXXX 2014 and XXXX 2014 as a condition of his continued enrollment, but that the University failed to provide the resources necessary to allow him to follow these instructions and denied him promised services. He alleged that the University's failure to implement its agreements led to his low grades and ultimately to his dismissal.

After the Student failed to maintain a 3.0 cumulative GPA after the XXXX 2013 semester, he was informed that he would need to meet with the LRC Director to develop a structured weekly remediation plan. The Complainant stated that he was unable to locate the LRC Director; the University confirmed that the LRC Director was on leave for part of the time the Complainant was enrolled, and the Learning Resource Center had been closed.

In XXXX 2014, the Complainant was required to sign a learning contract which required him to enroll in a preparation course for a nursing licensing examination (NCLEX)<sup>5</sup>. The Complainant stated that was not allowed to enroll in the course and that he was denied individual assistance from the course instructor. He further stated that, because most course examinations were required to follow the format of the NCLEX, the failure to provide him the review course contributed to his failing grades in clinical courses. University administrators confirmed that he was not allowed to enroll in the course during the XXXXXXX of 2014 because he had not yet completed enough courses in the nursing program.

OCR reviewed the January 2014 letter and the June 2014 learning contract and determined that they were difficult to understand and included inaccurate and contradictory information. For example, the January letter stated that the Complainant would be allowed to "retake" three courses in which he had not yet enrolled and the learning contract inserted the name of another student in one of the terms. This lack of clarity, in addition to the unannounced absence of the LRC Director, and the failure to provide the NCLEX preparation course, made it difficult for the Complainant to fulfill the requirements placed on him. However, OCR did not find evidence that the Complainant was treated differently because of his age. The absence of the LRC Director affected all students in the nursing program. The Complainant's learning contract

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<sup>5</sup> Two different versions of the learning contract show different timing for the course, but both state that the Complainant was expected to begin the NCLEX preparation course in June 2014.

contained terms that were also imposed on the only other student (Student 2) in the Complainant's cohort who had failed to maintain a 3.0 GPA over multiple semesters, a student who was under 30 at the time. OCR found insufficient evidence to establish that the Complainant was denied support because of his age.

*Refusal to Allow Simultaneous Enrollment in Multiple XXXXXXXX Courses*

The Complainant alleged that several students who were younger than he, and who had fallen behind the normal course progression of their cohort, were permitted to take two XXXXXXXX courses simultaneously. OCR confirmed that one of the students he identified was permitted to take XXXXXXXX and XXXXXXXXXX XXXXXXXX simultaneously and that another enrolled in both courses but withdrew. Neither of these students was on probation at the beginning of the XXXXXXX 2014 semester; neither was repeating a course or had ever received a grade lower than 'XX'. OCR concluded that these students were not situated similarly to the Complainant, and therefore found insufficient evidence to establish different treatment on the basis of age.

*Miscalculation of the Complainant's Grades*

The Complainant alleged that the University had miscalculated his grades on several occasions. OCR calculated the Complainant's cumulative GPA and determined that it reflected the grade earned when he retook three classes in which he had previously received a 'XX' or 'X' grade. Although the Complainant alleged that he was dismissed based on his cumulative GPA before his grade in a XXXXXXX XXXXXXXXXXXX XXX XXXXXXXX course had been reported, even when the 'X' grade he eventually received was included in his GPA, it remained below 3.0. The Complainant also alleged that he was deprived of the chance to raise an unfairly calculated 'X' grade in XXXXXXXXXXXXXXXX XX XXXXXXXX; he alleged that grievance forms were distributed to other students in his cohort in a class that he was not taking because he had been removed from the typical course sequence of his cohort. Because OCR did not find that the change in the Complainant's course sequence was based on his age, it did not find any indication that he was denied the opportunity to appeal his grade based on age.

OCR found overall evidence that the Complainant was not consistently provided the support he had been told he needed to succeed in the XXX program, that the rules published in the nursing program handbook were not always applied consistently to him or to other students, and that communications directed to him were often inconsistent and confusing. After a careful review of all of the evidence, however, OCR did not find sufficient evidence to conclude that this treatment was based on his age. For this reason, OCR concluded that the preponderance of the evidence did not support a conclusion of discrimination on the basis of age with respect to the Complainant's underlying allegation of age discrimination.

Overall Conclusion

This concludes the investigation of this complaint.

To address the issues alleged in the complaint, the University entered into the enclosed Resolution Agreement (Agreement) which is aligned with the complaint allegations and the

information obtained by OCR during its investigation. The Agreement provides that the University will adopt and publish Age Discrimination Act Grievance Procedures that provide for the prompt and equitable resolution of complaints of age discrimination and provide training for Nursing Program administrators on responding to allegations of discrimination on the basis of age.

Based on the commitments made in the enclosed Agreement, OCR is closing the investigation of this complaint as of the date of this letter and notifying the Complainant concurrently. When fully implemented, the Agreement is intended to address the complaint allegations. OCR will monitor the implementation of the Agreement until the University is in compliance with the terms of the resolution agreement. Upon completion of the obligations under the Agreement, OCR will close the case.

OCR's determination in this matter 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 has a right to appeal OCR's determination with respect to the underlying allegation of age discrimination within 60 calendar days of the date indicated on this letter. In the appeal, the complainant must explain why the factual information was incomplete, inaccurate, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal. If the complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the recipient. The recipient has the option to submit to OCR a response to the appeal. The recipient must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

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.

Please be advised that the University may not harass, coerce, intimidate, retaliate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the individual 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 Katherine Riggs at (415) 486-XXXX or [Katherine.L.Riggs@ed.gov](mailto:Katherine.L.Riggs@ed.gov) or Nezhia Burkes at (415) 486-XXXX or [Nezhia.Burkes@ed.gov](mailto:Nezhia.Burkes@ed.gov).

Sincerely,

/s/

Joseph Wheeler  
Team Leader

Cc: XXXX XXXXXX, General Counsel