



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVENUE, SW  
WASHINGTON, DC 20202-1475

REGION XI  
NORTH CAROLINA  
SOUTH CAROLINA  
VIRGINIA  
WASHINGTON, DC

April 19, 2017

Dr. Ben Hancock, Jr., President  
Methodist University  
5400 Ramsey Street  
Fayetteville, North Carolina 28311

RE: OCR Complaint No. 11-15-2295  
Letter of Findings

Dear Dr. Hancock:

The Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) has completed its investigation of the complaint we received on XXXX, against Methodist University (the University). The Complainant alleged that the University discriminated against him on the basis of disability and against him and other similarly situated students on the bases of race and gender. Specifically, the complaint alleged that:

1. A University staff member (the Professor) discriminated against the Complainant on the basis of disability when XXXX.
2. The Professor discriminated against the Complainant and other students on the bases of race and sex by giving students of color and male students lower grades than white students and female students, respectively, for similar or superior work during the XXXX school year.
3. The University failed to respond appropriately to the Complainant's XXXX complaint to the Dean and President of the University regarding the Professor's allegedly discriminatory actions on the basis of race, sex, and disability.
4. The Professor retaliated against the Complainant by giving him XXXX because he reported her allegedly discriminatory behavior to the Dean and President of the University in XXXX.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104, Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulation at 34 C.F.R. Part 100, and 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 disability; race, color, or national origin; and sex, respectively, in programs and activities that receive Federal financial assistance from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive Federal financial assistance from the Department. The laws enforced by OCR prohibit retaliation against any individual who asserts rights or privileges under these laws or who files a complaint, testifies, or participates in an OCR proceeding. Because the University

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

receives Federal financial assistance from the Department, OCR has jurisdiction over it pursuant to Section 504, Title II, Title VI, and Title IX.

In reaching a determination, OCR reviewed documents provided by the Complainant and the University; interviewed the Complainant, University faculty/staff, and other students; and listened to an audio recording of a conversation between the Complainant and the Professor. Before OCR completed its investigation into allegations 2, 3, and 4, the University expressed a willingness to resolve the allegations by taking the steps set out in the enclosed Resolution Agreement. OCR found insufficient evidence to support allegation 1. The following is a discussion of the relevant legal standards and information obtained by OCR during the investigation that informed the development of the Resolution Agreement, as well as OCR's findings and conclusions regarding allegation 1.

### **Allegation 1**

The Complainant alleged that a Professor discriminated against him on the basis of disability when XXXX.

#### *Legal Standard*

The Section 504 regulation, at 34 C.F.R. § 104.43(a), provides that a qualified person with a disability may not be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in any postsecondary aids, benefits, or services on the basis of disability. The regulation at § 104.44(a) requires a university to modify its academic requirements as necessary to ensure that such requirements do not discriminate or have the effect of discriminating on the basis of disability against a qualified student with a disability.

Universities may establish reasonable requirements and procedures for students to provide documentation of their disability and request academic adjustments and auxiliary aids and services. Students are responsible for obtaining disability documentation and for knowing and following the procedures established by the university. Once the student has provided adequate notice and documentation of his disability and the need for modifications due to the disability, the university must provide the student with appropriate academic adjustments and auxiliary aids and services that are necessary to afford the student an equal opportunity to participate in a school's program. However, the university is not required to make adjustments or provide aids or services that would result in a fundamental alteration of the university's program or impose an undue burden.

In determining what modifications are appropriate for a student with a disability, the university should familiarize itself with the student's disability and documentation, explore potential modifications, and exercise professional judgment. The question of whether a university has to make modifications to its academic requirements or provide auxiliary aids is determined on a case-by-case basis. OCR generally does not substitute its judgment for that of qualified educators and professionals regarding modifications. Instead, OCR reviews relevant factual evidence to determine whether a university acted in a reasonable manner and whether it took appropriate steps consistent with Section 504 in making decisions regarding a student's eligibility for

academic adjustments. Section 504 envisions a meaningful and informed process with respect to the provision of modifications, e.g., through an interactive and collaborative process between the university and the student. If a university denies a request for a modification, it should clearly communicate the reasons for its decision to the student so that the student has a reasonable opportunity to respond and provide additional documentation that would address the university's objections.<sup>1</sup>

### *Analysis*

The Complainant, a student at the University, registered with the University as a student with a disability for the XXXX school year. The University provided the following accommodations: XXXX. The Professor signed the Disability Accommodations Certification on XXXX. The Student's accommodations did not include extended time on term papers or other similar writing assignments.

The website for the University's Accessibility and Disability Services provided that:

If an assignment is on the syllabus at the beginning of the term, and explained thoroughly at that time, professors may consider this ample time for all students to complete an assignment. Time management is the responsibility of the student. In the case of an unforeseen event the student or Director for Accessibility Resources/Disability Services may request a small limited extension. In any case extension of time will not be more than a few days or one week as decided by the instructor.<sup>2</sup>

The Complainant was enrolled in the Professor's XXXX course. XXXX 4 SENTENCES REDACTED XXXX.

XXXX 2 PARAGRAPHS REDACTED XXXX

As neither the Complainant nor the University provided corroborating evidence regarding the alleged request for additional time, there is insufficient evidence to find that the Complainant requested extra time, and therefore insufficient evidence to conclude that the Professor discriminated against the Complainant on the basis of disability.

OCR would like to note that even if we assume that the Professor denied a request by the Complainant XXXX. XXXX 3 SENTENCES REDACTED XXXX. This response did not violate the University's stated policy for requests for extensions. There is no evidence or allegation that the Complainant was not provided agreed-upon academic adjustments or that the Professor did not follow University policy.

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<sup>1</sup> The University and the Complainant may refer to academic adjustments and auxiliary aids as "accommodations." The Section 504 regulation addressing post-secondary education refers to "academic adjustments and auxiliary aids." When the term "accommodations" is used in this document, it refers to academic adjustments and auxiliary aids as those terms are used in 34 C.F.R. § 104.44.

<sup>2</sup> <http://www.methodist.edu/accommodations>.

## **Allegation 2**

The Complainant alleged that the Professor discriminated against him and other students on the bases of race and sex by giving students of color and male students lower grades than white students and female students, respectively, for similar or superior work during the XXXX school year. The Complainant specifically provided that he and other students of color were discriminated against on the basis of race in the grading of the term paper for the Professor's XXXX class. XXXX 2 SENTENCES REDACTED XXXX.

### *Legal Standard*

The Title VI regulation, at 34 C.F.R. § 100.3(a), provides that no person shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under the University's programs or activities on the basis of race, color, or national origin. The Title IX regulation, at 34 C.F.R. § 106.31(a), provides that no person shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under the University's education programs or activities on the basis of sex. When investigating an allegation of different treatment, OCR first determines whether there is sufficient evidence to establish an initial, or prima facie, case of discrimination. Specifically, OCR determines whether the University treated the Complainant less favorably than similarly situated individuals of a different race or sex. If so, OCR then determines whether the University had a legitimate, nondiscriminatory reason for the different treatment. Finally, OCR determines whether the reason given by the University is a pretext, or excuse, for unlawful discrimination.

### *Analysis*

For its analysis, OCR looked at the Complainant's XXXX grade in comparison to the student he identified as being treated more favorably. OCR also looked at the Complainant's XXXX grade in comparison to all the other students in the class who do not identify as black. In addition, OCR looked at the performance of black students across all of the classes that the Professor taught during the XXXX school years.

### Race

- Comparison of the Complainant to other identified student

The Complainant was treated less favorably than the other student he describes in his complaint. He received a XXXX on his term paper in XXXX, while the other student, who is white, received an XXXX.

The Professor presented a legitimate, non-discriminatory reason for the difference in grades. She followed a rubric to grade all the papers for the course, including the papers for the Complainant and the other student in question. According to the Professor's completion of the grading rubric, the Complainant's paper earned fewer points than the other student's paper. The Professor explained to the Complainant during the conversation on XXXX, that the other student received

a higher grade because she communicated her points more clearly. This contention was reflected in the grading rubric completed for both students.

XXXX 2 PARAGRAPHS REDACTED XXXX.

OCR also found insufficient evidence to conclude that the proffered reason was pretext for unlawful discrimination. In grading XXXX, the Professor followed the same rubric for all students. She did not refer to or allude to race or racial stereotypes in any of her comments on either XXXX or in her conversation with the Complainant regarding XXXX on XXXX. OCR did not see any evidence of discriminatory actions or intent in the Professor's subsequent emails with University administrators regarding the Complainant's allegations of discrimination. In an interview with OCR, the Professor stated that she graded all students according to the rubric, which was made available to all students in advance of the due date of XXXX. During the interview, OCR saw no evidence of discriminatory actions or intent in the grading of the Complainant's XXXX. OCR therefore concludes that there is insufficient evidence to find that the Complainant was discriminated against on the basis of race when compared with the white student who received an XXXX.

- Comparison of the Complainant to all other students

OCR would like to note that the Complainant's grades were not included in any of the averages in this section, as he did not identify his race in the data provided by the University to OCR.

OCR reviewed the final term paper grades for each student in the XXXX class. These grades included any points students earned through a re-write process offered to all students. The Complainant's final grade was an 83. The average grade for black students in the class, 80%, was higher than the average grade for all students identifying as other races, 78%.

OCR finds insufficient evidence to conclude that Complainant was treated differently than similarly-situated students in term paper grading. XXXX 2 SENTENCES REDACTED XXXX. There is also insufficient evidence to conclude that black students as a group received lower grades on their term paper than the other students in the class. As explained in the previous section regarding the Complainant's term paper, OCR found no evidence of racial bias toward the Complainant within the Professor's communications with University administrators or in her interview with OCR. OCR therefore finds insufficient evidence to conclude that the Professor discriminated against the Complainant on the basis of race.

- Overall Race Discrimination

To investigate the claim that the Professor discriminated against black students on the basis of race by giving black students lower grades, OCR reviewed the final grades in all of the Professor's courses for the XXXX and XXXX school years. When averaged across all of her courses, black students received between a B minus and B, while students who identified as another race received between a B and a B plus. The difference was statistically significant.<sup>3</sup>

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<sup>3</sup> Statistical significance is the likelihood that a relationship between two or more variables is caused by something other than random chance. To determine whether a result is statistically significant, a researcher calculates a p-value,

OCR finds that the black students were treated less favorably than students who identified as another race.

In an interview with OCR, the Professor provided a legitimate, non-discriminatory reason for a difference in class performance between black students and other students. She stated that she noted a difference in attendance rates “in some instances” between black students and other students. She noted that when she followed up with individual students, the attendance issues were usually due to commitments the students had to athletics. The Professor did not know if these specific attendance issues were correlated with lower grades, but she did note a general correlation between poor attendance and poor performance. She explained that class participation grades can be affected by poor attendance. This is a legitimate non-discriminatory reason for black students to receive lower grades than students who do not identify as black.

To determine whether this reason was pretext for unlawful discrimination, OCR closely examined the Professor’s grading practices.

First, OCR looked at attendance data for the Professor’s courses to see if black students were absent more than students who did not identify as black, and to see if attendance was correlated with grades. The Professor only kept track of attendance for one of her courses, XXXX. Analyzing three of the last four XXXX courses together, black students were absent less frequently, on average, than students who did not identify as black, although the difference was small and not statistically significant. The number of absences a student had was moderately negatively correlated with grades, so that students with more absences had lower grades.

OCR then reviewed the Professor’s grades to look more closely at the correlation between student race and student grades. OCR attempted to compare students’ grades on multiple choice exams against their grades on written assignments and participation, which require more discretion in grading. However, only one of the Professor’s courses, the XXXX, had exams. In this course, black students outperformed students who did not identify as black on both the exams and the paper, although the difference was not statistically significant. Black students received lower participation scores on average the other students, but this difference was also not statistically significant. The final grade averages were the same for black students and other students.

OCR also looked at the Professor’s grades in her courses taught in person versus her online courses. In online courses, it would be more difficult for the Professor to identify students by race, and thus a difference in grading in in-person courses only could indicate different treatment based on perceived race. In the Professor’s online courses, black students and other students performed about equally well in their final grades, both receiving final grades between a B minus and a B. Students not identifying as black outperformed black students on major papers by about a third of a letter grade, but the difference was not statistically significant. In contrast, there was a statistically significant difference between the performance of black students and other students

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which is the probability of observing an effect given that there is no relationship between two variables (i.e., race and grades). The researcher decides upon a threshold to use for the p-value. Here, OCR set the threshold at 0.05, or 5%, meaning that if the p-value is less than 0.05, the result will be statistically significant. This means that there is less than a 5% chance that the relationship between the two variables is random chance.

in the Professor's in-person courses, with black students receiving final grades between a B minus and B and other students averaging between a B and B plus. Much of this difference came from major paper grades, where black students on average received between a C and C plus, while other students received between a B minus and a B. Other students also received higher participation grades than black students, but this difference was not statistically significant.

Based on this review of the Professor's grades, OCR has a concern that the Professor's proffered legitimate non-discriminatory reason for different treatment, namely that black students were absent more frequently than student who do not identify as black, was pretext for unlawful discrimination. Black students were not in fact absent more than students who were not black in the course in which the Professor maintained attendance records, and the disparities in grades between black students and non-black students did not exist in online classes in which the Professor would not be as aware of the students' race. OCR therefore has a concern that the black students were discriminated against on the basis of race when they received lower grades than students who did not identify as black. Before finishing its investigation, the University requested to voluntarily resolve this allegation under Section 302 of the *Case Processing Manual* (CPM).

### Sex

The Complainant alleged that the Professor discriminated against him and other male students on the basis of sex as reflected in their final grades in her XXXX courses. He alleged that she would find ways to take points away from male students. He added that she would not let men talk in class or would talk over them.

- Comparison of the Complainant to all other students

OCR reviewed the final grades for the XXXX class by sex. The male students performed better than the female students. The average grade for male students was between a B plus and A minus, while the average grade for female students was between a B and B plus. Of the four students who received an A in the class, two were female, and two male. Two students received A minuses, both male. The lowest grade given was a B minus, and three of the four B minuses were received by female students. The Complainant's final grade of a B plus, taking into account the result of his grade appeal, fell above the average grade for female students in the class. OCR finds insufficient evidence to conclude that the Professor gave male students, including the Complainant, lower grades than female students in that course.

In the Professor's other XXXX, male students earned a B plus on average, and female students earned between a B minus and a B. The Complainant earned a B plus. OCR finds insufficient evidence to conclude that the Professor gave male students, including the Complainant, lower grades than female students in this course.

- Overall Sex Discrimination

To investigate the claim that the Professor discriminated against male students on the basis of sex in her grading, OCR reviewed the final grades in all of the Professor's courses for the XXXX

school years. When averaged across all of her courses, male students received between a B minus and B, while female students received between a B and a B plus. The difference was statistically significant. OCR finds that male students were treated less favorably than female students.

The Professor told OCR that female students, on average, turned in their work more promptly than male students, and this had an effect on academic performance. The University therefore presented a legitimate, non-discriminatory reason for a difference in performance between male and female students.

OCR examined whether the reason given by the Professor was a pretext, or excuse, for unlawful discrimination. The Professor provided in a written statement that her late assignment policy, as listed in her syllabi, was “no late assignments and no test make-ups.” Only one of the Professor’s courses, XXXX, had a syllabus that included a late assignment policy, but it did state that no late assignments would be accepted. The Professor stated that in practice, she reserved the right to “accept late work but downgrade based on the degree of lateness.”

The Professor further provided that she had records for assignments that were not turned in, but she did not keep regular records for grade changes in her grade book and could not rely on her memory for detailed information regarding student grades. OCR was therefore unable to review evidence regarding whether students were allowed to turn in late assignments for credit or not. OCR could only review evidence regarding assignments that received a zero, as those grades were recorded in the gradebook.

OCR examined any difference in grades between male and female students after removing any student who received a zero average for the course or for their major papers, to account for students who did not turn in their assignments or who received zero credit for a late assignment. Looking at the students who received a zero for their “major paper” grade, with the majority of the Professor’s classes only having one major paper, the percentage of male students who received a zero was more than twice the percentage of female students who received a zero, 12% versus 5%. When looking at class average grades without including any student who had a zero average for major papers, a statistically significant difference remained between the performance of male students and female students but the difference was smaller, with both groups of students averaging between a B and a B plus on their final grades.

OCR also looked at participation grades for male students and female students in the Professor’s classes to examine the Complainant’s contention that the Professor would find ways to take points away from men, including not letting them talk in class and talking over them. There was not a statistically significant difference in grading for the two groups, with both earning between a B plus and A minus in class participation.

Considering the evidence as a whole, OCR finds insufficient evidence to conclude that the Professor’s proffered legitimate reason was pretext for unlawful discrimination. The evidence available to OCR supports the Professor’s contention that male students turned in late assignments and/or did not turn in assignments at all more than female students, and this had a negative effect on their final grades. The evidence did not support the Complainant’s contention

that the Professor would not let the male students participate in class. OCR therefore finds insufficient evidence to conclude that the Professor discriminated against male students on the basis of sex in grading.

### **Allegation 3**

The Complainant alleged that the University failed to respond appropriately to his XXXX complaint to the Dean and President of the University regarding the Professor's allegedly discriminatory actions on the basis of race, sex, and disability.

In investigating allegation 3, OCR examined the Complainant's communications with University administrators in XXXX to determine what allegations he raised with them and to assess the University response.

#### *Communications*

XXXX 11 PARAGRAPHS REDACTED XXXX

In a statement the Complainant wrote in support of a grade appeal in XXXX, he stated that he was still waiting for the President and the Dean to address all of his complaints concerning the Professor.

#### *Allegations of Sex and Disability Discrimination*

After a review of the communications between the Complainant and University staff and administrators, OCR concluded that there is insufficient evidence to find that the Complainant raised an internal claim of discrimination based on disability or sex. Although the Complainant did state in an email dated XXXX, that he turned in a revised paper so that "we can focus on the Title IX issues," he later clarified that he was referring to his allegations of race discrimination. There is no other evidence in his communications with the administration to show that he articulated an allegation of discrimination based on sex or disability. OCR therefore will only evaluate the University's response to the Complainant's allegation of discrimination based on race.

#### *Allegations of Race Discrimination*

A university does not need to have a written grievance procedure to address allegations of race discrimination, but its response to race-based allegations must be reasonable. Here, the Complainant raised his concerns, both verbally and in writing, with the Professor on XXXX. That day, both the Professor and the Complainant raised the concerns with the Dean of Arts and Humanities. Over the next few weeks, the Complainant met multiple times individually with the Dean of the School of Arts and Humanities, the Academic Dean, and the Chair, and in groups with the Dean of the School of Arts and Humanities, the Academic Dean, the Dean of Students,

the Professor, and the President. Overall, the University was very willing to respond to the Complainant's initial emails and meet with him. However, OCR has two major concerns about the substance of its responses.

First, the University administrators repeatedly attempted to limit their emails and meetings with the Complainant to a discussion of his grades, without addressing his allegation of race discrimination. For example, on XXXX, the Professor told the Student that she would only discuss his paper; on XXXX, she told the Dean of the School of Arts and Humanities she was only willing to discuss the paper; that day, the Dean of the School of Arts and Humanities told the Complainant that he would talk with him about the paper, but that the Complainant would have to put discrimination concerns in writing; the Academic Dean repeated this instruction the following day; on XXXX, the Complainant tried to discuss his concerns regarding discrimination in a meeting with the Academic Dean, but the Dean tried to limit the conversation to the Complainant's grade; and the administrators planned in advance to limit the discussion at the XXXX meeting with several deans and the Professor to the Complainant's grades. In interviews with OCR, the Professor, the Dean of the School of Arts and Humanities, the Academic Dean, and the President all confirmed that they did not engage with the Complainant regarding his allegations of race discrimination, at most referring him to another person or office.

Second, the University administrators repeatedly instructed the Complainant to follow the grievance procedure outlined in the University policies without recognizing or acknowledging that the Complainant was in fact already proceeding through the steps. On XXXX, the Complainant emailed the Dean of the School of Arts and Humanities about issues faced by minority students in the Professor's class, and the Dean instructed him to submit his concerns in writing. On XXXX, the Academic Dean instructed the Complainant to follow the protocol outlined in University policy. On XXXX, the Academic Dean emailed the Complainant stating that he needed to follow the policy outlined on page 27 of the Student Handbook in order to address his "issues." The Academic Dean confirmed in an interview that he was referring to the grievance process. In their interviews with OCR, the deans confirmed that they told the Complainant to follow the grievance procedures.

The grievance procedures the University had in place for the XXXX school year provided that any student who felt unfairly treated by staff could go through the following steps:

1. The student should try resolving the issue directly with the staff person, or if precluded by the situation, with the staff person's immediate supervisor.
2. If step 1 is unsuccessful, the student may submit a written appeal with the staff person's immediate supervisor "for the purpose of mediation." The appeal must be filed within 30 days of the most recent incident precipitating the grievance. A conference will be held between the supervisor, the student, and the staff person.
3. If step 2 is unsuccessful, the student or the staff person can request a conference with the next level of administrative supervision, and a mediation conference will be held.
4. If step 3 is unsuccessful, the student or the staff person can request a meeting of an ad hoc Grievance Committee. The appropriate administrative decision head, whose decision is final, will decide whether to convene the Grievance Committee. The Grievance Committee shall hear testimony from both the student and the staff person, and its decision is final.

5. Steps 2 through 4 shall be completed within 30 days and come with the following due process rights:
  - a. To be present at all formal hearings.
  - b. To be represented by an advisor from the University community. Parties cannot be represented by a lawyer.
  - c. To cross-examine witnesses.

The Complainant attempted to proceed through the steps. On XXXX, he tried to resolve the issue with the Professor, as outlined in step 1. He then met with her and the dean of her department, the Dean of the School of Arts and Humanities, as outlined in step 2. He also met with the Professor, the Dean of the School of Arts and Humanities, and the Academic Dean, as outlined in step 3. At this point, the meetings had not successfully addressed the Complainant's concerns. As outlined above, this is partly because the administrators refused to discuss the Complainant's allegations of race discrimination. However, even if OCR assumes that the administrators fully engaged in the process up until that point, OCR is concerned that the administrators provided the Complainant with only vague directives to follow University protocol and did not provide more detail or help him proceed to step 4 of the grievance process, requesting a meeting of an ad hoc Grievance Committee. They also did not recognize that he was in essence following the grievance procedure outlined by the University.

OCR is concerned that the University did not reasonably respond to the Complainant's allegations of race discrimination. Instead of acknowledging and investigating the Complainant's verbal and written concerns, University staff repeatedly refused to engage with the Complainant directly, instead referring him to engage in a process in which the Complainant was already engaging. The University should have called a meeting of the ad hoc Grievance Committee to address the Complainant's allegations of race discrimination after he continued to have concerns after his meetings in April with the Professor and the deans.

OCR notes that in a XXXX, written statement provided to OCR, the Academic Dean stated that the University looked into the Complainant's allegation of discrimination after the Complainant included a reference to discrimination in his grade appeal. XXXX SENTENCE REDACTED XXXX. Although OCR appreciates the University's efforts to look into the allegation, its process did not provide the protections outlined in its grievance procedure, including allowing the Complainant to present testimony at a meeting of the ad hoc Grievance Committee.

Before the completion of the investigation, the University requested to voluntarily resolve this allegation under Section 302 of the CPM.

#### **Allegation 4**

The Complainant alleged that the Professor retaliated against him by XXXX in XXXX because he reported her allegedly discriminatory behavior to the Dean and President in XXXX.

#### *Legal Standard*

The Title VI regulation, at 34 C.F.R. § 100.7(e), prohibits retaliation against any individual who asserts rights or privileges under Title VI or who files a complaint, testifies, assists, or participates in a proceeding under Title VI. When analyzing a claim of retaliation, OCR will look at: 1) whether the Complainant engaged in a protected activity (e.g., filed a complaint or asserted a right under a law OCR enforces); 2) whether the University took an adverse action against the Complainant; and 3) whether there is a causal connection between the protected activity and the adverse action. If all these elements are present, this establishes an initial, or prima facie, case of retaliation. OCR then determines whether the University has a legitimate, non-retaliatory reason for its action. Finally, OCR examines whether the University's reason for its action is a pretext, or excuse, for unlawful retaliation.

### *Analysis*

#### Protected Activity

The Complainant engaged in a protected activity. An individual engages in a protected activity if he opposes an act or policy that he reasonably believes is discriminatory or unlawful under one of the laws that OCR enforces, or makes a complaint, testifies, assists, or participates in any manner in an OCR investigation, proceeding, or hearing. The Complainant lodged a complaint on XXXX, that the Professor engaged in racially discriminatory grading with the administration, including the Dean of the School of Arts and Humanities, the Academic Dean, and the President. The Professor knew of the allegations because the Complainant told her that he was raising them with the administration and she was included on several of the administrators' emails concerning them.

#### Adverse Action

On XXXX, the Professor subjected the Complainant to an adverse action. An adverse action is something that could deter a reasonable person from engaging in further protected activity. The Professor gave the Complainant XXXX for his XXXX course, which lowered his overall grade XXXX. Receiving a perceived undeservedly low grade could deter a reasonable person from engaging in protected activity.

#### Nexus

The temporal proximity of the protected activity and the adverse action establish a causal connection. The adverse action took place approximately one month after the protected activity.

#### Non-Retaliatory Reason

The University presents a non-retaliatory reason for the action taken. According to the Complainant, the Professor told him during a conversation on Monday, XXXX, that she gave him XXXX because he XXXX. XXXX 3 SENTENCES REDACTED XXXX. A failure to show respect for other students is a legitimate non-retaliatory reason for the action taken.

Pre-text

To determine whether the University's presented reason is pretext for unlawful retaliation, OCR looked at the evidence as a whole. The Professor's grading policy for the XXXX course provided for participation that:

XXXX 6 PARAGRAPHS REDACTED XXXX

OCR is concerned from the entirety of the evidence that the University's presented reason for the adverse action is pretext for unlawful retaliation. Part of the Professor's stated reasoning in marking the Complainant down was that he sent her "inappropriate" emails and accused her of using racist grading practices. The Complainant's "inappropriate" emails raised allegations of race discrimination, as did his conversation with the Professor regarding her grading practices. The Professor thus based her grade in part on the Complainant engaging in a protected activity.

Comparing the Professor's treatment of the Complainant with past students also provides evidence in support of pretext. The Complainant was the first student who received XXXX for disrespect, and the first who received XXXX as a result of a single incident rather than a pattern of XXXX behaviors. The fact that the Professor predetermined the Complainant's final XXXX grade shortly after he began alleging race discrimination also contributes to the conclusion that her action was retaliatory.

Because both retaliatory and non-retaliatory motives were present, OCR considered whether the University would have taken the same action in the absence of the retaliatory motive. Considering the Professor's assertion that she had never marked a student down for disrespect before and the decision of the Appeals Committee to grant the Complainant 50% of his points back, OCR is concerned that the Professor would not have taken the same action in the absence of the retaliatory motive.

Before the conclusion of the investigation, the University requested to voluntarily resolve this allegation under Section 302 of the CPM.

**Conclusion**

Pursuant to Section 302 of the CPM, the University signed the enclosed Resolution Agreement on XXXX, which, when fully implemented, will resolve the allegations raised in this complaint. The provisions of the Agreement are aligned with the allegations and issues raised by the Complainant and the information discussed above that was obtained during OCR's investigation, and are consistent with applicable law and regulation. OCR will monitor the University's implementation of the Agreement until the University is in compliance with the statutes and regulations at issue in the case. Failure to implement the Agreement could result in OCR reopening the complaint.

This concludes OCR's investigation of the complaint. This letter 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. 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.

Please be advised that the University must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

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, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

We appreciate the University’s cooperation in the resolution of this complaint. If you have any questions regarding this letter, please contact Nicole Dooley, the OCR attorney assigned to this complaint, at (202) 453-5675 or nicole.dooley@ed.gov.

Sincerely,

/s/

Michael Hing  
Team Leader, Team 1  
Office for Civil Rights  
District of Columbia Office

Enclosure

cc: Daniel Nunn, Attorney for the University