



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

November 21, 2016

Dr. Ben Hancock
President
Methodist University
5400 Ramsey Street
Fayetteville, NC 28311

Re: OCR Complaint No. 11-16-2003
Letter of Findings

Dear Dr. Hancock:

This letter is to advise you of the outcome of the complaint that the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) received on October 4, 2015 against Methodist University (the University). The Complainant alleged that the University discriminated against her on the basis of race (XXXX) and sex, and that the University retaliated against her. Specifically, the complaint alleges that:

1. The University failed to respond appropriately to a complaint the Complainant filed in March 2015 alleging that she was discriminated against based on race and sex.
2. A XXXX (the Professor) retaliated against her by giving her zero points for class participation in May 2015 because she reported the Professor's discriminatory behavior to the University.

OCR enforces Title IX of the Education Amendments of 1972 (Title IX) and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any program or activity receiving Federal financial assistance from the Department. OCR enforces Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin in any program or activity receiving 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 receives Federal financial assistance from the Department, OCR has jurisdiction over it pursuant to Title IX and Title VI.

In reaching a determination, OCR reviewed documents provided by the Complainant and the University; interviewed the Complainant and University faculty; and listened to multiple audio

recordings. After carefully considering all of the information obtained during the investigation, OCR found insufficient evidence to support Allegation 1.

Before OCR completed its investigation of Allegation 2, the University expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement. 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.

The Complainant was a student at the University during the 2014-2015 school year. During the spring semester, she was enrolled in XXXX, a class taught by the Professor. The Complainant graduated from the University in May 2015.

***Allegation 1:** The University failed to respond appropriately to a complaint the Complainant filed in March 2015 alleging that she was discriminated against based on race and sex.*

A University's failure to respond promptly and effectively to racial and sexual harassment that it knew or should have known about, and that is sufficiently serious that it creates a hostile environment, is a form of discrimination prohibited by Title VI and Title IX. A University may also violate Title VI and Title IX if an employee engages in racial and sexual harassment of students in the context of the employee carrying out his/her responsibility to provide benefits and services, regardless of whether the University had notice of the employee's behavior. Harassing conduct may take many forms, including verbal acts and name-calling; graphic and written statements, which may include use of cell phones or the Internet; physical conduct; or other conduct that may be physically threatening, harmful, or humiliating. Harassment creates a hostile environment when the conduct is sufficiently severe or pervasive as to interfere with or limit a student's ability to participate in or benefit from the University's programs, activities, or services. When such harassment is based on race or sex, it violates Title VI or Title IX.

To determine whether a hostile environment exists, OCR considers the totality of the circumstances from both an objective and subjective perspective and examines the context, nature, scope, frequency, duration, and location of incidents, as well as the identity, number, and relationships of the persons involved. Harassment must consist of more than casual, isolated incidents to constitute a hostile environment.

When responding to harassment, a University must take immediate and appropriate action to investigate or otherwise determine what occurred. The specific steps in an investigation will vary depending upon the nature of the allegations, the source of the complaint, the age of the student or students involved, the size and administrative structure of the school, and other factors. In all cases, however, the inquiry should be prompt, thorough, and impartial. If an investigation reveals that discriminatory harassment has occurred, a University must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring.

The Complainant informed OCR that during her XXXX class on March 16, 2015, the Professor assaulted her while attempting to take her cell phone. According to the Complainant's account, the Professor placed her hand on the Complainant's shoulder, moved towards her to take the cell

phone out of the Complainant's hand, and lost her footing, causing her to further grab the Complainant for support. The Complainant asserted to OCR that when she reported the assault to the University, it failed to respond appropriately to her complaint regarding discrimination based on race and sex.

OCR examined whether the University was placed on notice that the Complainant was alleging that the March 16, 2015 incident (the incident) was sex or race-based harassment and, if so, whether the University took immediate and appropriate action to investigate or otherwise determine whether sex or race-based harassment occurred.

The Complainant reported the incident in meetings with a University Dean (the Dean) on March 16 or 17, 2015 and Executive Vice President (the Executive Vice President) on March 17, 2015. The Complainant asserted to OCR that she described the alleged assault to both the Dean and the Executive Vice President. However, she did not state that she told either the Dean or the Executive Vice President that the assault was an act of sex or race-based harassment or discrimination. OCR reviewed the Dean's recorded testimony at the University grievance hearing held on June 18, 2015 regarding the assault and the recording of the Complainant's meeting with the Executive Vice President. The recordings were consistent with the Complainant's assertions that she described the incident as an assault and, most significantly, there was no mention of the alleged assault being an incident of sex or race-based harassment. Additionally, in an interview with OCR, the Executive Vice President confirmed that the Complainant did not allege that the incident was sex or race-based harassment.

On March 23, 2015, the Complainant met with two officers from the Methodist University Police Department. OCR reviewed the Investigation Reports, the officers' notes from the meeting, an audio recording of the meeting with one of the Officers, and testimony of the other Officer given at the University grievance hearing. There is no indication from either the documents or the recording that the Complainant stated that the alleged assault was sex or race-based harassment.

The Complainant submitted a "Letter of Grievance" to the Dean and the Executive Vice President regarding the alleged assault along with a numerated list of how she wanted the University to respond to the incident.¹ The Letter of Grievance details the incident. It does not make any reference that the assault was sex or race-based harassment.²

In response to a request by the Complainant, the University held a meeting on April 30, 2015 to discuss the incident with the President of the University, the Executive Vice President, the Complainant and her parents. According to the Complainant, she re-enacted the alleged assault.

¹ The letters are not dated. The Complainant informed OCR that she gave one letter to the Dean and Executive Vice President on March 17, 2015.

² With her letter of grievance, the Complainant included a page from the Student Conduct System that has the provisions regarding Assault and Battery, which is underneath the heading of "Sexual Discrimination, Sexual Harassment and Sexual Violence Policy and Adjudication Procedures." The page also contains a section entitled "Bias-Related Intimidation or Harassment." The Complainant indicated to OCR that she included the page with her Letter of Grievance because it stated the policy for assault and battery and, in particular, that physical contact may also constitute battery in certain circumstances. The Executive Vice President explained to OCR that he assumed the Complainant had included the page because of the assault and battery provisions.

She did not report to OCR that she made any allegation at the meeting that the assault was sex or race-based harassment. The Executive Vice President confirmed that the Complainant did not raise any allegation that the assault was harassment based on race or sex.

On May 11, 2015, the Complainant emailed a request to the Executive Vice President that the University convene an ad hoc committee (the Committee) to investigate the “incident of academic ‘bullying’ by means of authority, and assault.” The University designated the Vice President for Student Affairs and Dean of Students to chair the committee (the Chair). He communicated via email with the Complainant about the hearing. The Chair stated, and OCR confirmed, that the Complainant did not communicate to him that she was alleging the incident was sex or race-based harassment.

On June 22, 2015, the University convened the Committee regarding the incident. OCR listened to the recording of the hearing during which the Complainant testified. When asked by the committee members to state clearly her grievance, she replied, “My grievance is that I was assaulted by the Professor...” Consistent with all her other correspondence and meetings with the University, the Complainant did not assert in her testimony that the assault was harassment based on race or sex.³

Based on the aforementioned, OCR did not find any evidence to indicate that the University was on notice that the alleged assault on March 16, 2015 was harassment based on race or sex. Rather, the Executive Vice President and the Chair informed OCR that at various stages throughout the process, the Complainant never alleged that the assault was harassment based on race or sex. Additionally, the Complainant herself informed OCR that she alleged to the University that the Professor assaulted her. OCR determined that this language is not sufficient to place a reasonable person on notice of a sex or race-based harassment allegation. Lastly, OCR finds that there is insufficient evidence to conclude that the University was placed on constructive notice of a sex or race-based harassment allegation, as the Complainant’s allegations, on their face, do not place a reasonable person on notice of harassment based on race or sex. Accordingly, since OCR finds insufficient evidence to conclude that the University was on actual or constructive notice of racial or sexual harassment, OCR finds that the University was under no obligation to respond consistent with Title VI or Title IX. .

Based on the above, OCR determined there is insufficient evidence to conclude that the University failed to respond promptly and effectively to any allegation of sex or race-based harassment. Thus, OCR will take no further action with respect to Allegation 1.

Allegation 2: A XXXX (the Professor) retaliated against her by giving her zero points for class participation in May 2015 because she reported the Professor’s discriminatory behavior to the University.

³ The Committee’s decision, dated June 22, 2015, stated that it could not determine whether an assault occurred, but it recognized the Professor’s “actions that day to be unprofessional.” It recommended that: (1) a letter of reprimand be placed in the Professor’s employment file; (2) the Professor be required to attend a training session on classroom management; and (3) an experienced faculty mentor should be assigned to the Professor for a period of time to be determined by the Executive Vice President.

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 a materially adverse action against the Complainant; and 3) whether there is a causal connection between the protected activity and the materially 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.

An individual engages in a protected activity if he/she opposes an act or policy that he/she 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 alleged that because she complained to the University about the March 16 incident, the Professor gave her zero points for her class participation grade. As described above, OCR determined that the University was not put on notice that the Complainant's complaint allegation involved sex or race-based harassment. Thus, OCR found insufficient evidence to conclude that the Complainant engaged in a protected activity when she reported the alleged assault to the University.

However, the Complainant informed OCR, and the Professor acknowledged, that the Complainant was involved in a conversation with another student (Student A) and the Professor in April 2015, in which Student A and the Complainant raised concerns regarding whether the Professor graded African American students' papers more harshly than those of other students. Additionally, according to an email from the Dean, Student A, the Complainant, and two other African American students met with the Dean on April 9, 2015 to support Student A in his complaint that the Professor did not grade his paper fairly. OCR also determined that the Complainant accompanied Student A to a meeting with the Executive Vice President and the President on April 10, 2015. According to an email from the Executive Vice President, Student A discussed "a litany of problems" in the meeting. The Executive Vice President informed the Professor via email that the Complainant attended the meeting and that Student A had asserted that six of the seven African American students in the class were failing.

Based on the above, OCR determined that the Complainant engaged in protected activity in April 2015.

Since the Professor gave the Complainant a zero for her class participation grade in May 2015, OCR determined that there is evidence of a nexus between the protected activity and adverse action, which could establish a prima facie case of retaliation. Next, OCR examined whether the Professor had a legitimate, non-retaliatory reason for her actions and, if so, whether there is evidence that the reason is a pretext for retaliation.

The Professor told OCR that she gave the Complainant zero points for class participation because the Complainant disrupted the class on March 16, 2015 when she refused to put away her cell phone and left the classroom cursing and yelling; moreover, she stated that from that

point forward, the Complainant undermined the Professor's authority and was disrespectful towards her

The Professor stated that on XXXX, she saw several students, including the Complainant using their cell phones in class. She informed the class that using cell phones during class was against class policy and asked them to put their phones away. According to the Professor, all the students except the Complainant complied; instead, the Complainant told the Professor that she was almost finished. The Professor then walked over to the Complainant and touched her while reaching for the Complainant's cell phone. The Professor stated that the Complainant became very upset and disrupted the class by having an outburst and cursing as she left the classroom. After the incident, the Complainant demanded a written apology, which the Professor provided; however, the Complainant refused it as "illegitimate." Additionally, the Complainant refused to meet with the Professor alone or with the Dean to discuss the incident.

The Professor described two other incidents where she felt that the Complainant was disrespectful and undermined her authority. One incident took place during a class period in April 2016, when the Student announced to the class that the grade she had received on her paper was not fair. Because the Student indicated that she was not comfortable meeting with the Professor outside of class, the Professor gave her permission to "workshop" her paper in class by reading it aloud. The Professor went through the grading rubric for the paper and pointed out how the paper could be restructured to earn a higher grade. However, according to the Professor, the Student dismissed her comments about the paper and proceeded to explain to the class that she thought the paper was graded unfairly.⁴ The reading of the paper and subsequent discussion about the grade took up the entire class period.

The second incident occurred at the end of class on the same day. The Professor stated that Student A approached the Professor to discuss the grade he received on his paper. The Complainant was present during the exchange and agreed with Student A that the Professor had unfairly graded the papers. Later, the Professor learned from another student or professor that the Complainant audiotaped and videotaped her during this incident. The Professor stated that she believed it was disrespectful for the Complainant to tape her without her permission; moreover, this was a violation of the cell phone policy.

Based on the aforementioned, OCR determined that the Professor provided legitimate, non-retaliatory reasons for giving the Student a zero on her class participation grade. Namely, the Professor gave her a zero because she used her cell phone in violation of the class policy, refused to put it away when asked, and disrupted the class by cursing and yelling as she left the classroom. Additionally, the Complainant was disrespectful to the Professor during the class period in April when she read her paper aloud, and she taped the Professor without her permission.

OCR has some concerns about whether the Professor's reasons are pretextual. According to the class syllabus, a student's class participation grade is based on numerous factors. It states in relevant part:

⁴ The Professor asserted, and the Complainant confirmed, that the Complainant did not state to the class that the Professor had graded her paper unfairly based on race or sex during that particular incident.

Participation (10%) Participation in class is encouraged and attendance is expected. You will contribute to the learning environment for the class as much as I do. Asking good questions, listening carefully and respecting other members of the class are important contributions. I will also be looking for evidence in your classroom comments that you are making connections between the reading and class discussion. I expect every person in the class to be fully present during class, no cell phone or internet communication during class. You may place your cell phone on vibrate if you are expecting an emergency call. In the event of an emergency you are expected to leave the room to use your cell phone. Including people outside the walls of the classroom in our discussions is disrespectful to your instructor, your fellow students and yourself – because it devalues your education. (Emphasis in original.)

The Professor acknowledged that she did not reduce the Complainant’s class participation grade based on the Complainant’s participation and attendance in class. The only criteria the Professor used was the Complainant’s violation of the cell phone policy on March 16 and the other two incidents described above that she found disrespectful.⁵ Out of twelve students in the class, the Complainant and Student A, who also engaged in protected activity, were the only students who received zeros for class participation. Additionally, the Professor stated she had never given a prior student a zero for disrespect or for use of a cell phone.

Based on the information OCR has gathered at this stage of the investigation, OCR has identified preliminary concerns about whether the Professor retaliated against the Complainant by giving her a zero for class participation. Specifically, OCR has concerns that the Complainant may have engaged in meetings with University staff, including with the Professor, that constitute protected activity and that the Professor’s stated reasons for giving the Complainant a zero may be pretextual. The University has agreed to voluntarily resolve these concerns. Pursuant to Section 302 of OCR’s *Case Processing Manual*, the University signed the enclosed Resolution Agreement on November 18, 2016, which, when fully implemented, will resolve the allegation raised in this complaint. The provisions of the Agreement are aligned with this allegation, the 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 statute and regulation 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

⁵ OCR determined that the University’s Student Code of Conduct (the Code) includes disciplinary sanctions for “Disorderly Conduct,” including behavior that is “disrespectful, offensive, and/or threatening,” or that “interferes with the learning activities of other students.” OCR could not find, nor could the parties provide, any evidence to indicate that the Professor treated the Complainant’s alleged behavior under this provision of the Code.

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, or participates in an OCR proceeding. 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 Jennifer Barmon at 202-453-6751 or Jennifer.barmon@ed.gov, or Tracey Solomon, at (202) 453-5930 or Tracey.Solomon@ed.gov.

Sincerely,

/S/

David Hensel
Supervisory Attorney, Team III
Office for Civil Rights
District of Columbia Office

cc: Daniel M. Nunn, Bailey & Dixon, LLP