



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

September 29, 2016

Dr. Wayne A.I. Frederick
President
Howard University
Office of the President
2400 Sixth Street, NW
Washington, DC

RE: OCR Complaint No. 11-16-2077
Resolution Letter

Dear Dr. Frederick:

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 January 4, 2016 against Howard University (the University). The Complainant alleged that the University discriminated against her based on her sex and national origin. Specifically, the complaint alleged the following:

1. From approximately XXXX, a University professor harassed the Complainant based on her national origin by repeatedly referring to her as a "red head Indian" and harassed her based on sex by repeatedly making offensive physical contact with her.
2. In approximately XXXX, a University professor treated the Complainant differently based on sex when she gave a male student credit for the Complainant's clinical work.

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 also 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.

Before OCR completed its investigation, the University expressed a willingness to resolve Allegation 1 by taking the steps set out in the enclosed Resolution Agreement. The following contains a discussion of the relevant legal standards and information obtained by OCR during the investigation that informed the development of the Resolution Agreement.

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

OCR investigated Allegation 2. In reaching a determination on this allegation, OCR reviewed documents provided by the Complainant and the University, and interviewed the Complainant and University faculty/staff. After carefully considering all of the information obtained during the investigation, OCR found insufficient evidence to support the Complainant's allegation.

Legal Standards

A University's failure to respond promptly and effectively to sexual, racial, or national origin 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 IX and/or Title VI. A University may also violate Title IX or Title VI if an employee engages in sex, race, or national origin-based harassment of students in the context of the employee carrying out his or 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 sex, race and/or national origin, it violates Title IX and/or Title VI.

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 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/Student less favorably than similarly situated individuals of a different 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.

Factual Background

The Complainant, who is female and from XXXX, attended the XXXX school of the University during the time period relevant to the allegations, including XXXX. During her time at the University, the Complainant participated in XXXX clinics as a XXXX. Each of the professors against whom she filed allegations were clinical professors responsible for supervising XXXX work required for completion of the University's clinical XXXX curriculum.

The University's Title IX policy requires the University to complete an impartial and thorough investigation of all complaints alleging harassment and discrimination within 60 calendar days of receipt of a complaint.¹ Upon receipt of a complaint, the policy requires the University to promptly assess problems or conflicts that may exist during the investigation and implement remedial measures as appropriate. It states, "Promptly upon learning of potential harassment or discrimination, the Title IX Officer will consult with the Complainant to determine whether interim remedial measures should be taken to alleviate problems or conflicts that currently exist or that may arise while the investigation is pending." The policy then gives examples like changing class schedules or reassigning staff. The policy also obligates the University to provide notice to the accused person within 10 calendar days of receiving the complaint. The Title IX policy also obligates the Title IX coordinator to implement it and ensure adequate training of staff on the policy.

Similarly, the Title VI policy requires an investigation of national origin or race, color, or national origin discrimination complaints. It obligates the deans of the various colleges to either resolve informally or investigate Title IV complaints. The policy lists no required or desired time period for completion of the investigation, but it does require a prompt review to determine appropriate interim measures upon receiving a filed complaint.

Analysis

OCR will review information obtained concerning Allegation 1 prior to reaching a voluntary agreement to resolve this allegation. OCR will then discuss the basis for its finding of insufficient evidence concerning Allegation 2.

Allegation 1

The Complainant alleged that, while she was working to complete her requirements in a clinical course, Professor 1 repeatedly harassed her based on her national origin by calling her a "red head Indian." She also alleged that this same professor pulled her hair, poked her in the stomach, pulled a water bottle from in-between her legs, and sat on her lap. She reported that she repeatedly informed University staff about these incidents.

¹ While there were two different versions of this policy in place during the time relevant to Allegation 1, both policies contain the requirements discussed in this section.

In its response to OCR, the University did not admit or deny the Allegation 1. The University stated that, during the fall semester of XXXX, the Complainant told the Dean of the Office of Student Services that she was sexually harassed by a professor. The University stated that the Complainant reported that her hair was pulled by the professor. Further, the University stated that the Dean of the Office of Student Services referred the Complainant to the Title IX Coordinator as a result of this report. It stated that the Title IX Coordinator met with the Complainant and the Complainant reported that Professor 1 pulled her hair, poked her in the stomach and commented on her weight, and pulled a water bottle from between her legs. Despite this report to the Title IX Coordinator, the University stated that it did not open an investigation into the alleged sexual harassment of Professor 1 until after it received OCR's initial data request in February XXXX. The University stated that the Complainant told the Title IX Coordinator that she did not want an investigation but instead wanted assistance completing her coursework. When the University received notice of the Complainant's OCR complaint, it stated that it opened an investigation into the Complainant's prior report of sexual harassment.

According to the legal standard for harassment, the University must respond immediately and appropriately to sexual and race harassment that it knew or should have known about. If not, and the harassment is sufficiently serious that it creates a hostile environment; this is a form of discrimination under Title IX and Title VI.

Here, the Complainant has alleged and the University has admitted that it had notice of the race and sexual harassment in the fall semester of XXXX. The Complainant provided emails to a professor, a University dean, and the University's Title IX Coordinator in which she complained about sex and national origin harassment and requested an investigation. These emails span from XXXX. This information generally aligns with the University's statement that staff knew about the harassment during the XXXX semester.

The University provided a XXXX email to the Complainant in which the Title IX Coordinator stated that she believed that the Complainant did not want an investigation. However, the Complainant responded to this email, on the same day, stating that she would like to file a complaint because the harassment is continuing. In this email, the Complainant also asked to add an allegation of national origin discrimination because the professor frequently referred to her as "red head Indian."

The University's notice of its internal investigation provided to Professor 1 was dated, XXXX. The listed allegations are:

1. On numerous occasions from XXXX you engaged in verbal and physical acts of sexual harassment towards [the Complainant];
2. Your actions have created a hostile environment for [the Complainant];
3. On numerous occasions from XXXX you made offensive remarks based on [the Complainant's] national origin; and
4. In XXXX you subjected [the Complainant] to discriminatory treatment based on her gender.

OCR interviewed two staff members about this allegation. The University Dean acknowledged that she received a report from the Complainant that an unnamed professor pulled her hair and she referred the student to the Title IX office. Professor 1 denied that he touched the Complainant. He did admit that he called the Complainant a “red headed Indian lady” on one occasion, but denied that he intended to harass the Complainant due to her national origin by making this statement.

Due OCR’s concerns about the delayed investigation of the Complainant’s allegations, OCR and the University have agreed to the enclosed Resolution Agreement. The Resolution Agreement, among other requirements, will require the University to conclude its investigation within 60 days and submit its findings and any remedies to OCR for approval. The agreement will also obligate the University to modify its Title IX policy to make clear that it must take immediate and appropriate action to investigate all reported sexual harassment and to train staff on the revised Title IX policy and the Title VI policy.

Allegation 2

The Complainant alleged that another clinic professor, Professor 2, treated her differently based on sex when she gave a male student credit for her work. Specifically, the Complainant alleged that, in XXXX, Professor 2 allowed a male student to present a XXXX to a patient after she measured and constructed it. This enabled the male student to obtain credit for the work instead of the Complainant. The Complainant provided OCR with the male student’s first name, but stated that she did not remember his last name. The Complainant alleged that this incident occurred in approximately XXXX, but did not provide a specific date or other details. The Complainant reported to OCR that she believes she completed work for Professor 2 until approximately late XXXX.

OCR investigated this allegation by interviewing Professor 2 and reviewing documentation, including XXXX and other documentary evidence, and found insufficient evidence that this allegation occurred as alleged by the Complainant.

First, OCR found insufficient evidence that the Complainant completed any work with Professor 2 in XXXX. The University asserted that the allegation could not have occurred as alleged because the Complainant did not complete course work with Professor 2 after XXXX. University staff reported to OCR that any student who completed the type of XXXX work the Complainant alleged she completed in this allegation would have signed into an electronic system maintained by the University. OCR reviewed documentary evidence provided by the University and could not find any evidence that the Complainant completed a XXXX in XXXX. Next, OCR spoke with Professor 2 and inquired if the Complainant completed any work with Professor 2 in XXXX. Professor 2 denied that the Complainant completed any work with her during that time. However, the University also provided a copy of an XXXX that was prepared for the Complainant to record her XXXX coursework. This document listed various tasks the Complainant was to complete in order to graduate. OCR reviewed the document and noted to University staff that Professor 2 initialed the documents indicating the Complainant completed work as late as XXXX. Professor 2 confirmed that she initialed various projects during this date range, but told OCR staff that the Complainant did not complete any XXXX work from XXXX

In support of its position that the Complainant did not work with Professor 2 in XXXX, the University provided a XXXX covering the summer of XXXX through the end of the XXXX semester and class rosters for all prosthodontics courses during these semesters. Professor 2 stated that all XXXX appointments, including all XXXX², are listed in the XXXX. Professor 2 told OCR staff that she consulted this log and saw no record of XXXX work performed by the Complainant. Professor 2 also stated that she did not recall working with the Complainant on a XXXX case in her XXXX.

OCR also reviewed the log and found that the Complainant's name was not listed on the XXXX and was only listed on one class roster for the XXXX, for a "refresher course." The Student's score was listed as zero and the roster had a note indicating "no-participation." Professor 2 stated that she was the instructor for this course, and that the Complainant did not attend or participate in this course at all.

OCR also notes that the information provided by the Complainant was inconsistent. For instance, on XXXX, the Complainant emailed an administrator with whom she worked to complete her clinical requirements. In this email, the Complainant stated that her remaining requirements were "the XXXX." The Complainant referred to three XXXX areas that are separately listed in the submitted XXXX and in which Professor 2 does not provide instruction. This email contradicts the Complainant's statement that she worked with Professor 2 through the month of XXXX.

Despite the inconsistencies on both sides as to whether Professor 2 worked with the Complainant in the XXXX during the time relevant to this complaint, OCR additionally found insufficient evidence that the Complainant worked with a male student on a XXXX case during the time she alleged. OCR searched the provided records and found one male student with the name provided by the Complainant. However, the XXXX log did not list this student as working with Professor 2. The lack of documentation that the alleged comparator worked with Professor 2 contradicts the allegation that Professor 2 treated this student differently due to his sex.³ Further, the Complainant provided no further information or documents to support her allegation.

Finally, OCR reviewed the Complainant's academic record, including the courses she completed with Professor 2, and found that the Complainant completed all XXXX coursework with Professor 2 and received final credit for that work. Based on all the above, OCR finds that there is insufficient evidence that the Complainant was treated differently than a male student as alleged and finds insufficient evidence of sex discrimination regarding this allegation.

Conclusion

Pursuant to Section 302 of OCR's *Case Processing Manual*, the University signed the enclosed Resolution Agreement on August 8, 2016 which, when fully implemented, will resolve the

² University staff confirmed that this would include the type of work described by the Complainant in this allegation.

³ Due to privacy restrictions, the University was not given the first name of the alleged comparator. Also, Professor 2 was listed in the log as working with 287 other students during the time relevant to this complaint.

Allegation 1. The provisions of the Agreement are aligned with the allegation 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, 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, please contact Timothy Riveria, OCR attorney, at 202-453-6796 or Timothy.Riveria@ed.gov. You may also contact Katie Teigen, OCR attorney, at 202-453-5564 or Katie.Teigen@ed.gov.

Sincerely,

/S/

Kristi R. Harris
Supervisory Attorney, Team IV
District of Columbia Office
Office for Civil Rights

Enclosure

cc: XXXX