



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

March 2, 2016

Dr. Joseph C. Spooner
President
Ferrum College
215 Ferrum Mountain Road
Ferrum, Virginia 24088

Re: OCR Complaint No. 11-16-2302
Resolution Letter

Dear Dr. Spooner:

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 September 6, 2016, against Ferrum College (the College). The Complainant alleged that the College discriminated against her on the basis of her race XXXX and national origin XXXX. Specifically, the complaint alleges that the College removed the Complainant from a XXXX course on the basis of her national origin and race following a XXXX in which the course professor questioned the suitability of the Complainant for the course after learning of her national origin and race.

Jurisdiction

OCR is responsible for enforcing Title VI of the Civil Rights Act of 1964 (Title VI), as amended, 42 U.S.C. § 2000d *et seq.*, and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color or national origin in programs and activities receiving financial assistance from the Department. The College is a recipient of financial assistance from the Department, and is a public post-secondary education system. Therefore, OCR has jurisdictional authority to investigate this complaint under Title VI.

In its investigation, OCR reviewed documentation the Complainant and the College submitted. OCR made the following determinations.

XXXX SENTENCE REDACTED XXXX

The Complainant alleged that the Professor discriminated against her on the basis of her race and national origin, by removing her from the Course. Specifically, the Complainant informed OCR that the Professor removed her from the Course following XXXX in which the Professor questioned whether the Complainant was suited for the Course after learning of her race and national origin.¹ XXXX 3 SENTENCES REDACTED XXXX. The Complainant stated that the Professor told her that she would speak to her department chair about the matter. The

¹ Because the Complainant registered for the Course on XXXX.

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

Complainant informed OCR that no one reached out to her, but sometime later, she received an email from the Registrar's office stating that the Professor had removed or cancelled her registration for the Course.

Legal Standards

The regulation implementing Title VI, at § 100.3, states that no person shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under a recipient's program.

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 recipient treated the complainant less favorably than similarly situated individuals of a different race or national origin. If so, OCR then determines whether the recipient had a legitimate, nondiscriminatory reason for the different treatment. Finally, OCR determines whether the reason given by the recipient is a pretext, or excuse, for unlawful discrimination.

Harassment on the bases of race and national origin are forms of discrimination prohibited by Title VI and its implementing regulation. Harassing conduct can include verbal, written, graphic, physical or other conduct; or conduct that is physically threatening, harmful or humiliating, by an employee, a student, or a third party. Harassment can create a hostile environment if it is sufficiently severe, persistent or pervasive to limit a student's ability to participate in or receive benefits, services or opportunities in the institution's program. If OCR determines that harassing conduct occurred and that the recipient had actual or constructive notice of the harassment, OCR will examine additional factors to make a determination of whether a hostile environment based on race existed and whether the College took prompt and effective action to stop the harassment, prevent its recurrence and, as appropriate, remedy its effects.

In the context of harassment of students by employees of the recipient, as is at issue in this complaint, OCR's analysis depends on whether the employee conditioned an educational decision or benefit on the student's submission to unwelcome race and/or national origin-based conduct. OCR examines whether an employee has conditioned an educational decision or benefit on the student's submission to unwelcome race-based conduct, thereby treating the student differently or denying or limiting the student's ability to participate in or benefit from the recipient's program, on the basis of race and/or national origin, which violates the regulation implementing Title VI. If the employee does not explicitly or implicitly condition a decision or benefit on submission to race and/or national origin-based conduct, OCR considers whether the conduct is sufficiently serious to have created a hostile environment which denied or limited the student's ability to participate in or benefit from the recipient's program based on race and/or national origin.

Discussion

During the course of its investigation, OCR determined that the Complainant attended XXXX class session for the Course on XXXX, and that there was a verbal exchange XXXX between the Complainant and the Professor. OCR determined that the Professor subsequently emailed the Complainant's advisor (the Advisor) on XXXX stating:

XXXX PARAGRAPH REDACTED XXXX

The Complainant sent an email to the Professor on XXXX asking the Professor what she meant when she stated XXXX in the conversation earlier in the day. The Professor responded to the Complainant via email on the same day at XXXX, telling the Complainant that she did not recall stating anything regarding XXXX but stating:

XXXX PARAGRAPH REDACTED XXXX

Thereafter, OCR determined that between approximately XXXX and XXXX, the Complainant complained orally and via email to XXXX. Specifically, the Complainant explained that she had a verbal exchange with the Professor, XXXX. XXXX SENTENCE REDACTED XXXX. The Dean met with the Complainant and the Advisor on or about XXXX², and the Dean informed the Complainant that the Course was XXXX, and that it would not help her achieve her goals because it did not cover XXXX.

XXX 3 PARAGRAPHS REDACTED XXXX

During the course of OCR's investigation, OCR had concerns that the Professor may have subjected the Complainant to different treatment and/or harassment on the bases of her race and national origin; and, that the College may have failed to respond to the Complainant's complaints regarding the Professor, which indicated that different treatment and/or harassment on the bases of her race and national origin may have occurred. The College's counsel communicated the College's willingness to resolve this complaint prior to the conclusion of OCR's investigation, pursuant to Section 302 of the Case Processing Manual (CPM).

Conclusion

On February 28, 2017, the College agreed to implement the enclosed Resolution Agreement (Agreement), which commits the College to take specific steps to address the identified areas of concern. The Agreement entered into by the College is designed to resolve the issues of concern. Under Section 302 of OCR's *Case Processing Manual*, a complaint will be considered resolved and the College deemed compliant if the College enters into an agreement that, fully performed, will remedy the identified areas of concern. OCR will monitor closely the College's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively. OCR may conduct additional visits and may request additional information as necessary to determine whether the College has fulfilled the terms of the Agreement and is in compliance with Title VI with regard to the issues raised. As stated in the Agreement entered into by the College on February 28, 2017, if the College fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings, including to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10) or judicial proceedings, including to enforce the Agreement, OCR shall give the School written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

² Neither the Complainant nor the Dean could provide OCR with the exact date of the meeting. However, the Dean memorialized the meeting after the fact in a memorandum dated XXXX.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the College'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 College 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.

If you have any questions regarding this letter, please contact Jeanette Tejada Bustos, the OCR attorney assigned to this complaint, at 202-453-6084 or jeanette.tejadabustos@ed.gov.

Sincerely,

/s/

Letisha Morgan
Supervisory Team Leader, Team II
District of Columbia Office
Office for Civil Rights

Encl.

