



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 13, 2017

*Via Email*

Johnson O. Akinleye  
Interim Chancellor  
North Carolina Central University  
1801 Fayetteville Street  
Durham, NC 27707

Re: OCR Complaint No. 11-17-2036  
Letter of Findings

Dear Dr. Akinleye:

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 North Carolina Central University (the University). The Complainant alleged that the University discriminated against her on the basis of disability XXXX.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability 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. Because the University receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

In reaching a determination, OCR reviewed documents provided by the Complainant and the University, and interviewed the Complainant, University faculty and staff, and other University students. After carefully considering all of the information obtained during the investigation, OCR found insufficient evidence to support the Complainant's allegation. However, OCR identified a possible compliance concern regarding the University's investigation of the informal, internal, complaint the Complainant made, which the University agreed to resolve through the enclosed resolution agreement.

OCR's findings and conclusions are discussed below.

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

## **Background**

The Complainant, a student with a disability, was enrolled in XXX at the University during the XXXX semester. She was approved by the University to receive academic adjustments, including delayed arrival of fifteen minutes, extended time on assignments, and extended time on exams. The Complainant is XXXX. The approved academic adjustments did not address the location or time that the Complainant XXXX. The Complainant XXXX at the end of the XXXX semester.

## **Legal Standards**

A university's failure to respond promptly and effectively to disability-based 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 Section 504 and Title II. A university may also violate Section 504 and Title II if an employee engages in disability-based 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 disability, it violates Section 504 and Title II.

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.

## **Analysis**

XXXX PARAGRAPH REDACTED XXXX

OCR first determined whether there is evidence of a hostile environment. OCR interviewed the Professor, who denied that the XXXX incident occurred as alleged, and did not recall the XXXX

at the Complainant. She did describe, however, speaking with the Complainant, privately on one occasion early in the semester, requesting that the Complainant XXXX. The Professor reported having no additional conversations with the Complainant about this, despite the Complainant XXXX. In addition, the Professor denied addressing the Complainant's XXXX. Finally, the Professor reported that the Complainant's XXXX. The Professor indicated that, at times, the Complainant would XXXX. XXXX SENTENCE REDACTED XXXX

XXXX PARAGRAPH REDACTED XXXX

XXXX 8 SENTENCES REDACTED XXXX Based on the above, OCR finds insufficient evidence of a hostile environment, and therefore insufficient evidence that the University discriminated against the Complainant on the basis of disability.

Nevertheless, as the Complainant told OCR that both she and her classmate reported the alleged XXXX incident to the Student Disability Services (SDS) Director (the Director),<sup>1</sup> OCR investigated whether the University took immediate and appropriate action to investigate or otherwise determine what occurred. As an initial matter, University staff indicated that it did not have written procedures for investigating informal complaints of discrimination. XXXX, the Complainant emailed the Director

XXXX PARAGRAPH REDACTED XXXX

The Director indicated that she considered this an informal complaint of discrimination. As a result of receiving the Complainant's email, the next day the Director reached out to the Interim Vice Chancellor and the Associate Vice Chancellor for Innovative, Engaged and Global Education, XXXX<sup>2</sup> The Director also responded to the Complainant, reporting that she shared the concerns with senior administrators, and that she would follow up XXXX. The Complainant emailed back XXXX. The Director indicated that she did not recall XXXX about the incident. When OCR inquired whether the Director followed up on the Complainant's email, XXXX, the Director indicated that she did not. In a conversation with the Director, on XXXX, the Professor denied the allegation. OCR reviewed the Director's contemporaneous notes from the call which corroborated that the Professor denied the allegation.<sup>3</sup> The Complainant indicated that she was not notified of the outcome of the investigation or how it was going to be handled. OCR notes that the Director did notify the Complainant that she was going to share her concerns with her leadership and the Office of the Provost. The Director indicated in her interview that after she spoke with the Professor, she notified the Complainant that the Professor denied the allegation and she did not recall the Complainant refuting the Professor's account.

However, based on the information received from the University and the interviews, OCR identified possible compliance concerns with respect to the thoroughness of the Director's investigation because she did not follow-up with the Complainant in order to identify or speak to the classmate witness to the allegation. She also did not notify her of her right to file a formal

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<sup>1</sup> The Director served in that role until XXXX.

<sup>2</sup> XXXX SENTENCE REDACTED XXXX.

<sup>3</sup> XXXX SENTENCE REDACTED XXXX.

complaint if she was not satisfied with the resolution. However, before OCR completed its investigation, the University expressed a willingness to resolve this concern by taking the steps set out in the enclosed Resolution Agreement. In order to complete the investigation, OCR would need to interview both the Interim Vice Chancellor, the Associate Vice Chancellor, as well as the Chair of the XXXX Department to assess what investigations they undertook. As stated above, before OCR completed the investigation, the University expressed willingness to resolve this concern.

Because the Complainant had also XXXX, OCR examined whether the Complainant was treated differently on the basis of her disability.

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 University less favorably than similarly situated individuals without disabilities. 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.

As a initial matter, OCR determined that the Complainant did not establish a prima facie case of different treatment based on disability. The Professor and all three students interviewed indicated that the Professor had an established XXXX. They also indicated that when the Complainant attended class, it was her practice to XXXX. The Professor indicated that even though it was distracting, she allowed the Complainant to XXXX. All three students confirmed that every class that the Complainant attended, XXXX. Further, one of the classmates interviewed by OCR also confirmed that she was asked by the professor not to XXXX. Therefore, OCR determined that the Complainant did not establish an initial, or prima facie, case of different treatment.

### **Conclusion**

Pursuant to Section 302 of OCR's *Case Processing Manual*, the University signed the enclosed Resolution Agreement on April 10, 2017, which, when fully implemented, will resolve the identified compliance concern identified. The provisions of the Agreement are aligned with the compliance concern 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 Shana Heller or Jan Gray the OCR attorneys assigned to this complaint. You may reach Ms. Heller at 202-453-6599 or [Shana.Heller@ed.gov](mailto:Shana.Heller@ed.gov) or Ms. Gray at 202-453-6028 or [Jan.Gray@ed.gov](mailto:Jan.Gray@ed.gov).

Sincerely,

/s/

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

Enclosure

cc: Benita Jones, Assistant University Legal Counsel