



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

July 21, 2017

Dr. Makola Abdullah
President
Virginia State University
1 Hayden Drive
Petersburg, VA 23806

RE: OCR Complaint No. 11-17-2134
Resolution Letter

Dear Dr. Abdullah:

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 XXXX against Virginia State University (the University). The Complainant filed the complaint on behalf of a former student (the Student). The Complainant alleged that the University treated the Student differently from female students on the basis of his sex (male), when the Office of Judicial Affairs initiated administrative charges against the Student for XXXX in violation of the Student Code of Conduct (the Code), but did not similarly proffer administrative charges against two female students (Student A and Student B) for XXXX under the Code, as reported in the XXXX incident report to the Department of Police and Public Safety (DPPS).

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. Because the University receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Title IX.

Before OCR completed its investigation, 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.

Factual Background

The Student enrolled as a XXXX at the University for the XXXX academic year. During his tenure at the University, he was involved in a relationship with Student A for approximately XXXX years.

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 reviewed DPPS documentation, which indicated that the Student and Student A were involved in a XXXX which transpired on XXXX. According to the DPPS Crime Incident Report (the Incident Report), Student A filed a complaint with DPPS against the Student.¹ In her complaint, Student A reported that the Student “XXXX.”² Student A further stated that another student, Student B, witnessed the incident.³

Following Student A’s report, DPPS interviewed the Student. The Student stated that prior to the Incident, he noticed that XXXX. He reported to DPPS that his roommate had left Student A and Student B unaccompanied XXXX. Because he believed that Student A XXXX, the Student went to Student A’s dormitory to XXXX. Upon arriving at Student A’s dormitory, the Student confronted Student A and acknowledged to DPPS “XXXX.”⁴

The Incident Report stated that Student B corroborated the accounts of Student A and the Student. Specifically, OCR reviewed Student B’s written statement provided to DPPS, stating that XXXX 2 SENTENCES REDACTED XXXX

The Incident Report further indicated that DPPS referred the Student, Student A and Student B to the Office of Judicial Affairs (OJA) for appropriate action. OCR reviewed the OJA Referral Form, which referred the Student for XXXX as well as Student A and Student B for XXXX. In addition, the Student received a Pre-Hearing Notice dated XXXX, notifying him of OJA’s initiation of charges for violations of the Code and to advise students of a forthcoming hearing.

On XXXX, OJA held a hearing to adjudicate the Student’s charge for XXXX.⁵ OJA found the Student responsible for violating Sections XXXX and XXXX of the Code. OJA imposed several sanctions to include XXXX.

On XXXX, OJA separately emailed both Student A and Student B advising them to contact OJA concerning their alleged violation of Section XXXX of the Code (XXXX).⁶

With respect to Student B, OJA issued a Pre-Hearing Notice to Student B on XXXX, notifying Student B that OJA initiated charges against her for XXXX and advised her of a pending hearing. OJA did not issue a contemporaneous Pre-Hearing Notice to Student A at this time. Although OJA scheduled Student B’s hearing to occur on XXXX, OCR reviewed documentation citing that the hearing was postponed, but the reason for the postponement was unclear. On XXXX, and after the University received notice of OCR’s investigation of the instant complaint on XXXX, OJA held a hearing for Student B’s alleged violation of the Code. In a letter dated

¹ XXXX 3 SENTENCES REDACTED XXXX.

² Student A, in her written statement, declined to XXXX with DPPS against the Student for XXXX. Nevertheless, DPPS completed a University-issued Title IX Report with details of the Incident. Available documentation indicates that the University did not pursue charges against the Student under its Discrimination, Harassment, Sexual Misconduct, and Retaliation Policy. Rather, the University’s Office of Judicial Affairs (OJA) proceeded with the Student’s XXXX as a violation of the Code.

³ The Incident Report indicated that XXXX.

⁴ The Student also reported to DPPS that Student XXXX. XXXX SENTENCE REDACTED XXXX.

⁵ Specifically, OJA charged the Student with violating the following sections of the Code: XXXX SENTENCE REDACTED XXXX.

⁶ XXXX SENTENCE REDACTED XXXX.

XXXX, OJA informed Student B that the Judicial Panel found that her conduct did not violate the Code.

With respect to Student A, in an email dated XXXX, OJA reiterated its XXXX request for Student A to contact the office to formally initiate charges against her for XXXX. OCR reviewed available documentation which indicated that Student A's Pre-Hearing Notice and hearing occurred at the same time on XXXX. Following the hearing, the Judicial Panel found Student A responsible for violating the XXXX and Section XXXX of the Code, and OJA imposed a sanction of XXXX.

Legal Standards

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 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.

Analysis

The Complainant alleged that the University treated the Student differently from female students on the basis of his sex, when OJA initiated administrative charges against the Student for physical XXXX in violation of the Code, but did not similarly proffer administrative charges against Student A and Student B for XXXX under the Code, as reported in the XXXX incident report to DPPS.

OCR first considered whether the Complainant established an initial, or prima facie, case of discrimination by demonstrating that the Student was treated differently than similarly situated students of a different sex.

OCR reviewed documentary evidence generated in response to the Incident. Specifically, OCR reviewed the Incident Report and OJA Referral Form, as well as the Pre-Hearing Notices and Disciplinary Disposition Forms for the Student, Student A and Student B. The evidence established that DPPS used the same OJA Referral Form to refer all three students to OJA for alleged violations of the Code on XXXX. OJA subsequently levied charges and convened hearing panels to adjudicate the alleged violations against each respective student.

In reviewing the timeframe in which OJA levied charges and held a hearing against each respective student, documentation indicates that the Student received a Pre-Hearing Notice advising him of the levied charge of XXXX, the same day the Incident occurred. Thereafter, the Student appeared before a hearing panel on XXXX. Conversely, OJA did not initiate contact

with Student A or Student B until XXXX, and did not issue Pre-Hearing Notices advising Student A or Student B until XXXX and XXXX, respectively. Therefore, OJA did not adjudicate the levied charges against Student A and Student B until the XXXX semester. While OJA levied charges against all three students stemming from the Incident, it immediately levied charges against the Student but delayed initiating and adjudicating charges against Student A and Student B. The discrepancy in timing between the initiation and adjudication of the Student's charges compared to Student A and Student B's charges is demonstrative that OJA treated the Student, a male student, less favorably than Student A and Student B, who are female students at the University. Accordingly, OCR found sufficient evidence to establish an initial, or prima facie, case of discrimination.

OCR next considered whether the University had a legitimate, nondiscriminatory reason for the different treatment. As a threshold matter, OCR notes that the University, in its narrative response to the allegation, failed to account for the difference in time between initiating charges against the Student compared to Student A and Student B. Instead, the University only specified differences in time that occurred during the adjudication process. Specifically, the University stated that timing disparities in adjudicating charges against Student A and Student B were attributed to their alleged unresponsiveness to their respective judicial hearings. OCR reviewed email correspondence between OJA and Student A and Student B and found limited evidence to corroborate the University's position.

With respect to Student A, email documentation indicated that OJA requested Student A to respond to its notice of charges on two occasions: XXXX and XXXX.⁷ OCR determined that the multiple emails sent to Student A supported the University's contention that she was uncooperative in addressing the charges levied against her. However, with respect to Student B, available documentation cited that she contacted OJA upon her return for the XXXX semester as directed in a XXXX email. Although her hearing was initially scheduled for XXXX, email documentation noted that the hearing was canceled for an unspecified reason. OCR reviewed further email correspondence citing that OJA did not resume contact with Student B until after the University received notice of the instant complaint in XXXX. OCR did not find any documentary evidence to corroborate that the delay in adjudicating Student B's charges was attributed to her lack of cooperation. Although OCR has not completed its investigation, OCR is concerned that the University's articulated justification for different treatment is not fully corroborated by available evidence and does not account for the outlined timing disparities in both the initiation and adjudication of charges against all three students.

Moreover, OCR is concerned that the University's stated reason for different treatment is inconsistent with provisions of the Code. Specifically, OCR reviewed the Code which states in relevant part that "[f]ailure of the accused student to respond to the initiation of charges or schedule a preliminary meeting shall in no way prevent the university from scheduling and conducting a hearing in the absence of the accused student."⁸ Because OJA's action of delaying the adjudication of charges levied against Student A and Student B due to alleged noncooperation is expressly precluded under the Code, OCR is concerned that the University's

⁷ OCR notes that the Office of Student Conduct's second attempt to contact Student A to proceed with judicial proceedings occurred after the University received notice of the instant complaint.

⁸ See <http://www.vsu.edu/student-life/support-and-resources/student-code-of-conduct.php>.

stated reasoning could be considered pretextual. In order to establish the foregoing, OCR would be required to conduct interviews with University personnel to further determine whether the University had a legitimate, nondiscriminatory reason for different treatment absent pretext. However, during the course of the investigation, and considering OCR's concerns, the University expressed interest in resolving this matter pursuant to Section 302 of OCR's *Case Processing Manual*.

Conclusion

On July 21, 2017, the University agreed to implement the enclosed Resolution Agreement (Agreement), which commits the University to take specific steps to address the identified areas of concern, as described with respect to the complaint. The Agreement entered into by the University 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 University deemed compliant if the University enters into an agreement that, fully performed, will remedy the identified areas of concern. OCR will monitor closely the University'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 University has fulfilled the terms of the Agreement and is in compliance with Title IX with regard to the issue raised. As stated in the Agreement entered into by the University on July 21, 2017, if the University 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 University written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

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, please contact Erika Westry, the OCR attorney assigned to this complaint, at 202-453-7025 or Erika.Westry@ed.gov.

Sincerely,

/s/

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

Enclosure