



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

January 23, 2019

Dr. Gregory T. DeCinque
Interim President
Tidewater Community College
121 College Pl.
Norfolk, VA 23510

RE: OCR Complaint No. 11-18-2285
Resolution Letter

Dear Dr. DeCinque:

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 July 9, 2018 against Tidewater Community College (the College). The Complainant filed the complaint on behalf of a student (the Student) in the XXXX. The Complainant alleges that the College discriminated against the Student on the basis of race (African American) when the Student's instructor treated her less favorably than white classmates between XXXX 2018 when:

1. On or around XXXX, 2018, requiring the Student to complete XXXX that was not part of the assigned XXXX;
2. On or around XXXX, 2018, allowing a white classmate to redo XXXX that factored into the course's final grade but refusing to provide this same opportunity to the Student;
3. On XXXX, 2018, deviating from the College's grading criteria and issuing the Student a failing grade in the XXXX program;
4. Between XXXX, 2018 and XXXX, 2018, providing the Student with less time than her peers to complete course simulations;
5. On or around XXXX, 2018, informing all students except for the Student that the courses' final XXXX would begin at XXXX instead of the previously scheduled XXXX start time, and then berating the Student and refusing to allow her to enter the classroom when the Student arrived.

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. Because the College receives Federal financial assistance from the Department, OCR has jurisdiction over it pursuant to Title VI.

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

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During the investigation to date, OCR reviewed information provided by the Complainant and interviewed the Complainant and the Student. OCR also reviewed the College's complete response to OCR's data request. Before OCR completed its investigation, the College expressed a willingness to resolve the complaint pursuant to Section 302 of OCR's *Case Processing Manual*, which states that allegations may be resolved prior to OCR making a determination if the College expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified issues that can be addressed through a resolution agreement. The following is a summary of the evidence obtained by OCR during the investigation to date.

Background

XXXX PARAGRAPH REDACTED XXXX

The Student reported that issues with the Instructor first began in XXXX 2017 during the Student's attempts to access the College's XXXX. During XXXX, the Student alleges an increasing pattern of different and unfavorable actions taken by the Instructor against the Student as XXXX.

Legal Standard

The Title VI regulation, at 34 C.F.R. § 100.3(a), provides that no person shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under the College's programs or activities on the basis of race, color, or national origin. 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 College treated the Student less favorably than similarly situated individuals of a different race. If so, OCR then determines whether the College had a legitimate, nondiscriminatory reason for the different treatment. Finally, OCR determines whether the reason given by the College is a pretext, or excuse, for unlawful discrimination.

Analysis

The Complainant alleges that the College discriminated against the Student on the basis of race (African American) when the Student's instructor treated her less favorably than white classmates in several ways during XXXX.

1. *On or around XXXX, 2018, the Instructor allegedly required the Student to complete XXXX that was not part of the assigned XXXX.*

At the start of this semester, the Student was completing remediation due to XXXX. OCR reviewed the Student's Remediation/Probation Plan, instituted on XXXX, 2018. This plan explicitly states the remediation objective: XXXX.

The Student completed XXXX as part of the remediation on XXXX, 2018 and XXXX, 2018. After the Student completed XXXX, the Instructor assigned her an additional assessment related to XXXX, scheduled for XXXX, 2018. The Student's Remediation/Probation Plan, as provided

to OCR, indicates that the Instructor determined the Student had not achieved the expected objective as of XXXX, 2018.

The Instructor appears to have taken a remediation plan focused specifically on XXXX and expanded it to XXXX. The College claims that the Instructor required the Student to complete XXXX because the Student had not successfully completed the previous scheduled XXXX. OCR has concerns because the additional XXXX required tasks outside the scope of XXXX and the specific objective of the Student's Remediation/Probation Plan. Prior to OCR completing its investigation into this issue, the College agreed to resolve this allegation.

2. *On or around XXXX, 2018, the Instructor allegedly allowed a white classmate to redo XXXX that factored into the course's final grade but refused to provide this same opportunity to the Student.*

The Instructor determined that the Student didn't complete XXXX on XXXX, 2018 to the appropriate standard, and informed the Student that she would have an opportunity to redo XXXX which factored in the final course grade, on XXXX, 2018. The Instructor then reneged on this offer. The Student believes that the Instructor allowed a white classmate to redo XXXX while refusing to provide this same opportunity to the Student. The College acknowledges that the Instructor did not allow the Student to redo XXXX but also denies that any other student was allowed to redo XXXX as the Student purports. Prior to OCR completing its investigation into this issue, the College agreed to resolve this allegation.

3. *On XXXX, 2018, the Instructor allegedly deviated from the College's grading criteria and issued the Student a failing grade in XXXX.*

On XXXX, 2018, the students completed XXXX. Although the Student XXXX, the Instructor gave the Student a grade of "zero" and then weighted this grade more heavily than XXXX. As a result, the Student was given a failing grade for the course. The Student successfully appealed this grade to the College, XXXX.

The College acknowledges that the Instructor improperly applied the course grading policies by XXXX. The College expresses that the Instructor made a mistake and followed the grade policy as she understood it. Prior to OCR completing its investigation into this issue, the College agreed to resolve this allegation.

4. *Between XXXX, 2018 and XXXX, 2018, the Instructor allegedly provided the Student with less time than her peers to complete XXXX.*

According to the Student, the Instructor would often cut off the allotted time the Student was provided for XXXX; students were allotted XXXX but the Student would receive only XXXX. The Complainant provided two specific examples in the complaint: on XXXX and XXXX. In each of these instances, the Student was paired with a classmate. The Complainant maintains that the Student did not receive the full allotted time for XXXX, and that in particular the Student was penalized for the mistakes of her partner without XXXX. The College denies that the Student received less time than her white classmates to complete XXXX. Neither party provided OCR with written supporting documentation regarding how much of XXXX the Student, or any

of her classmates, actually received to XXXX. Prior to OCR completing its investigation into this issue, the College agreed to resolve this allegation.

5. *On or around XXXX, 2018, the Instructor allegedly informed all students except for the Student that the courses' final XXXX would begin at XXXX instead of the previously scheduled XXXX start time, and then berated the Student and refused to allow her to enter the classroom when the Student arrived.*

The final instance of alleged different treatment took place on XXXX, 2018. The Student was assigned to complete XXXX at noon. However, the Instructor changed the scheduled time for XXXX and emailed the other students with the revised schedule, failing to include the Student on this email or otherwise communicate the change to the Student. One of the Student's classmates text the Student when the Student was not present at the XXXX start time. At that point, the Student, who was already on campus, proceeded to the classroom, arriving by XXXX. The Student reports to OCR that the Instructor then berated her in front of another instructor and the Student's classmates, informing the Student that she would not be allowed in since she arrived late and threatening to "write up" the Student. The Student immediately complained to the Dean and was allowed to complete XXXX later that same day. The Student received a passing grade but felt her performance was undermined by the upsetting events earlier in the day.

The College admits that the Student was not included in the email that informed the class about the time change for XXXX, but maintains that it was another unintentional mistake by the Instructor. The Instructor further admits to denying the Student entry XXXX that morning but denies berating the Student in doing so. OCR would need to further investigate to determine whether the Instructor's position that she excluded the Student by mistake is merely pretext for unfavorable treatment of the Student on the basis of race. OCR notes that the College rectified the situation insofar as the Student successfully completed XXXX.

During the investigation, the College expressed to OCR that the Instructor was frustrated with the Student because of the Student's perceived attitude and procrastination but that this frustration is not synonymous with racial discrimination. The College also informed OCR that this is the first complaint against the Instructor, who XXXX. Finally, the College represents that the Instructor's grade distribution is in line with the grade distributions of other XXXX faculty and that the Instructor honestly believed that the Student should not have passed XXXX.

OCR reviewed the Student's XXXX as provided in the College's data response, which included XXXX completed by instructors other than the Instructor who XXXX. These XXXX ranged from XXXX. However, the only XXXX that indicates the Student XXXX is the one completed by the Instructor XXXX.

OCR also reviewed the supporting data provided by the College of the Program's grade distributions for XXXX, which revealed that Black students were about three times more likely than white students to receive grades below the standard for passing the Program. The data aggregated by race for the Instructor in particular showed a somewhat greater differential than the instructor average. This background statistical data does not substantiate the Student's individual claims of different treatment on the basis of race in the Program. However, it does

Commented [RM1]: Response to OCR Complaint, DM2555356, Attachment E, at pg. 55 of data response. NOTE: this data covers only 2016-17 and 2017-18 years but even based on that there are some concerning numbers that probably don't support the College's position as much as the College is purporting here. For example, in data aggregated by race for this particular instructor, 95.5% of white students received a passing grade of A, B, or C whereas only 88.6% of Black students and 83.3% of "Other" students did. Put another way, the percent of Black students receiving Ds (below standard for passing program average) and F grades appears to be 3 times that of the percent of white students. The percent of "other" students receiving Ds or worse is about 4 times that of white students...when compared to the data from all College nursing program instructors teaching specific courses that the College is choosing to report on to us (not sure from this how many instructors this even includes or why some courses seem to be excluded), the differential between white and black failure percentages is closer to 2x rather than 3x and there is only a very marginal different in the percentages between white students and "other" students (12.1% to 14.9%)

provide circumstantial evidence that may be indicative of implicit bias toward Black students within the Program, and more specifically, by the Instructor.

Based on the information presented above and considered at this stage, OCR has concerns that some of the Instructor's actions towards the Student may have amounted to unlawful discrimination under Title VI. Prior to OCR completing its investigation into this issue, the College agreed to resolve this allegation.

On January 8, 2019, the College signed the enclosed Resolution Agreement which, when fully implemented, will address the allegations investigated. The provisions of the Agreement are aligned with the allegations and the information obtained during OCR's investigation, and are consistent with applicable law and regulation. OCR notes that the College has recently implemented diversity and inclusion training for Program faculty and staff at XXXX Campus. See OCR Case No. 11-18-2196. OCR reviewed the PowerPoint presentation from this training and found it to be robust. The Agreement thus requires the College to provide this anti-harassment and non-discrimination training to all Program faculty and staff in XXXX at the XXXX campus, including the Instructor. Please review the enclosed Agreement for further details. OCR will monitor the College's implementation of the Agreement until the College has fulfilled the terms of the Agreement.

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, 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 College's cooperation in the resolution of this complaint. If you have any questions, please contact Megan Rok, the OCR attorney assigned to this complaint, at 202-453-6978 or megan.rok@ed.gov.

Sincerely,

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Michael Hing
Team Leader, Team I
District of Columbia Office
Office for Civil Rights

Enclosure

cc: Greer D. Saunders, Esq., Counsel for College