



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 9, 2020

Via email: [johnson.akinleye@ncu.edu](mailto:johnson.akinleye@ncu.edu)

Johnson O. Akinleye, Ph.D.  
Chancellor  
North Carolina Central University  
1801 Fayetteville Street  
Durham, North Carolina 27707

Re: OCR Complaint No. 11-20-2248  
Resolution Letter

Dear Dr. Akinleye:

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 March 16, 2020, against North Carolina Central University (the University), specifically the School of Graduate Studies (the Graduate School). The Complainant alleged that the Graduate School retaliated against her when it dismissed her from the Masters in Social Work Program on March 25, 2020, after she raised concerns under Title IX that she was being sexually harassed by a student in the Men's Achievement Center.

OCR enforces Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 et seq., 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. Title IX also prohibits retaliation against any individual who asserts rights or privileges under these laws or who files a complaint, testifies, assists, or participates in a proceeding under these laws. Because the University receives Federal financial assistance from the Department, OCR has jurisdiction over it pursuant to Title IX.

During the investigation thus far, OCR reviewed documents provided by the Complainant and the University; interviewed the Complainant; and listened to an audio recording of a meeting between the Complainant and a University staff member.

Before OCR completed its investigation, the University expressed a willingness to resolve the complaint on August 12, 2020. OCR determined that it is appropriate to resolve the complaint pursuant to Section 302 of the *Case Processing Manual* because the investigation has identified issues that can be addressed through a resolution agreement. The following is a summary of the legal standards and evidence obtained by OCR during the investigation to date.

## **Facts**

The Complainant enrolled in the University's Department of Social Work Master's in Social Work (MSW) program in XXXX. In the XXXX, the Complainant began her field placement at the University's XXXX, under the leadership of the Director of XXXX, and supervised by her field placement supervisor (Placement Supervisor), a professor in the XXXX program. On October 1, 2019, the XXXX offered the Complainant a Graduate Assistant Position that included a monthly stipend and expanded the Complainant's responsibilities at the XXXX to include: XXXX.

On XXXX, the Complainant reported a concern to her Placement Supervisor regarding the behavior of one male student at the XXXX who made her uncomfortable. She told her Placement Supervisor that she had shared her concerns with the XXXX in December 2019. In response, the Placement Supervisor contacted the XXXX to request a meeting. On January 30, the Complainant participated in the meeting with her Placement Supervisor and XXXX Director to discuss her concern of possible sexual harassment by one male student in XXXX.

Two business days later, on February 3, 2020, XXXX sent the Complainant an emailed stating that it was brought to his attention that the Complainant's Placement Supervisor had been unaware of her paid internship at XXXX and that he was terminating her paid position because of a conflict of interest. In a separate email the same day, the XXXX explained to the Complainant that, "as a paid intern, your duties require you to work with all students, which we now know cannot safely happen, as a result of the incident. My goal is to make sure that you are comfortable in the space at all times. I would like to thank you for all your hard work during the year, let me know if you [have] any more issues or concerns."

After receiving the XXXX's email, the Complainant sent an email to her Placement Supervisor requesting a change in field placement, out of concern that the XXXX would terminate her. She further stated her belief that the dismissal "is definitely retaliation" and explained that she no longer felt comfortable working at XXXX.

On XXXX, the Complainant met with the Chair of the Social Work Department and the Director of Field Education to express her concerns about her placement at the MAC. While the University did not provide any contemporaneous records from that meeting, the Complainant sent a follow-up email clarifying that she no longer wished to return to the MAC and expressing her opinion that "dishonesty is a trend" in the department. On February 14, 2020, the Complainant filed a Student Concern Form with the University, in which she alleged that the XXXX retaliated against her after the XXXX meeting with her Placement Supervisor and the MAC Director about a possible Title IX concern.

On XXXX, the Director of Field Education notified the Complainant by letter that she was referring the Complainant to the Student Review Committee for possible disciplinary action because of a possible violation of the XXXX Code of Ethics. Specifically, the letter explained that the XXXX had received information that raised concerns about the Complainant's "professionalism and ability to establish and adhere to boundaries with clients." The letter also explained that the XXXX received this information during a telephone meeting with the XXXX

on XXXX. The letter further elaborated that XXXX received information that the Complainant had been in a relationship with a client during the XXXX.

The Complainant submitted a rebuttal of all charges to the Student Review Committee, including a statement that the alleged relationship ended before the XXXX semester began and that she told the XXXX that she could not work with the male student in a professional capacity. The XXXX also had reported to the XXXX leadership that he had concerns about the Complainant's performance, which the Complainant asserted had never come up until after she raised a concern under Title IX. The University provided no contemporaneous documentation reflecting performance concerns.

On XXXX, following a hearing, the Student Review Committee, comprised of XXXX, the Interim Chair of the Committee, one faculty member, and two students, recommended to the XXXX the Complainant's dismissal from the program. On XXXX, the XXXX adopted the Student Review Committee's recommendation, dismissing the Complainant from the XXXX Program. On March 25, the Assistant Provost and Dean of XXXX adopted the recommendation of the XXXX and dismissed the Complainant from the program. The Complainant appealed the decision to the Interim Provost, who upheld the dismissal decision on XXXX.

On XXXX, the Complainant filed a formal Title IX complaint with the University alleging that the XXXX retaliated against her for reporting possible sexual harassment when he dismissed her from her paid internship. The University investigated both the Complainant's allegation of sexual harassment and her allegation of retaliation by the XXXX. On August 17, 2020, the University's Title IX Coordinator issued notice of outcome letters to the Complainant, the XXXX, and the male student involved. While the University found insufficient evidence of sexual harassment, the University found that the XXXX had retaliated against the Complainant for raising a Title IX concern when he dismissed her from her paid internship on XXXX. The notice of outcome letter to the XXXX further noted that the XXXX compromised the process leading to the Complainant's dismissal from the XXXX, stating as follows:

[I]t appears that all of the information you provided to the XXXX regarding [the Complainant's] sub-par work performance and negative behavior was presented after you were confronted by the Complainant and [the Placement Supervisor], seemingly in a retaliatory manner.

Based on these findings, the Title IX Coordinator recommended disciplinary action against the XXXX for retaliating against the Complainant, failing to report her concerns of sexual harassment in December, and compromising OCR's investigation of the Complainant's claim that the University retaliated when it dismissed her from the School of Social Work. The University also recommended Title IX training for the MAC Director and all MAC employees and interns.

### **Analysis**

The Complainant alleges that the University retaliated against her when it dismissed her from the XXXX Program on XXXX, after she raised concerns under Title IX that she was being sexually harassed by a student in the XXXX.

The Title IX regulation, at 34 C.F.R. § 106.71, which incorporates the procedural provisions of the regulation implementing Title VI of the Civil Rights Act of 1964, prohibits retaliation against any individual who asserts rights or privileges under Title IX or who files a complaint, testifies, assists, or participates in a proceeding under Title IX. The following three elements must be satisfied to establish an initial, or *prima facie*, case of retaliation: 1) an individual engaged in a protected activity (e.g., filed a complaint or asserted a right under a law enforced by OCR); 2) an individual experienced an adverse action caused by the University; and 3) there is some evidence of a causal connection between the protected activity and the adverse action. When these elements have been established, OCR then determines whether there is a legitimate, non-retaliatory reason for the adverse action; and if so, whether the reason is a pretext, or excuse, for retaliation.

The facts outlined above establish that the Complainant engaged in protected activity when she raised a concern at the end of XXXX to her Placement Supervisor and the Director of the XXXX about possible sexual harassment by a male client at XXXX. It also is undisputed that the University took adverse action when it dismissed the Complainant from the XXXX at the end of XXXX. A causal connection is established by the proximity of events. Specifically, the XXXX's referral of the Complainant to the Student Review Committee for possible disciplinary action, based largely on information provided by the XXXX, came approximately three weeks after the Complainant made her Title IX report. Based on this information, OCR finds that there is a *prima facie* case for retaliation.

The University's asserted legitimate, non-retaliatory reason is outlined in the documents leading to her dismissal, specifically the University's finding that the Complainant engaged in unprofessional conduct when she had a relationship with a male client at XXXX in the Fall of XXXX. However, OCR is concerned that the University's legitimate, non-retaliatory reason is based in large part on information provided by the XXXX, information that has been discredited by the University's independent findings that the XXXX retaliated against the Complainant. The discredited information also could be evidence of possible pretext.

On September 8, 2020, the University signed the enclosed Resolution Agreement which, when fully implemented, will address the allegation investigated. The provisions of the Agreement are aligned with the allegation and the information obtained during OCR's investigation, and are consistent with applicable law and regulation. The Agreement requires the University to: conduct an independent administrative review of the basis for the Complainant's referral to determine whether there was a basis for referral without consideration of any information provided by the XXXX; if the University determines that referral was appropriate, offer the Complainant the choice between an administrative review of her dismissal and a new hearing; remove from the Complainant's permanent record all references to the XXXX referral and resulting dismissal; if the University determines reinstatement is appropriate, allow the Complainant the opportunity to present completed work, including field placement hours; provide training to the XXXX and all XXXX employees regarding the prohibition on retaliation; and post notices of the prohibition prominently in the XXXX, the XXXX, and on their respective websites. Please review the enclosed Agreement for further details. OCR will monitor the

University's implementation of the Agreement until the University has fulfilled the terms of the Agreement.

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 Sara Clash-Drexler, the OCR attorney assigned to this complaint, at 202-453-5906 or sara.clash-drexler@ed.gov.

Sincerely,

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

Enclosure

cc (via email): Piper Mitchell, Assistant University Legal Counsel