



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION XV

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REGION XV
MICHIGAN
OHIO

August 28, 2020

Via E-mail Only to jhughe11@ashland.edu

Joshua A. Hughes, Esq.
Director, HR & Legal Affairs
Ashland University
401 College Avenue
Ashland, Ohio 44805

Re: OCR Docket No. 15-17-2250

Dear Mr. Hughes:

This letter is to notify you of the disposition of the above-referenced complaint filed on May 25, 2017, with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Ashland University (the University) alleging that the University retaliated against a student (the Student) when, following the Student's complaint of discrimination on the basis of race to a University instructor on April 27, 2017:

1. The instructor gave the Student failing grades on three papers in April 2017.
2. The instructor filed an academic integrity complaint against the Student in May 2017.
3. The University Integrity Board did not follow the appropriate hearing procedure when it considered the academic integrity complaint filed by the instructor against the Student in May 2017.

OCR enforces Title VI of the Civil Rights Act of 1964 (Title VI), 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 by recipients of federal financial assistance. Persons who seek to enforce their rights under this law are also protected from retaliation. As a recipient of federal financial assistance from the Department, the University is subject to this law.

Based on the complaint allegations, OCR opened an investigation of the following legal issue: whether the District intimidated, threatened, coerced, or discriminated against an individual for the purpose of interfering with any right or privilege secured by Title VI or because the individual made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under Title VI in violation of the Title VI implementing regulation at 34 C.F.R. § 100.7.

During its investigation to date, OCR reviewed information provided by the Complainant and the University.

The Student is African-American. During the spring 2017 semester, he was enrolled in XXXXX (the course). Beginning in April 2017, the Student and the instructor of the course corresponded by email about a quiz in the Blackboard system. The Student told the instructor that he had not been able to submit the quiz due to technical issues and asked her to re-open the quiz so that he could re-submit it. The instructor declined, stating that the rest of the students in the course successfully submitted the quiz. The Student and the instructor continued to email each other regarding the quiz for a few weeks. On May 1, 2017, the Student emailed the instructor, stating: “It appears the conflict with my quiz has impacted the pattern in which you grade my papers.” The email continued:

I am not quite clear if the conflict is my insistence that I completed the quiz according to the syllabus, my asking to re-take the quiz due to difficulties with blackboard or my being a black male pursuing a career in education, I say this because it appears you may be taking this misunderstanding personal; my hope is it is NOT the latter.

In America only 2% of all educators are black males, the graduation rate for black males was 59 percent, 65 percent for Latinos, and 80 percent for white males for the 2012-13 school year. I believe the correlation between black males graduating and black male educators are closely related.

My hope has been [the University] would want to be a part of fostering social change, by increasing the cultural balance needed in the education field.

I XXXXX have never experience such conflict with my previous professors, which is why I am quite conflicted with this recent misunderstanding.

My hope is to resolve this issue. But oddly enough since emailing you about the IT departments’ resolution on the quiz issue on April 29th, you have failed me on **all the work I have completed** [emphasis in original], although the pattern of how I completed my assignments has NOT changed. It would have been much more beneficial for the furthering of my education if your concerns with my citations would have been addressed in my earlier writings.

The University submitted screen shots of the University’s online drop box system for submitting assignments. It shows that the Student submitted an assignment entitled XXXXX on April 28, 2017. The instructor graded this assignment on April 29, 2017, giving the Student 20/60 points. In the “feedback to learner” column for the assignment, the instructor wrote that she was “unable to award some points for this assignment” because “I see a few passages that were written in other online sources with no credit given to the original author.” She further stated that these “typos... interfere[d] with you earning full credit.” A Blackboard printout shows that the instructor graded two additional assignments on April 29, 2017, for which he received 0/60 points and 20/60 points.

On May 2, 2017, the instructor filed two Academic Integrity Reports against the Student, alleging plagiarism on April 28 and April 30. Regarding the April 28 assignment, the report stated:

I emailed [the Student] to ask if [his use of an uncredited source] was “willful” he did not respond. Prior to my query, he emailed to ask if I was grading him differently since he had been asking questions about a quiz that he earned a 0 on because I did not receive a submission from him.

On May 9, 2017, the University sent the Student a letter informing him that the instructor had accused him of violating the University’s Academic Integrity Policy and inquiring about his availability for a hearing.

On May 24, 2017, an administrator forwarded to the Academic Integrity Board members and the instructor a timeline from the Student for the board’s consideration at the hearing. The timeline summarized the conflict over the Blackboard quiz but did not mention the Student’s allegation of race discrimination.

The Academic Integrity Board met on May 26, 2017. The Student alleged to OCR that the University’s policies require the person who made the allegation, in this case the instructor, to be present at the hearing. The University’s Graduate Academic Integrity Policy states that “the appropriate committee shall schedule a hearing and inform the student of his or her right to refute the allegation at the hearing” and “shall determine the penalty.” The policy does not define “appropriate committee.” However, the University’s “Student Appeal Policy” states that, if a student is dissatisfied with the determination made by the committee, the student may submit a written appeal to the dean and then to the provost, who will “schedule a meeting including the student, the faculty member in question, and a Review Committee, consisting of the academic graduate program head and the academic dean.” It is not clear from the evidence obtained whether the Student submitted such an appeal and whether such a meeting occurred.

The Academic Integrity Board determined that “the evidence failed to substantiate the charge of willful plagiarism.” In a letter to the Student explaining the outcome of the hearing, the University stated that the committee recommended the Student work with a communications instructor in “understanding what plagiarism is” and completing the assignments for the course in which the instructor charged him with the academic integrity violation.

The Student did not return to the University following the spring 2017 semester. He told OCR that he was not interested in re-enrolling at the University.

Legal Standard

The regulation implementing Title VI of the Civil Rights Act of 1964, at 34 C.F.R § 100.7(e), prohibits recipients of Federal financial assistance from intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by the regulation or because that individual has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the regulation.

In analyzing retaliation claims, OCR examines whether: 1) an individual experienced an adverse action caused by the recipient; 2) the recipient knew that the individual engaged in a protected activity or believed the individual might engage in a protected activity in the future; and 3) there is some evidence of a causal connection between the adverse action and the protected activity.

Protected activity includes participation in an investigation, proceeding, or hearing under OCR's regulations; actions taken in furtherance of a substantive or procedural right guaranteed by the statutes and regulations enforced by OCR; or expression of opposition to any practice made unlawful by a statute or regulation that OCR enforces. An act of intimidation, threat, coercion, or discrimination constitutes adverse action for purposes of the anti-retaliation regulations if it is likely to dissuade a reasonable person in the individual's position from making or supporting a charge of discrimination or from otherwise exercising a right or privilege secured under the statutes or regulations enforced by OCR.

Causal connection between protected activity and adverse action may be established through either direct or circumstantial evidence. Direct evidence consists of a recipient's written statement, oral statement, or action demonstrating unambiguously that the recipient took the adverse action because the individual engaged in a protected activity or for the purpose of interfering with protected activities. Circumstantial evidence of retaliatory motive can include (but is not limited to): changes to treatment of the individual after protected activity; the proximity in time between protected activity and the adverse action; the recipient's treatment of the individual compared to others; or the recipient's deviation from established policies or practices.

Although all three elements must exist to establish a prima facie case, OCR need not address all three elements if it determines one is missing.

Analysis

Allegation #1

The preponderance of the evidence shows that the Student engaged in protected activity (raising possible race discrimination in an email to the instructor) and the Student experienced an adverse action (three failing grades in the instructor's class). However, the evidence shows that the instructor gave the Student the three failing grades before he complained of possible race discrimination. The grades were posted to Blackboard on April 29, 2017, and the Student emailed his instructor two days later, on May 1, 2017, stating that he hoped her refusal to allow him to retake a quiz was not based on his race. In fact, the Student mentioned the failing grades in his May 1 email, stating: "since emailing you about the IT departments' resolution on the quiz issue on April 29th, you have failed me on **all the work I have completed**, although the pattern of how I completed my assignments has NOT changed." Therefore, these grades could not be given in retaliation for the protected activity.

Accordingly, OCR finds insufficient evidence to support allegation #1.

Allegation #2

Before completion of OCR’s investigation of this allegation, the District expressed interest in voluntarily resolving this complaint allegation and OCR determined that it is appropriate to resolve it because OCR’s investigation has identified issues that can be addressed through a resolution agreement.

The evidence obtained to date, supports a possible causal connection between the protected activity and adverse action. On May 1, 2017, the Student emailed the instructor alleging that her grading practices might be discriminatory based on his race. The next day, May 2, 2017, the instructor filed two Academic Integrity reports regarding assignments turned in on April 28 and April 30, 2017. Therefore, the protected activity and the adverse action occurred in very close temporal proximity. In addition, on April 29, 2017, the instructor provided feedback on the April 28 assignment in the University’s Blackboard system, stating “I see a few passages that were written in other online sources with no credit given to the original author.” The instructor’s feedback further stated that these uncredited passages and “typos... interfere[d] with you earning full credit.” However, the instructor did not file the Academic Integrity reports until May 2, 2017, the day after the Student’s email alleging possible race discrimination.

OCR notes that the Student told OCR he was no longer enrolled at the University and was not interested in returning to the University, and OCR did not identify any additional individual remedies.

Allegation #3

Before completion of OCR’s investigation of this allegation, the District expressed interest in voluntarily resolving this complaint allegation and OCR determined that it is appropriate to resolve it because OCR’s investigation has identified issues that can be addressed through a resolution agreement.

The Student alleged that the University failed to follow appropriate hearing procedure when it did not include the instructor in the academic integrity hearing. The University’s Graduate Academic Integrity Policy does not require the instructor to be present at the initial hearing. However, the policy states that, if a student is dissatisfied with the determination made by the Academic Integrity Board, the student may submit a written appeal to the dean, and then to the provost, who will “schedule a meeting including the student, the faculty member in question, and a Review Committee, consisting of the academic graduate program head and the academic dean.” It is not clear from the evidence obtained whether such a meeting occurred, and if so, whether the instructor was present.

Conclusion

Under Section 302 of OCR’s *Case Processing Manual*, allegations under investigation may be resolved at any time when, prior to the issuance of a final investigative determination, the recipient 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. In this case, the University expressed an interest in

resolving allegation #2 prior to the conclusion of OCR's investigation and OCR determined resolution was appropriate. On August 24, 2020, the University signed the enclosed Resolution Agreement, which, when fully implemented, will address all of the allegations in the complaint. OCR will monitor the implementation of the Resolution Agreement.

This concludes OCR's investigation of the complaint and 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 has a right to appeal OCR's determination within 60 calendar days of the date indicated on this letter. In the appeal, the complainant must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal. If the complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the recipient. The recipient has the option to submit to OCR a response to the appeal. The recipient must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

Please be advised that the University may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the individual may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, OCR will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

The Complainant may file a private suit in federal court, whether or not OCR finds a violation.

OCR looks forward to receiving the University's first monitoring report by January 31, 2020. For questions about implementation of the Agreement, please contact Ms. Allison Beach. She will be overseeing the monitoring and can be reached by telephone at (216) 522-2666 or by

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e-mail at Allison.Beach@ed.gov. If you have questions about this letter, please contact me by telephone at (216) 522-7640, or by e-mail at Sacara.Miller@ed.gov.

Sincerely,

/s/

Sacara E. Miller
Supervisory Attorney/Team Leader

Enclosure