



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

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CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

March 15, 2019

Bruce G. Hearey, Esq.
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
Key Tower
127 Public Square, Suite 4100
Cleveland, Ohio 44114

Re: OCR Docket #15-18-2319

Dear Mr. Hearey:

This letter is to notify you of the disposition of OCR complaint #15-18-2319, filed on September 26, XXX, with the U.S. Department of Education's Office for Civil Rights (OCR) against Baldwin Wallace University (the University), alleging that the University discriminated against a prospective student (Student) on the bases of race and age. Specifically, the complaint alleged that, in September XXX, the Student was counselled away from the University's XXX program based on her race and age.

OCR is responsible for enforcing 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. Title VI prohibits discrimination on the basis of race, color, or national origin by recipients of federal financial assistance from the Department. OCR is also responsible for enforcing the Age Discrimination Act of 1975 (the Age Act), 42 U.S.C. § 6101 *et seq.*, and its implementing regulation at 34 C.F.R. Part 110, which prohibit discrimination on the basis of age by recipients of federal financial assistance. As a recipient of such financial assistance from the U.S. Department of Education, the University is subject to these laws. OCR therefore had jurisdiction over this complaint.

During its investigation to date, OCR reviewed the complainant's statement and statements from others who stated that they witnessed the events at issue. OCR also spoke with the University's legal counsel. Before OCR received the University data response and interviewed additional witnesses, the University expressed an interest resolving the allegations voluntarily pursuant to Section 302 of OCR's Case Processing Manual.

Summary of Investigation to Date

According to the complaint, the Student, a XXX woman, was interested in attending Baldwin-Wallace University. On August XXX, she met with a University Associate Director XXX to discuss her interest in area of Music XXX. XXX accompanied her. She stated that she informed

the Associate Director at the meeting that she had XXX years of experience in music and wanted to add a degree to that experience. She said that she was then advised to speak with the Director of the XXX (Director).

According to the Student's statement, she herself, XXX attended a meeting with the Director at her office on September XXX. The Student stated that the Director said to close the door so that no one could hear and then told her that she would feel more comfortable at a university where "there was more diversity, maybe Cleveland State," and that the Student "would be the oldest in her class." The Director also "provided an age range." The Student stated that the Director never mentioned any XXX courses or the Student's experience and that the Director said she did not actually work for the University XXX.

The Student submitted signed, notarized statements from the XXX individuals who accompanied her to that meeting. The statements are consistent with that of the Student as to the Director's statements.

OCR also reviewed pages from the University's website, which stated that the University has a Director of Campus Diversity Affairs. The website quotes the University's president stating that the Director of Diversity's position will involve "initiatives relating to the diversification of [the University's] student, faculty and staff populations" and that he will "provide leadership as we [the University] optimize the impact of our current programs in multiculturalism; and help to implement the College Strategic Plan, particularly in those areas that relate to diversity." As of OCR's review on March 1, XXX, the website also includes pages titled "Diversity at Baldwin Wallace University, <https://www.bw.edu/about/diversity/> and a "Baldwin Wallace University Equal Employment, Harassment and Nondiscrimination Policy," <https://www.bw.edu/Assets/policies/policy-equal-opportunity-harassment-nondiscrimination.pdf>, which includes a complaint procedure and personnel contacts.

Legal Standards, Analysis, and Conclusion

Under the Title VI implementing regulation at 34 C.F.R. § 100.3(a) and the Age Act at 34 C.F.R. § 110.10(a), a recipient institution may not, on the basis of race, color, national origin, or age, exclude a person from participation in, deny her the benefits of, or otherwise subject her to discrimination under its program. Evidence gathered to date--specifically the statements the Director allegedly made to the Student during discussion of her possible participation in the University's XXX program--raises cause for concern that a University staff member discouraged a potential student from applying to its program due to her race and her age.

As stated above, before OCR concluded an investigation and made findings as to the University's compliance or non-compliance with Title VI or the Age Act, University counsel expressed the University's interest in resolving the allegation voluntarily under Section 302 of OCR's Case Processing Manual. OCR determined that such resolution was appropriate. The agreement the University signed to resolve the complaint requires the University to provide training to the personnel involved in the alleged actions about the requirements of Title VI and the Age Act, particularly as regards nondiscrimination in counseling potential applicants to University programs. The agreement also requires the University to send a letter to the

Complainant, inviting her to apply for admission to its program, informing her that consideration of her application will occur in a non-discriminatory manner, providing her with a person to contact should she have any questions about the admissions process, and informing her that, should she choose to apply, she may challenge any denial of admission through the University's grievance/complaint process (with details as to whom to contact/where to file). OCR will monitor implementation of the 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.

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. The Complainant has the right, pursuant to the regulation at 34 C.F.R. § 110.39 implementing the Age Act, to file a civil action for injunctive relief in federal court following the exhaustion of administrative remedies. Administrative remedies are exhausted if: (1) 180 days have elapsed since the complainant filed the complaint with OCR, and OCR has made no finding, or (2) OCR issues any finding in favor of the recipient. A civil action can be brought only in a United States district court for the district in which the recipient is found or transacts business. A complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but these costs must be demanded in the complaint filed with the court. Before commencing the action, the complainant shall give 30 days' notice by registered mail to the Secretary of the Department of Education, the Secretary of the Department of Health and Human Resources, the Attorney General of the United States, and the recipient. The notice shall state the violation of the Age Act, the relief requested, the court in which the action will be brought, and whether or not attorney's fees are demanded in the event the complainant prevails. The complainant may not bring an action if the same alleged violation of the Age Act by the same recipient is the subject of a pending action in any court of the United States.

OCR looks forward to receiving the University's first monitoring report by October 15, XXX. For questions about implementation of the agreement, please contact Ms. Karla Ussery. She will be overseeing the monitoring and can be reached by telephone at (216) 522-2683 or by e-mail at Karla.Ussery@ed.gov.

Page 4 – Mr. Bruce G. Hearey, Esq.

If you have questions about this letter, you may contact me at (216) 522-7634.

Sincerely,

Donald S. Yarab
Supervisory Attorney/Team Leader

Enclosure