



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

61 FORSYTH ST., SOUTHWEST, SUITE 19T10
ATLANTA, GA 30303-8927

REGION IV
ALABAMA
FLORIDA
GEORGIA
TENNESSEE

November 13, 2015

Via U.S. Mail and Electronic Mail

XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

Southern Crescent Technical College
Office: Bldg 200 - Office 203
501 Varsity Rd
Griffin, GA 30223

Re: OCR Complaint # 04-15-2366

Dear XXXXXX:

On May 18, 2015, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint against Southern Crescent Technical College (College), alleging discrimination on the basis of national origin (Hispanic, Mexican). Specifically, the Complainant alleged that as a result of his grievances alleging harassment and retaliation by students and Instructors to a College administrator, the Instructors retaliated against him by giving him failing grades in May XXXX.¹

OCR investigated the complaint pursuant to Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d *et seq.*, and its implementing regulation, 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. As a recipient of Federal financial assistance from the Department, the College is subject to Title VI.

OCR investigated whether the College retaliated against the Complainant in May XXXX by awarding the Complainant failing and incomplete grades in his courses, thereby failing to comply with the Title VI implementing regulation at 34 C.F.R. § 100.7(e).

Before OCR completed its investigation, the College offered, and OCR agreed, to resolve the allegations by entering into a resolution agreement. Pursuant to Section 302 of OCR's *Case*

¹ OCR began to investigate a complaint allegation involving harassment on the basis of national origin, because it appeared that the harassment the Complainant reported in fall 2013 continued during the 2014-2015 school year. However, during the investigation, OCR identified further information that revealed that there were no continuing allegations of harassment on the basis of national origin after the fall of 2013. As the allegations were untimely, OCR did not continue to investigate the harassment allegation. Complainant's request for a waiver regarding the untimeliness of the harassment allegation was denied since the provided explanation did not meet OCR's *Case Processing Manual* criteria for grant of a waiver.

Processing Manual, a complaint “may be resolved at any time when, before the conclusion of an OCR investigation, the recipient expresses an interest in resolving the allegations and issues *and* OCR determines that it is appropriate to resolve them with an agreement during the course of an investigation.” Set forth below is a summary of the evidence obtained thus far in OCR’s investigation, which serves as the basis of the resolution agreement entered into by the College.

Legal Standards

The regulation implementing Title VI provides that no person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any educational program or activity. *See* 34 C.F.R. § 100.3(a).

Retaliation is prohibited under the regulation implementing Title VI of the Civil Rights Act of 1964. The regulation implementing Title VI at 34 C.F.R. § 100.7(e) provides that a recipient shall not intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the laws enforced by OCR, or because he or she has made a complaint, testified, assisted or participated in any manner in an investigation, proceeding or hearing.

To establish whether retaliation has occurred, OCR examines: (1) whether the Complainant engaged in a protected activity; (2) whether the recipient was aware of the protected activity; (3) whether the recipient took adverse action against the Complainant subsequent to or contemporaneous with participation in a protected activity; (4) whether there is a causal connection between the adverse action and the protected activity; and, if these four steps are established, (5) whether the recipient can show legitimate, non-retaliatory reasons for its actions that are not a pretext for discrimination.

Summary of Investigation

The Complainant first enrolled in the College for the XXXXXXXXXXXX semester. He is currently in the XXXXXXXXXXXX Program and attends classes on the College’s XXXXX campus. After the XXXXXXXXXXXX semester, the College placed the Complainant on academic probation.

The XXXXXXXXXXXX of the College described the XXXXXXX Program in which the Complainant is enrolled as a self-paced, project-based program of instruction. The tasks are divided up into various courses, and each course contains a list of projects that must be mastered prior to moving on to the next course of instruction. The student must have each project graded and “signed off” on to obtain full credit for the course.

The Complainant alleged that in September XXXX, one of his classmates harassed him on the basis of his national origin, and his XXXXXXXX Instructor witnessed and participated in the harassment. Between September XXXX and December XXXX, the Complainant filed three internal grievances. Two of the grievances alleged harassment on the basis of his national origin and one alleged retaliation. The College conducted a formal investigation in response to each internal grievance filed by the Complainant and found that he was harassed on the basis of his

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

national origin, but did not find any retaliation. The College took corrective actions to remedy the harassment. On March XXXXX, the Complainant filed another grievance alleging retaliation by his instructors in his two XXXXXXXXXX classes. The College investigated this grievance and found no retaliation.

The OCR complaint alleged that as result of his internal grievances in XXXX and XXXX alleging harassment and retaliation, instructors retaliated against him by giving him failing grades for the XXXXXX Semester. The Complainant received failing grades in the Introduction to Computers and Foundations to Mathematics courses, and he received a failing grade in one XXXXXXXX class and an incomplete in another XXXXXXXXX class. A review of the Complainant's transcript revealed that prior to the XXXXXX Semester, he earned grades of A or B in all of his courses for his first three semesters at the College. For his fourth (last) semester, XXXXXX, the Complainant received three failing grades and an incomplete.

An individual has engaged in a protected activity, and thus is protected from retaliation if: 1) the individual has opposed any act or policy that is unlawful under one of the laws that OCR enforces; or 2) the individual has made a complaint, testified, assisted, or participated in any manner in an investigation, or proceeding or hearing conducted under the laws that OCR enforces.

As set forth above, the Complainant formally filed four internal grievances, alleging harassment on the basis of national origin and retaliation. College administrators investigated these internal grievances and made investigative findings on each grievance. Accordingly, OCR has determined the Complainant engaged in protected activities, and the College had knowledge of the protected activities.

OCR next determined whether the College took adverse action against the Complainant contemporaneous with or subsequent to the protected activity. To determine whether an action is adverse, OCR must determine whether the College's action significantly disadvantaged the Complainant's ability to gain the benefits of the recipient's program. The Complainant's transcript shows that in XXXXXXXX, the Complainant took two XXXXXX courses: XXXXXXXXXXXXXXXX. He received a failing grade in one XXXXXXXX course, an incomplete in the other XXXXXXXXXXXX course, and failing grades in the XXXXXXXXXXXX courses. The awarding of failing and incomplete grades constitutes adverse actions.

To determine causal connection between the protected activity and the adverse action, OCR considers: (a) closeness in time between knowledge of the protected activity and the adverse action; (b) change in treatment of the complainant after the College had knowledge of the protected activity; or (c) treatment of the complainant compared to other similarly situated persons.

The Complainant engaged in protected activities in XXXXXXXX when he filed three grievances, alleging harassment and retaliation and in March XXXX when he filed one grievance, alleging retaliation. The adverse actions occurred in XXXXXXXX when the Complainant received his final grades for the XXXXXXXX Semester. Thus, there is a sufficient closeness in time between knowledge of the protected activities and the adverse actions.

Once a prima facie case of retaliation is established, the recipient must articulate a legitimate, non-retaliatory reason for its action. The College contends that it investigated the Complainant's internal grievances alleging retaliation, and that its investigations revealed that no retaliation occurred. OCR did not complete this aspect of the investigation prior to receiving the request from the College to resolve this matter. However, OCR's investigation identified areas of concern with regard to the retaliation allegations that the College has agreed to remedy.

Resolution Agreement

To remedy the concerns raised by OCR's investigation, the College has agreed to implement the provisions of the attached Resolution Agreement (Agreement) which, when fully implemented will resolve the compliance concerns. Pursuant to the terms of the Agreement, the College will offer the Complainant the choice of continuing his studies at his current campus with special oversight by the Dean's Office or at an entirely different campus; provide the Complainant with a Peer Tutor/Special Assistant to assist him with completing his final XXXXXXXXXX projects; assign a Special Coach/Monitor to monitor the Complainant's progress inside and outside of the classroom; change all of the failing grades the Complainant received for the XXXXX Semester to incomplete grades; allow the Complainant to complete his work in any course in which he has an incomplete grade; waive the Complainant's tuition for any course he has to re-take to complete his degree in XXXXXXXXX; and agree to training on retaliation under Title VI for all administrators, faculty and staff.

The Agreement is aligned with the complaint allegations and the information obtained thus far and is consistent with applicable regulations under Title VI. OCR will monitor the implementation of this Agreement to ensure that it is fully implemented. If the District fails to fully implement the Agreement, OCR will reopen the case and take appropriate action to ensure compliance with Title VI.

This concludes OCR's investigation of the complaint and 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. The Complainant may file a private suit in federal court whether or not OCR finds a violation.

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 duly authorized OCR officials and made available to the public.

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, we 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.

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

OCR will proceed with monitoring the Agreement, effective the date of this letter. OCR is committed to a high quality resolution of every case. If you have any questions regarding this matter, please contact XXXXXXXXXX, Compliance Team Leader, at (404) 974-XXXXX.

Sincerely,

Melanie Velez
Regional Director

Enclosure: Resolution Agreement