



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, DC

February 25, 2015

Dr. Linda P. Brady
Chancellor
University of North Carolina at Greensboro
303 Mossman Building
Greensboro, North Carolina 27402-6170

Re: OCR Complaint No. 11-14-2299
Letter of Findings

Dear Dr. Brady:

This letter is to notify you that the Office for Civil Rights (OCR) of the U.S. Department of Education (Department) has completed its investigation of the above-referenced complaint filed on July 2, 2014, against University of North Carolina Greensboro (the University). The Complainant alleged that:

1. The University singled out the Complainant for negative treatment because of his race and national origin after he made grading errors for students, including students of races and ethnic backgrounds similar to his; and
2. The University failed to respond to his grievance, which alleged that his race and national origin influenced the XXXX Department's conclusion that he intentionally changed the grades of students of a similar ethnicity.

On September 26, 2014, OCR notified the University that the Complainant raised two additional allegations of retaliation, which OCR opened. The Complainant alleged that the University retaliated against him for filing complaints regarding negative treatment by the University (Psychology Department) when:

3. On XXXX, the University charged the Complainant with violating the Student Code of Conduct values of Trust and Honesty by violating a position of trust and committing forgery.
4. On XXXX, the University charged the Complainant with research misconduct, specifically fabrication.

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 programs and activities that receive Federal financial assistance from the Department. The

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

laws enforced by OCR prohibit retaliation against any individual who asserts rights or privileges under these laws or who files a complaint, testifies, or participates in an OCR proceeding. Because the University receives Federal financial assistance from the Department, OCR has jurisdiction over it pursuant to Title VI.

In reaching a determination about the above allegations, OCR reviewed documentation submitted by the University and the Complainant. OCR also conducted interviews of University faculty and administrators as well as the Complainant. Based on its consideration of all the information obtained, OCR concludes that there is insufficient evidence to support a finding that national origin-based discrimination and retaliation occurred as alleged in allegations 1, 3, and 4. However, the University resolved allegation 2 by signing a voluntary resolution agreement. The basis for our findings is set forth below.

Background

During the 2013-2014 school year, the Complainant was a XXXX for Professor 1 and Professor 2, the latter of whom was the Complainant's mentor and supervised his dissertation. The Complainant worked in Professor 2's lab collecting research data since 2012. For the 2013-2014 school year, the Complainant received a tuition waiver and stipend as compensation for his <XXXX 4 SENTENCES REDACTED XXXX>

<XXXX 2 PARAGRAPHS REDACTED XXXX>

Legal Standards and Analysis

Allegation 1

<XXXX PARAGRAPH REDACTED XXXX>

The regulation implementing Title VI, 34 C.F.R. Part 100, provides that no individual shall, on the basis of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in any program or activity that receives or benefits from Federal financial assistance. The regulation implementing Title VI specifies that recipients of Federal financial assistance are prohibited from providing services or other benefits to an individual that are different from, or provided in a different manner than, those provided to others under the program on the basis of race, color, or national origin.

When investigating an allegation of different treatment based on race or national origin, OCR first determines whether the evidence is sufficient to establish an initial or *prima facie* case of discrimination. To do so in this instance, the evidence must show that the Complainant was subjected to adverse treatment. Further, there must be sufficient evidence that the Complainant was treated less favorably than similarly situated students of a different race or national origin. OCR considers direct evidence of different treatment as well as other facts that may provide evidence of bias against individuals of a particular race or national origin. If OCR finds an initial or *prima facie* case of different treatment, we then determine whether the recipient had a

legitimate, nondiscriminatory reason for taking the action, and, if so, whether the recipient's reason is a pretext, or an excuse, for unlawful discrimination.

<XXXX 2 PARAGRAPHS REDACTED XXXX>

The University acknowledges that there are no other students in the graduate school who have been charged with violation of a position of authority and falsification. Further, the University states that there were no other students who are similarly situated to the Complainant. However, the University states that the investigation into the Complainant's actions was due to the finding that he changed the grades of students, not because of his national origin. OCR's examination of the evidence found that the Complainant changed the exam grades of students over the course of several semesters without authorization from the Professors 1 and 2. When confronted about his behavior the Complainant stated that he changed some grades because the questions were incorrect on the exam. He also said that some students' grades were changed because they turned in their assignments after the due date.

Where OCR is unable to identify any students who received more favorable treatment in similar circumstances, we consider whether there is other evidence that suggests that the University's actions were based on the Complainant's national origin. Several actions taken by University staff indicate that the Complainant was charged with a violation of the Code of Conduct because of his conduct and not his national origin. The decision to forward his name for consideration of a Code of Conduct violation was made by Professor 1 and Professor 2, his research mentor, along with the former and current Department Heads.

When interviewed by OCR, Professor 2 acknowledged that, immediately after she learned of the allegation of grade changing, she and Professor 3 speculated during one conversation about what may have motivated the Complainant. She stated that the first few students she knew of whose grades had been changed were female and international students. She said she had speculated other theories as well such as that the students were women or might have been friends with the Complainant; however, she said as she learned over the next few days of additional students whose grades had been changed, she knew the Complainant had not targeted particular groups. Similarly, Professor 3 admitted to raising the issue of national origin in an email. But he told OCR that he reached out to the Complainant's undergraduate professor because he wanted to gain a better understanding of why the grade changing incident occurred.

OCR notes that the conversation between Professors 1 and 3 and the reference in Professor 3's email do not speak to any potentially discriminatory treatment of the Complainant but, rather, went to speculation as to the motivation for the Complainant's actions after the changes were discovered. In any event, Professor 2 stated she immediately dismissed her speculation as unfounded and incorrect because she realized that the misconduct was broader after she discovered that the grades of additional students, who did not fit a profile, had been changed. Professors 1 and 2 explained to OCR that they were unaware of the email Professor 3 sent to the Complainant's undergraduate mentor at the time they were gathering information related to his conduct. Emails among University staff that address the Complainant's conduct do not discuss the Complainant's nationality or the nationality of any of the students whose grades he was accused of changing. Staff's emails indicate that they were concerned with the seriousness of the

Complainant's conduct and undertook a deliberate process to ensure that they were following the appropriate procedures for reporting a Code of Conduct violation.

The University's utilization of its procedures also indicates that it responded to the Complainant's conduct because it represented a violation of the Code of Conduct and not because of his national origin. When the staff determined that the Complainant's actions may have violated the Code of Conduct they, as required by the procedures, gathered and reviewed evidence and forwarded it to the Dean of Students who makes the determination about whether to charge a student with a violation. In OCR's review of voluminous emails among University staff there was no evidence (for example, statements by University administrators or staff) that suggested that the University's decision was based on the Complainant's national origin. OCR evaluates evidence obtained during an investigation under a preponderance of the evidence standard to determine whether the greater weight of the evidence supports a conclusion that a recipient failed to comply with a law enforced by OCR or that the evidence is insufficient to support such a conclusion. Applying this standard here, OCR has determined that there is insufficient evidence to support a finding that the Complainant was discriminated against as alleged.

Allegation 2

During the course of OCR's investigation, the University expressed a willingness to resolve Allegation 2 of the complaint. OCR reviewed the data submitted by the University, including its policy and procedures, and conducted interviews of the Dean of Students and his designee to inform the development of a voluntary resolution agreement.

OCR identified a preliminary concern about the University's implementation of its grievance procedure, specifically regarding the University's response to the Complainant's allegation raising a concern of national origin discrimination under Title VI. The University's grievance resolution letter did not make a finding as to the issue of national origin discrimination that was explicitly raised in the grievance.

Pursuant to Section 302 of OCR's Case Processing Manual, OCR discussed resolution options with the University. On February 13, 2015, the University signed the enclosed agreement to resolve the Allegation 2 of the complaint. The provisions of the agreement are aligned with the issues raised in Allegation 2, with information obtained during the course of OCR's investigation, and are consistent with the applicable regulations. By fulfilling the terms of this agreement the University will resolve the concerns identified in this allegation. OCR will monitor implementation of the agreement.

Allegations 3 and 4

The Complainant alleged that the University retaliated against him after he filed a grievance with the University and a complaint with OCR by charging him with a violation of the Code of Conduct for forgery and with research misconduct. The Complainant told OCR that he received notice dated August 20, 2014, that the University was initiating an investigation under the Code of Conduct for violating a position of trust or authority and committing forgery. Then, the

Complainant told OCR that he received notice dated September 8, 2014 that the University was pursuing a charge of research misconduct, specifically, data fabrication, against him. He told OCR that he believes the University, specifically, the Psychology Department, took action against him because of the complaints he filed.

To establish that retaliation has occurred, OCR first determines whether: (1) the complainant engaged in a protected activity; (2) the recipient took materially adverse action against the complainant or a person closely associated with the complainant; and (3) there is some evidence of a causal connection between the adverse action and the protected activity. If all of these elements are present, a *prima facie* case, or initial case, of retaliation has been established and OCR then inquires whether the recipient had a legitimate, non-retaliatory reason for taking action that was adverse. OCR then analyzes the evidence to determine whether the offered reason is merely an excuse or pretext for retaliation.

First, OCR finds that the Complainant engaged in protected activities when he filed a grievance with the University alleging discrimination on the basis of national origin around June 24, 2014, and when he filed a complaint raising the same allegation with OCR on July 2, 2014. These activities protect a complaining individual from retaliation under Title VI.

Next, OCR finds that the University took an adverse action against the Complainant by raising Student Code of Conduct (Code) violations, which may be noted in the Complainant's educational record and which carry with them the threat of removal from the University's academic program. For an action to be materially adverse it must cause lasting and tangible harm or reasonably have a deterrent effect on future protected activity; mere unpleasant or transient incidents usually are not considered adverse. OCR finds that these actions are adverse because the consequences of the charges are serious and could deny the Complainant the benefits of the University's educational program and because the actions could have a significant chilling effect on further protected activity.

OCR then considered whether there is evidence of a causal connection between the protected activity and the adverse actions. Evidence shows that on June 24 the Dean of Students became aware of the grievance the Complainant filed, and he forwarded it to the Dean of Arts & Sciences for investigation and response. OCR notified the University that it was opening this complaint on August 13, 2014, and Psychology Department faculty learned about the OCR complaint on August 15, 2014 when they attended a pre-scheduled meeting to discuss the research misconduct violations. Based on the short time period between the Complainant's protected activities and the initiation of Code and research misconduct investigations, OCR is able to infer the possibility that the actions were taken in retaliation for the Complainant's protected activities.

Because all three elements of an initial case of retaliation were established, OCR next considered whether the District offered a legitimate, non-retaliatory reason for its actions against the Complainant. Faculty in the Psychology Department told OCR that the Psychology Department was required by University policy to report the alleged infractions because of the serious nature of the allegations. In each circumstance, the University, not the Psychology Department, then decided to act on the reports by charging the Complainant with

a violation of the Code and research misconduct, respectively. In the case of research misconduct, an independent panel of University faculty and administrators unfamiliar with the Complainant's complaints made the decision to charge the Complainant.

OCR then examined whether the offered explanations were pretext, or an excuse, for retaliation. First, OCR reviewed the Code and Research Misconduct policy and found that both support the University's statements that the Psychology Department was required to report the allegations to the Dean of Students Office. According to the Code, "Allegations concerning violations of this Code must be brought in writing to the attention of the Dean of Students Office within 120 days of the discovery of the alleged offense," and a conduct officer screens the allegations to determine if the allegations would violate the Code before charging the student with a violation of the Code. According to the University's Research Misconduct policy, anyone who has "reason to believe" a University faculty or staff member or student has engaged in research misconduct "must" report it to a University official. Once the report is made, the Office of Research Integrity (ORI) convenes a committee to review the report and determine whether to make a charge.

OCR reviewed voluminous e-mail correspondence among faculty in the XXXX and University administrators that showed considerable discussion about the seriousness of the alleged violations as well as the course of action prescribed by University policy. It also confirmed the information provided by the Dean of Students Office about the meaning of the University's policies. Adherence to its written policies and procedures would suggest a lack of pretext on the part of the University because it would, per these policies and procedures, undertake these actions regardless of the national origin of an individual.

The University provided information to indicate that no other student has been alleged to have committed forgery or research misconduct. The University indicated that these types of infraction are rare, and there were no other situations with which to compare these incidents. Professor 3, the Experimental Department Head, indicated that the only other contact he has had with this type of incident is plagiarism by undergraduate students. He told OCR that those situations are handled in a manner similar to this one, although plagiarism falls under the policy related to academic integrity rather than the Code. The former Department Head, who has also served as the Director of Graduate Studies, stated that in his 26 years at the University he has not encountered any actions liked these.

Because there were no other students with whom to compare the Complainant, OCR considered other available evidence to determine whether the University's reasons were pretext for retaliation. OCR gathered evidence to show that the concern related to forgery came out on August 11, 2014, when a student contacted Professor 2 by email, writing that she had not received her grade and could not graduate. Professor 2 told OCR that she did not know the student had been enrolled in her lab but that the student told her the Complainant had completed her registration. Professor 2 said she checked the registration forms and discovered the student's form and others contained a signature that was not hers. As a result, Professor 2 mentioned the concern to the Department Head, who, in turn, consulted with the Dean of Students Office. The Dean of Students recommended that the XXXX Department provide more information and, then, based on University policy, decided to pursue a charge of

forgery on August 20, 2014.¹ Email correspondence further bears out that the XXXX Department did not initially want to charge the Complainant; rather, with respect to forgery, the XXXX Department recommended that the Complainant offer an apology for his actions. OCR finds this evidence notable in that it does not support that the University deliberately pursued charges in light of the Complainant's protected activity. As a result, OCR has no evidence that the explanations offered by the University are excuses for retaliation.

Next, as to the issue of alleged research misconduct, although the University did not charge the Complainant with research misconduct until after he filed his grievance and complaint with OCR, the Complainant was aware that an investigation into his research had been ongoing since early June 2014 when Professor 2 requested that the Complainant provide her with sets of the raw data he had collected over a three-year period. Professor 2 told OCR that she spent June through August 2014 reviewing the Complainant's data carefully on the advice of the Vice Chancellor of Research and Economic Development; she said she did not want to raise concerns lightly because her reputation as well as the Complainant's was on the line. On June 9, 2014, the Complainant met with the Director of Graduate Studies to discuss concerns about authorship of the article that was the basis for concerns about his research. On August 7, 2014, the Dean of Students requested to meet with the Complainant about issues concerning his research. Although the University did not officially notify the Complainant of the charge of research misconduct until September 8, 2014, the Complainant had knowledge that an investigation of his research was ongoing before he filed his grievance with the University or his complaint with OCR.

After Professor 2 reported the discrepancies she found in the research data to the Director of ORI, the ORI assembled a panel of faculty investigators, of which Professor 2 was not a part, to complete a preliminary assessment. The panel determined that the concerns were serious enough to take action. Then, an independent committee of faculty started an investigation as part of its protocol.

Based on this information, OCR finds that the charge of research misconduct was not a reaction to the Complainant's complaints but was a careful and deliberate decision made in accordance with University process. OCR finds that the information provided by Professor 2 and other Psychology Department faculty about the issue of research misconduct confirmed the University's adherence to its policy and indicated that the Psychology Department had no involvement in the investigation of the charge after it made the mandatory report. Therefore, OCR cannot conclude that the University's actions were pretext for retaliation against the Complainant as a result of his protected activities.

OCR concludes that the evidence is insufficient to support that the University retaliated against the Complainant by charging him with forgery or research misconduct. OCR did not find evidence to support that the University took these actions against the Complainant as a result of his protected activities.

Conclusion

¹ The University held a hearing on November 20, 2014, at which the panel found the Complainant responsible for forgery. The independent hearing panel imposed a sanction of suspension for one semester and a reflection paper.

OCR concludes that it has insufficient evidence to support that the University discriminated against the Complainant based on national origin or retaliated against the Complainant. As noted previously, with regard to the issues raised in Allegation 2, the University entered into the enclosed resolution agreement. OCR will monitor the University's implementation of the resolution agreement.

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 may not retaliate against an individual who asserts a right or privilege under a law enforced by OCR or who files a complaint, testifies, or participates in an OCR proceeding. 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.

If you have any questions, feel free to contact Amy S. Williams at (202) 453-5933 or by e-mail at amy.s.williams@ed.gov, or Duane Scott at (202) 453-6596 or by e-mail at duane.scott@ed.gov.

Sincerely,

/S/

Alessandro Terenzoni
Team Leader, Team II
District of Columbia Office
Office for Civil Rights