



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

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REGION IV
ALABAMA
FLORIDA
GEORGIA
TENNESSEE

August 29, 2023

Via email only: sleemkevin@gmail.com

Mr. Kevin Sleem
3528 Turnberry Circle
Fayetteville, North Carolina 28303

Re: OCR Complaint #04-23-2022

Dear Mr. Sleem:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of your complaint against Florida Atlantic University (University) received on November 1, 2022 alleging discrimination based on national origin. Where appropriate this letter will refer to you as the Complainant.

OCR enforces Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §§ 2000d *et seq.*, and its implementing regulation, 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin by recipients of Federal financial assistance from the Department of Education. As a recipient of Federal financial assistance from the Department of Education, the University is subject to Title VI and to OCR's jurisdiction.

You told OCR that you first enrolled in the PhD program at the University's Business School in fall 2008. You stated that you were dismissed from the program in November 2008 because of your grade point average. You stated that you applied for enrollment at another university that requires references from previous instructors. You stated that you emailed a professor from the College of Business on September 29, 2022 to request a reference but did not receive a response. You alleged that you did not receive a response to your request because you have U.S. and Jamaican citizenship.

OCR enforces Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §§ 2000d *et seq.*, and its implementing regulation, 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin by recipients of Federal financial assistance from the Department of Education. As a recipient of Federal financial assistance from the Department of Education, the University is subject to Title VI and to OCR's jurisdiction.

OCR investigated whether the University discriminated against the Complainant on the basis of national origin, in violation of Title VI and its implementing regulation at 34 C.F.R. §100.3.

OCR interviewed the Complainant and the Graduate College Program Assistant who was responsible for responding to email inquiries directed to the Graduate College. We also

reviewed documents provided by the Complainant and the University including email correspondence between the Complainant and the University employees.

Legal standards

The regulation implementing Title VI at 34 C.F.R. Section 100.3(a), (b)(1)(i)-(iii) and (2) provides that no person 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 program to which the regulation applies. A recipient may not, on the ground of race, color or national origin, subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program. Further, a recipient may not, on the ground of race, color, or national origin, deny an individual any service or other benefit, provide any service in a different manner from that provided to others, or subject an individual to segregation or separate treatment under the program.

When investigating an allegation of different treatment, OCR first determines whether there is sufficient evidence to establish an initial, or prima facie, case of discrimination. Specifically, OCR determines whether a school treated an individual less favorably than similarly situated individuals of a different national origin. If so, OCR then determines whether the school had a legitimate, nondiscriminatory reason for the different treatment. Finally, OCR determines whether the reason given by the school is a pretext, or excuse, for unlawful discrimination.

Factual findings

The Complainant, a former University student, was last enrolled at the University during the fall 2008 semester; during that term he was in the Ph.D. program in Finance in the University's College of Business.

The Complainant told OCR that on September 29, 2022, he emailed a former professor in the College of Business to request that a professor provide a reference to North Carolina State University (School), but he did not receive a response. He asserted that he did not receive a response to his request because of his national origin.

According to the University's Civil Rights Investigator, the University conducted an email search and did not locate the email that the Complainant described, but did locate a request for recommendations submitted by the School. The University's Civil Rights Investigator reported that auto-generated emails were sent to the University Graduate College's general email account, and not to a particular University employee's email account. The request was addressed: "Dear [the former professor whom the Complainant identified]." The University advised OCR that the Complainant's former professor retired and is no longer employed by the University.

On December 1, 2022, the Graduate College Program Assistant, who monitors the Graduate College's email account, responded to the request, stating that "the Graduate College does not provide letters of recommendation as we do not know the student on a personal basis."¹ In an

¹ The University received similar letters of recommendation requests on behalf of the Complainant from three universities.

interview with OCR, the Graduate College Program Assistant stated that she did not know the Complainant, and likewise was unaware of his national origin.

According to information provided by the University's representative in response to OCR's request for information, the University's College of Business does not request or require that faculty write letters of recommendation on behalf of students and does not maintain records regarding issuance of such letters

Analysis

The evidence does not substantiate that the University received from the Complainant a request for a letter of recommendation from the professor to support the Complainant's application to the School. When the University received a request from the School through the Graduate College email account, the Graduate College Program Assistant, who had no knowledge of the Complainant, replied that the College does not provide recommendations for students. In light of the representative's statement that the University does not request or require that faculty provide letters of recommendation, the response to the School's request does not indicate any different treatment of the Complainant. Nor is there other evidence of possible national origin-based different treatment since the Graduate College Program Assistant did not know the Complainant's national origin. The evidence therefore does not support that the University discriminated against the Complainant on the basis of national origin, as alleged.

Conclusion

Accordingly, OCR found insufficient evidence to support a finding of a violation of the applicable regulation.

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 a right to file a lawsuit 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, to the extent provided by law, personally identifiable information, that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions regarding this letter, please contact Philip Weltner, Senior Attorney, at (202) 987-1891 or me, at (404) 974-9356.

Sincerely,

Wendy Gatlin
Compliance Team Leader