

No. 13-3093

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JUNHAO SU,)
)
Petitioner,)
)
v.)
)
U.S. DEPARTMENT OF EDUCATION,)
OFFICE FOR CIVIL RIGHTS, Region XV,)
)
Respondent.)
)

ORDER

FILED <i>Jul 25, 2013</i> DEBORAH S. HUNT, Clerk

Before: GUY, McKEAGUE, and WHITE, Circuit Judges.

This matter is before the court upon a motion to dismiss the appeal for lack of jurisdiction filed by the U.S. Department of Education, Office for Civil Rights (“OCR”), and motions to reconsider this court’s order to hold the filing of the administrative record in abeyance and to expedite the appeal filed by Junhao Su.

The record before the court indicates that Su filed a complaint with the regional OCR office in Cleveland, Ohio in January 2012, alleging that Bowling Green State University discriminated against him based on his Chinese origin and also retaliated against him in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d–2000d-7.¹ Su, a student at Bowling Green State University, alleged that he was harassed by instructors between 2006 and 2010. He also alleged that he was later retaliated against when he was required to: complete his courses on campus, rather than online, after he complained about the harassment; submit a readmission application fee of \$75 to re-enroll to complete his master’s degree; and retake coursework if he re-enrolled in the master’s degree

¹Title VI provides that “[n]o 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 subjected to discrimination under any program or activity receiving Federal financial assistance.” 42 U.S.C. § 2000d.

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program. On April 12, 2012, the OCR issued a disposition of Su's complaint, concluding that it could not act on allegations of discrimination or retaliation which occurred more than 180 calendar days before the complaint was filed, and that the information Su provided was insufficient for OCR to infer that the university had discriminated or retaliated against him in the 180 days prior to the filing of his complaint. Su requested reconsideration from the Regional OCR Director. The Director denied Su's request for reconsideration on December 5, 2012. On January 22, 2013, Su filed in this court a petition for review of the OCR's decision denying reconsideration.

Since the appeal was filed, OCR moved to hold the filing of the administrative record in abeyance pending the filing and disposition of its motion to dismiss for lack of subject matter jurisdiction. This court granted OCR's motion on April 2, 2013. On April 3, 2013, Su filed a motion to expedite the appeal and, on April 5, Su filed a motion for reconsideration of the order granting OCR's motion for abeyance.

In its motion to dismiss for lack of jurisdiction, OCR asserts that, under Title VI, review by the federal appellate court is limited to final agency orders "terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 2000d-1." 42 U.S.C. § 2000d-2. Given this review, this court is not authorized to directly review administrative complaints alleging discrimination or retaliation. Rather, OCR asserts that a complainant's remedy for resolution of their claims of discrimination and retaliation is to bring a civil action under Title VI in district court. Su has not responded to OCR's motion to dismiss.

"Direct review of agency action has been placed in the courts of appeals only on an agency-by-agency basis in the particular organic acts of selected agencies." *In re Sutton*, 652 F.3d 678, 679 (6th Cir. 2011); *see also Watts v. SEC*, 482 F.3d 501, 505 (D.C. Cir. 2007) (noting that initial review of agency action "occurs at the appellate level only when a direct-review statute specifically gives the court of appeals subject-matter jurisdiction to directly review agency action."). If an agency has not authorized a procedure for a petition for review in the Courts of Appeals, agency action is subject to "non-statutory" judicial review. *See Sutton*, 652 F.3d at 679. This review, "based

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on the Administrative Procedure Act and a general grant of jurisdiction such as 28 U.S.C. § 1331,” is limited to the district court. *Id.* (citation omitted).

Nothing in Title VI or the Code of Federal Regulations gives this court jurisdiction to directly review the decision of the Regional OCR Director denying reconsideration of a complaint. Rather, as OCR points out, Su’s remedy is a private right of action under Title VI in the district court. *See Alexander v. Sandoval*, 532 U.S. 275, 279 (2001) (noting that private individuals may bring suit to enforce Title VI and seek both injunctive relief and damages).

Accordingly, OCR’s motion to dismiss the appeal is granted. Su’s pending motions are denied as moot.

ENTERED BY ORDER OF THE COURT

A handwritten signature in black ink, appearing to read "Debra L. Smith", is written over the printed name of the Clerk.

Clerk

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

Deborah S. Hunt
Clerk

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Filed: July 25, 2013

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Re: Case No. 13-3093, *Junhao Su v. Department of Education, Offic*
Originating Case No. : 15-12-2045 - Cleveland

Dear Sir,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Louise Schwarber
Case Manager
Direct Dial No. 513-564-7015

Enclosure

No mandate to issue