



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

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April 17, 2015

Katherine S. Conway-Turner, Ph.D.
President
State University of New York, Buffalo State College
1300 Elmwood Avenue
Buffalo, New York 14222

Re: Case No. 02-15-2007
State University of New York –Buffalo State College

Dear President Conway-Turner:

This letter is to notify you of the determination made by the U. S. Department of Education, New York Office for Civil Rights (OCR) in the above-referenced complaint filed against the State University of New York (SUNY) Buffalo State College (the College).¹

The complainant alleged that the professor (the Professor) for his XXXXXXXXXXXX XXX course (the Course), taken during the spring 2014 semester, subjected him to harassment because of his disability (XXXXXX XXXXXXXXXXX) by (a) asking him numerous questions about his XXXXXXXXXXX; (b) informing him that photography does not “sound good” for someone with XXXXXXXXXXX; and, (c) stating that she did not want him in the College’s Minor in Photography Program “for [any] reason whatsoever” (Allegation 1). The complainant further alleged that the Professor treated him differently from non-disabled students, by informing him that she did not like the cameras he was using, and sending him home and/or forcing him to use her camera on several occasions throughout the duration of the Course (Allegation 2). In addition, the complainant alleged that the Professor discriminated against him, on the basis of his disability, by failing to provide him with the extended testing time, of time and a half, as an academic adjustment during his Course examinations (Allegation 3); and, informing his advisor that he was failing the Course, thereby ignoring a directive issued by the Chair of the Photography/Arts Department and the Assistant Dean for the School of Arts and Humanities not to disclose that information (Allegation 4).

¹ The complainant initially filed his complaint with the U.S. Department of Justice (DOJ), in an email sent on May 6, 2014; DOJ subsequently referred his complaint to OCR for processing.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs or activities receiving financial assistance from the U.S. Department of Education (the Department). OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12131 et seq., and its implementing regulation at 28 C.F.R. Part 35. Under the ADA, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The College is a recipient of financial assistance from the Department and is a public postsecondary education system. Therefore, OCR has jurisdictional authority to investigate this complaint under both Section 504 and the ADA.

In its investigation, OCR reviewed information and documentation that the complainant and the College submitted. OCR also interviewed College personnel.²

During academic year 2013-2014, the complainant was enrolled in the College as an XXXXXXXXXXXXXXXXXXXXXXXXXXXX major. After stating his intention to participate in the College’s minor in Photography Program (the Program), he was enrolled in the Course for the spring 2014 semester.

With respect to Allegation 1, the complainant alleged that the Professor subjected him to harassment because of his disability by (a) asking him numerous questions about his XXXXXXXX, including why he needed to wear an apron or gloves to develop film, and how long he had XXXXXXXX; (b) informing him that photography does not “sound good” for someone with XXXXXXXX; and, (c) stating that she did not want him in the College’s Minor in Photography Program “for [any] reason whatsoever.” The complainant did not identify any individuals who witnessed the alleged harassment.

Disability harassment is a form of discrimination prohibited by Section 504, the ADA, and their implementing regulations. Harassing conduct by an employee, a student, or a third party can include verbal, written, graphic, physical or other conduct; or, conduct that is physically threatening, harmful or humiliating. Harassment can create a hostile environment if it is sufficiently serious to interfere with or deny a student’s participation in or receipt of benefits, services or opportunities in the recipient’s program. If OCR determines that harassing conduct occurred, and that the recipient had actual or constructive notice of the harassment, OCR will examine additional factors to determine whether a hostile environment existed and whether the recipient took prompt and effective action that was reasonably calculated to stop the harassment, prevent its recurrence, and, as appropriate, remedy its effects.

With respect to Allegation 1(a), the Professor denied asking the complainant any questions about his XXXXXXXX; including why he needed to wear an apron or gloves to develop film and how long he had XXXXXXXX. She stated that the complainant requested to use gloves, and she informed him that this was fine; however, she did not recall any discussions with the complainant about wearing an apron. The Professor advised OCR that students in the Course,

² During the course of its investigation, OCR contacted the complainant for additional information on two occasions in March 2015. The complainant did not respond to OCR’s requests for information.

including the complainant, were generally permitted to use an apron and gloves when developing photographs; this was set forth in the class syllabus.

With respect to Allegations 1(b) and 1(c), the Professor recalled that the complainant informed her that he was minoring in Photography; but denied that she informed the complainant that photography did not “sound good” for someone with XXXXXXXX, or that she made any comments to the complainant about his participation in the Course or the Program.³ The Professor stated that at the beginning of the semester, the complainant approached her and disclosed that he had XXXXXXXX and had been XXXXXXXX as a result; and, that he may miss class at times due to his XXXXXXXX. The Professor stated that in response, she expressed sympathy for the complainant upon hearing of the seriousness of his illness⁴; however, she did not ask him any questions regarding his XXXXXXXX or otherwise comment about his XXXXXXXX. The Professor stated that generally, throughout the semester, the complainant initiated many conversations about his XXXXXXXX; but she did not recall whether there were any witnesses present during such conversations.

The complainant and the Professor offered conflicting accounts of their interactions; and according to the Professor, the complainant initiated several conversations about his XXXXXXXX with her, to which she responded innocuously. OCR must often weigh conflicting evidence in light of the facts and circumstances of each case and determine whether the preponderance of the evidence substantiates the allegation. Here, OCR did not find sufficient evidence to corroborate the complainant’s version of events or to otherwise refute the Professor’s account. Therefore, OCR determined that there was insufficient evidence to substantiate the complainant’s allegation that the Professor subjected him to harassment because of his disability. Accordingly, OCR will take no further action regarding Allegation 1.

With respect to Allegation 2, the complainant alleged that the Professor treated him differently from non-disabled students, by informing him that she did not like the cameras he was using; and, sending him home and/or forcing him to use her camera on several occasions throughout the duration of the Course. Specifically, the complainant stated that the first camera that he bought for the Course had “light leakage”; and, although he bought a second camera, the Professor also told him that she did not like that camera. He further stated that the Professor gave him one of her cameras to use, but it also had “light leakage” and did not work.

The Professor denied informing the complainant that she did not like the camera he was using; or, sending him home and/or forcing him to use her camera. According to the Course syllabus, all students were required to have and use a functioning manual 35 mm camera.⁵ The Professor confirmed that the complainant experienced difficulty using multiple cameras throughout the semester; some of the complainant’s cameras were not functional, and at least one had “light leakage.” The Professor stated that in response to the complainant’s difficulties with various cameras, she offered to loan him her personal camera, but she did not require that he use it. The Professor also stated that she had previously loaned her personal cameras to other students when

³ Moreover, the Professor and other College personnel informed OCR that the Professor did not have the authority to determine whether students may participate in or to otherwise dismiss them from the Program.

⁴ The Professor stated that she informed the complainant that one of her family members also had XXXXXXXX.

⁵ The Professor stated that at the beginning of each semester, she inspects the students’ cameras; and, if the student does not have an appropriate camera she provides them with information about where they may obtain used or low-cost cameras. This information is also contained within the Course syllabus.

seek to use approved academic adjustments/auxiliary aids. The complainant requested Accommodation Letters for his courses taken during the spring 2014 semester on January 28, 2014; and, ODS provided him with such letters on January 30, 2014.

The Professor stated that during the spring 2014 semester, the complainant neither provided her with a copy of his Accommodation Letter nor otherwise notified her that he required time and a half extended testing time as an academic adjustment, or that he required any additional time. The complainant did not respond to OCR's inquiry regarding whether he provided the Professor with his Accommodation Letter. The Professor confirmed that she administered two tests in the Course [Exams 1 and 2]; and asserted that she permitted students to take as much time as they needed to complete Exams 1 and 2, regardless of whether the student was approved to receive extended time as an academic adjustment.

In addition, the Professor denied that she asked the complainant about his XXXXXXXX or otherwise spoke with him during Exams 1 and 2; and also denied interrupting him during Exam 2 to complete Exam 1⁸, as the complainant alleged. OCR must often weigh conflicting evidence in light of the facts and circumstances of each case and determine whether the preponderance of the evidence substantiates the allegation. Here, OCR did not find sufficient evidence to corroborate the complainant's version of events or to otherwise refute the Professor's account.

Based on the foregoing, OCR determined that there was insufficient evidence to substantiate that the complainant followed the College's procedure requiring him to notify the Professor regarding his approved academic adjustments; nevertheless, OCR determined that the Professor provided all students with unlimited time to complete examinations. Moreover, OCR did not find evidence to support that the Professor interrupted the complainant during Exam 1 or 2. Therefore, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that the Professor discriminated against him, on the basis of his disability, by failing to provide him with time and a half extended testing time as an academic adjustment during Exams 1 and 2. Accordingly, OCR will take no further action regarding Allegation 3.

With respect to Allegation 4, the complainant alleged that the Professor discriminated against him, on the basis of his disability, by informing his advisor that he was failing the Course; thereby ignoring a directive issued by the Chair of the Photography/Arts Department (the Chair) and the Assistant Dean for the School of Arts and Humanities (the Assistant Dean) not to disclose that information. The Professor confirmed that she contacted the College staff member the complainant had identified to her as his assigned advisor, in or around April or May 2014, because the complainant was failing the Course. The Professor stated that she frequently contacts a student's advisor if she is concerned about the student's academic progress in her courses; and, the Professor and other College personnel stated that the College encourages professors to contact students' advisors in these circumstances.⁹ The Professor denied that the Chair or Assistant Dean issued a directive to her not to communicate with the complainant's advisor; and, both the Chair and Assistant Dean denied issuing any such directive.

⁸ The Professor stated that if the complainant had not yet completed Exam 1, she would not have administered Exam 2 to him.

⁹ OCR confirmed that the complainant was failing the Course.

OCR must often weigh conflicting evidence in light of the facts and circumstances of each case and determine whether the preponderance of the evidence substantiates the allegation. Here, OCR did not find sufficient evidence to corroborate the complainant's version of events or to otherwise refute the Professor's account.

Based on the foregoing, OCR determined that the Professor had a legitimate, non-discriminatory reason for contacting the complainant's advisor; specifically, the complainant was failing the Course. OCR determined that the proffered reason was not a pretext for discrimination, as contacting students' advisors was consistent with the Professor's usual practice when a student is failing her course. Further, OCR found insufficient evidence that the Chair or Assistant Dean directed the Professor not to do so, as the complainant alleged. Therefore, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that the Professor discriminated against him, on the basis of his disability, by informing his advisor that he was failing the Course, thereby ignoring a directive issued by the Chair and Assistant Dean. Accordingly, OCR will take no further action regarding Allegation 4.

Although not an allegation raised in the complaint, during the course of its investigation of this complaint, OCR identified a compliance concern regarding the College's response to the complainant's complaints of disability discrimination and harassment filed during the spring 2014 semester. In an electronic mail message (email) sent to the Assistant Dean on May 7, 2014, the complainant forwarded complaints that he had filed on May 6 and 7, 2014, with the U.S. Department of Justice (DOJ), Disability Rights Section, through ADA.gov.¹⁰ In the complaints filed with DOJ, the complainant alleged that the Professor had subjected him to harassment because of his disability and had failed to provide him with extended testing time as an academic adjustment, as he alleged with respect to Allegations 1, 2, and 3, above. The Assistant Dean forwarded the complainant's complaints to ODS on May 7, 2014, and the Director of ODS forwarded the complaints to the College's Chief Diversity Officer on May 8, 2014.¹¹ In an email sent to the College's Assistant Dean of University College and Director of Academic Standards (the Director) on June 2, 2014, the complainant again alleged that the Professor had discriminated against him on the basis of his disability; the Director forwarded the email to the Assistant Dean to obtain additional information.

Although OCR found insufficient evidence to substantiate that the Professor discriminated against or harassed the complainant on the basis of his disability, OCR determined that in making the above complaints, the complainant provided the College with actual notice of the alleged discrimination/harassment. The complainant included sufficient information in his complaints to enable the College to respond or proceed with an investigation; and thereby triggered the College's legal obligation to take prompt and effective action reasonably calculated to stop any discrimination/harassment, prevent its recurrence, and remedy its effects. OCR determined that no College official (including the College's Chief Diversity Officer, the Director of ODS, the Assistant Dean, or the Director) contacted the complainant or the Professor to discuss or otherwise respond to the complainant's allegations.¹²

¹⁰ ADA.gov is the DOJ's electronic complaint submission portal.

¹¹ The Chief Diversity Officer is the College's designated individual responsible for responding to complaints of disability harassment and discrimination.

¹² The Professor informed OCR that the College's Chief Diversity Officer only contacted her in December 2014, after the College had received notice of the instant OCR complaint.

Based on the foregoing, OCR determined that despite receiving notice from the complainant in at least three separate complaints, the College failed to respond to the complainant's allegations of disability discrimination and harassment to determine whether a hostile environment existed, so that it could take prompt and effective action to stop any discrimination or harassment that existed or remedy its effects. OCR has negotiated a Resolution Agreement (attached) to remedy OCR's compliance concerns.

OCR will monitor the implementation of the enclosed resolution agreement. If the College fails to comply with the terms of the resolution agreement, OCR will resume its investigation.

This letter 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. 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 file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the College 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 complainant 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, 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.

If you have any questions regarding OCR's determination, please contact Joy M. Purcell, Compliance Team Attorney, at (646) 428-3766 or joy.purcell@ed.gov; Letisha Morgan, Senior Compliance Team Investigator, at (646) 428-3827 or letisha.morgan@ed.gov; or Felice Bowen, Compliance Team Leader at (646) 428-3806 or felice.bowen@ed.gov.

Very truly yours,

/s/

Timothy C.J. Blanchard

Encl.

cc: XXXXX XXXXXX, Esq.