



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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SAN FRANCISCO, CA 94105

REGION IX
CALIFORNIA

August 1, 2014

Dennis Harkins, Ph.D.
President
Orange Coast College
2701 Fairview Road
Costa Mesa, CA 92626

(In reply, please refer to case no. 09-13-2385)

Dear Dr. Harkins:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against Orange Coast College (College). The complainant alleged that the College discriminated against him based on disability.¹ Specifically, OCR investigated:

1. Whether the College discriminated against the complainant by failing to timely consider and approve his request for academic adjustments and accommodations.
2. Whether the complainant was harassed by a College instructor when the instructor made a derogatory comment about students with mental disabilities.
3. Whether the College retaliated against the complainant by imposing disciplinary sanctions on him after he reported to its Vice President that he intended to file a discrimination complaint with OCR.

OCR investigated the complaint under the authority of Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (ADA), as amended by the Americans with Disabilities Act Amendments Act of 2008, and their implementing regulations. Section 504 and Title II prohibit discrimination based on disability in programs and activities operated by recipients of federal financial assistance and by public entities, respectively. The College receives Department funds, is a public entity, and is, therefore, subject to the requirements of Section 504, Title II, and their implementing regulations.

¹The name of the complainant was stated in OCR's notification letter to the College and it is not being restated here in the interest of privacy.

As part of its investigation, OCR spoke with the complainant and College faculty and administrators. It also received and considered documents and records submitted by the complainant and the College.

Based on its investigation, OCR concluded that there was sufficient evidence to establish a violation of Section 504, Title II, and their implementing regulations with respect to the first allegation and insufficient evidence to establish a violation with respect to the second and third allegations. The facts determined by OCR, the applicable legal standards, and the reasons for OCR's conclusions are summarized below.

I. Legal Standards

The Section 504 regulations provide that no qualified individual with a disability shall, based on disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any postsecondary education program of a recipient.² The Title II regulations contain a similar prohibition applicable to public postsecondary educational institutions.³

The Section 504 regulations require recipient colleges and universities to make modifications to their academic requirements that are necessary to ensure that such requirements do not discriminate, or have the effect of discriminating, against qualified individuals with disabilities.⁴ Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific required courses, and adaptation of the manner in which courses are conducted. However, academic requirements that recipient colleges and universities can demonstrate are essential to the program of instruction being pursued or to any directly related licensing requirement will not be regarded as discriminatory.

Under the Title II regulations, public colleges and universities may not afford a qualified individual with a disability opportunities that are not equal to those afforded others, and may not provide aids, benefits or services that are not effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others.⁵ Under the Title II regulations, public colleges and universities must make reasonable modifications in policies, practices or procedures when necessary to avoid discrimination based on disability, unless doing so would fundamentally alter the nature of the service, program or activity.⁶ The Title II regulations state that they shall not be construed to permit a lesser standard than is

²34 C.F.R. § 104.43(a).

³28 C.F.R. § 35.130(a).

⁴34 C.F.R. § 104.44(a).

⁵28 C.F.R. §§ 35.130(b)(1)(ii) and (iii).

⁶28 C.F.R. § 35.130(b)(7).

established by the Section 504 regulations.⁷ Therefore, OCR interprets the Title II regulations to require public colleges and universities to provide necessary academic adjustments to the same extent as is required under the Section 504 regulations.

The regulations implementing Section 504 prohibit discrimination based on disability by recipients of federal financial assistance.⁸ The Title II regulations create the same prohibition against disability-based discrimination by public entities.⁹ Public colleges and universities are responsible under Section 504 and Title II for providing students with a nondiscriminatory educational environment. Harassment of a student based on disability can result in the denial or limitation of the student's ability to participate in or receive education benefits, services, or opportunities.

Colleges and universities provide program benefits, services, and opportunities to students through the responsibilities given to employees. If an employee who is acting, or reasonably appears to be acting, in the context of carrying out these responsibilities engages in disability-based harassment that is sufficiently serious to deny or limit a student's ability to participate in or benefit from the program, the college/university is responsible for the discriminatory conduct whether or not it has notice.

Under Section 504, Title II, and the regulations, if a student is harassed based on disability by an employee then the college/university is responsible for determining what occurred and responding appropriately. OCR evaluates the appropriateness of the responsive action by assessing whether it was prompt, thorough and effective. What constitutes a reasonable response to harassment will differ depending upon circumstances. However, in all cases the response must be tailored to stop the harassment, eliminate the hostile environment if one has been created, and address the problems experienced by the student who was harassed. The college/university must also take steps to prevent the harassment from recurring, including disciplining the harasser where appropriate.

The Section 504 regulations incorporate 34 C.F.R. § 100.7(e) of the regulations implementing Title VI of the Civil Rights Act of 1964 and prohibit colleges/universities from intimidating, coercing, or retaliating against individuals because they engage in activities protected by Section 504.¹⁰ The Title II regulations similarly prohibit intimidation, coercion, or retaliation against individuals engaging in activities protected by Title II.¹¹

When OCR investigates an allegation of retaliation, it examines whether the alleged victim engaged in a protected activity and was subsequently subjected to adverse

⁷28 C.F.R. § 35.103(a).

⁸34 C.F.R. §§ 104.4(a) and (b).

⁹28 C.F.R. §§ 35.130(a) and (b).

¹⁰34 C.F.R. § 104.61.

¹¹28 C.F.R. § 35.134.

action by the college/university under circumstances that suggest a connection between the protected activity and the adverse action. If a preliminary connection is found, OCR determines whether the college/university can provide a nondiscriminatory reason for the adverse action. OCR then evaluates whether the reason provided is merely a pretext and whether the preponderance of the evidence establishes that the adverse action was in fact retaliation.

II. Investigative Factual Determinations

Background Information

The College, founded in 1948, is a community college located in Costa Mesa, California that offers courses during the fall and spring semesters as well as during a summer session. During the time pertinent to OCR's investigation, the spring and fall 2013 semesters, it had an enrollment of approximately 21,000 students. Of those students, approximately 1,100 of them were registered with the College's Disabled Students Programs & Services (DSP & S) Office with 42% being classified as "other disability," 23% as "learning disabled," 9% as "acquired brain injury," 9% as "psychological disability," 8% as "mobility impaired," and the remainder as "developmentally delayed learner," "hearing impaired," "speech/language impaired," or "visually impaired."

The complainant is a veteran of the Iraq war and has been diagnosed as bipolar with periods of depression and mania and as having post-traumatic stress disorder (PTSD) causing hyper-vigilance and crowd intolerance. He began attending the College in the summer of 2012 when he took one course. In the fall of 2012, he enrolled in and completed four courses resulting in him having received 15 credit hours by the end of the fall semester.

Allegation #1 & #2

The College has adopted a policy, Board Policy (BP) 5140 Coast Community College District Academic Accommodations for Students with Disabilities, which addresses the provision of accommodations for students with disabilities. The policy focuses significantly on issues that may arise after the approval of accommodations and it states very little about the steps that need to be taken by a student in order to receive accommodations through the DSP & S, including providing any time lines by which things must occur during the process.

The Director of the DSP & S and her staff explained to OCR that the approval for accommodations follows a simple process that involves: the student completing and submitting an application for services; the student's physician or other health care provider giving sufficient medical information to support the disability and requested accommodation(s); staff at the DSP & S reviewing all of the documentation to determine a student's eligibility; notification of the results to the student; and, if the application is approved, then the student meeting with a DSP & S counselor and/or the issuing of a letter informing instructors of the provided accommodations.

On March XX, 2013, the complainant began the process to request accommodations for the spring 2013 semester when he completed an Application for Services and signed a Statement of Students Rights and Responsibilities. On March XX, 2013, the complainant signed his Application for Services and submitted a signed verification from his physician that attested to his disabilities and need for accommodations. On the verification form, the complainant's physician wrote that, for testing, the complainant needed additional time, an environment with decreased distraction, and the ability to use notes. Thus, as of March XX, the complainant completed all the requirements the College established in order to receive accommodations.

Although it received all of the required information and documentation from the complainant by March XX, DSP & S did not review the complainant's information to determine if he was eligible for accommodations until May X, 2013. Thereafter, another nine days passed before DSP & S notified the complainant, on May XX, 2013 via e-mail message, that his application had been approved.

The DSP & S director and the staff member who worked on the complainant's application for accommodations informed OCR that they did not know the reason why it took as long as it did for action to be taken on the complainant's application. They suspected that it simply "fell through the cracks."

The director informed OCR that the complainant's application should have been approved much sooner than it was and that the office did not have a formal tracking system that would have flagged the complainant's file when no action had been taken on it after a certain period of time. OCR also learned that DSP & S does not have any guidance documentation that it provides to students that explains the approval process, informs them of the time it should take to receive approval, or advises them to check with the office if they have not received a decision about their application after a certain amount of time has passed. The students are also not specifically told who to contact in the event they have any questions about the process after submitting their application.

The director informed OCR of some work load issues that exist within DSP & S, her belief that the office and its procedures could improve with the addition of extra administrative help, and that the extra help would enable the office to institute a tracking system so that future students' applications are not lost in the shuffle and receive attention once they have reached a certain age without any action being taken on them.

On May XX, 2013, during a final exam in his XXXX class, the complainant was asked to leave the class because he was being disruptive. According to the instructor, after he informed the class that the exam would be open book only, the complainant began yelling at the instructor and using vulgar language toward him. The complainant believed that he should have been permitted to use class notes on the exam. However, no accommodations had yet been approved and the instructor had no knowledge of any accommodations that the complainant had requested. On the same day as the incident,

the instructor completed a Report of Disruptive Behavior form and submitted it to Student Services.

According to the complainant, after the instructor informed the class that no notes could be used on the exam, he stated to the instructor that he had a memory loss problem and the instructor responded by stating that students with mental disabilities are always complaining and making excuses.

The following day, the complainant met with the Acting Dean of Student Services and the Director of the Student Health Center about the classroom incident. During the meeting, the complainant accepted responsibility for his actions and acknowledged that his behavior was inappropriate. The complainant did not advise the dean or director that the instructor made any discriminatory comment about him or otherwise complain about the instructor's actions. He offered to apologize to the instructor and promised that he would act appropriately in the future in the instructor's class. The Acting Dean and the instructor then considered the matter resolved.

The complainant did not follow-up with DSP & S after receiving the May XX, 2013 e-mail notification until August XX, 2013, at which time an appointment was scheduled for September XX, 2013 with a DSP & S counselor so that they could discuss the requested accommodations and he could be provided with a letter detailing the approved accommodations to give to his instructors.

Allegation #3

On August XX, 2013, the College's Vice President of Student Services received an Incident Information Report from campus police that detailed an incident that occurred with the complainant on the previous day. According to the reporting officer, the campus police received a disturbance call reporting that the complainant was being disruptive in a XXXX lab, was yelling and cursing, was abusing his dog, and was asked to leave the lab. Upon arriving at the lab, the campus police spoke with two students who witnessed the incident and each submitted a written statement to the police. According to the two students, the complainant began yelling, cursing, and telling students to stay away from his dog and stop touching it after one of the students commented that she thought his dog was cute. The students further reported that he then began yelling at his dog and, when he was asked to leave the room, he punched and kicked the door, dragged his dog by the leash, and continued to yell and curse while leaving the room.

According to one of the responding officers, he searched the area but was unable to locate the complainant. As he returned to the classroom where the incident occurred, the officer saw the complainant walking toward the classroom with the College's Director of Enrollment Services (Admissions Director). The complainant informed the officer that he was returning to the classroom to retrieve his belongings, that he had PTSD, and that he knew what he did was wrong. The officer stated that the complainant was very apologetic about the incident. The reporting officer sent a copy of his report to

the College's Behavioral Assessment Team (BAT) for any action that it deemed necessary.

The Admissions Director told OCR that the complainant had come to his office on the day of the incident and informed him of what had occurred. He stated that the complainant had come to his office dozens of times in the past to speak with him about various issues that he might be having or to just have general conversation. He explained that he first met the complainant when the complainant began attending the College and he assisted the complainant with enrollment services and took a special interest in him because he desired to help the complainant with whatever issues he may be having. He stated that he went so far as to instruct the staff in his office that, if the complainant came to the office to see him, they should get him even if he was involved in a meeting or otherwise committed. He referred the complainant to counseling on campus but the complainant stopped seeing the counselor after only two sessions. He believed that he developed a relationship with the complainant and felt that the complainant trusted him and knew that his door was always open if he needed to discuss anything or needed any assistance with matters. He stated that he has assisted the complainant numerous times with issues that were related to enrollment, class scheduling, problems with instructors, and other matters that were unrelated to admissions and enrollment.

On August XX, 2013, the Student Services Vice President called the complainant in order to discuss his recent behavior and see how the College could assist him in continuing his studies. The complainant agreed to meet with the Vice President in the office of the Admissions Director on September X, 2013 at XXXX p.m.

Prior to the meeting on September X, the complainant's XXXXXXXXXX instructor reported the complainant's disruptive behavior that had occurred in her class earlier in the day. According to the instructor, the complainant began yelling at her from the back of the classroom and asking whether she had received an e-mail message regarding his absence from the previous class. The instructor told the complainant to discuss the matter with her after class or to send her an e-mail message about the matter. The instructor stated that, throughout the duration of the class, the complainant continually spontaneously yelled things at her and, at times, interrupted other students. Near the end of the class, while the instructor was assisting other students, the complainant approached her and began yelling at her and demanding that she meet with him immediately about his issues. The instructor again informed the complainant that she could not take time out of class to discuss his individual issues and requested that he see her after class or contact her by e-mail message. The complainant persisted with his demands until he finally left the class prior to its conclusion. The instructor stated that she feared for her safety because of the complainant's aggressive and confrontational manner.¹²

¹²The instructor also reported that on the first day of class, another student accidentally bumped into the complainant when entering the classroom. The other student immediately apologized but the complainant began yelling at him and eventually muttered a highly offensive racial epithet.

At the September X meeting, the complainant explained some of the difficulties he had while growing up, other problems he experienced, and his service in the military. He also stated the following related to his being a student at the College:

- he was upset with the length of time it took DSP & S to approve his request for accommodations and its further delay in not scheduling him for an appointment until September XX, 2013;
- he believed the XXXXXXXXXX instructor did not respect him, disregarded him, and attempted to make him look foolish in front of the other students in the class;
- he would not participate in counseling through the Student Health Center because he did not want to be diagnosed; and,
- he could not pass XXXX and, therefore, could not ever obtain a degree since XXXX was a prerequisite to the degree.

Both administrators stated their willingness and desire to help the complainant and the Vice President explained to him that he needed to meet them half way – meaning he needed to better control his anger and conform his conduct to acceptable standards. She further advised him of a veteran’s counselor on campus with whom he should meet, that she would set up the meeting with him, and that she would look into any issues with DSP & S but he should attend his September XX meeting with the DSP & S counselor and also mention to the counselor the difficulties he was having with math to explore whether they were the result of a learning disability.

On September X, 2013, the complainant sent an e-mail message to the XXXXXXXXXX instructor, Vice President, Admissions Director, and a Veterans Administration representative that was titled “To clear the air.” In the message, he stated that he was a combat veteran with a complete disability and he requested that the instructor take this into consideration. He then criticized her for what he perceived were “snide remarks” and “disrespectful comments” directed at him and informed her that her attempts to “publicly humiliate [him] in front of class” would not be tolerated any longer. He closed his message with:

Please allow someone, who fought for your right to teach and to belittle me in front of the class, the opportunity to get a good grade in your class. I would hate to have to take this matter any further.

Later on September X, the Vice President responded to the complainant’s earlier e-mail message and thanked him for meeting with her during the previous day. She also informed him that she scheduled an appointment for him on September X, 2013 at XXXX p.m. with the veteran’s counselor and that she spoke with the Director of DSP & S about his matter. She informed him that DSP & S stated:

- he was eligible for services and a letter of eligibility was sent to him on May X, 2013;

- he met with a DSP & S counselor on May XX, 2013 in order to discuss what he was eligible to receive;
- DSP & S has his request for accommodations for his XXXXXXXXXX XXXXXXXX course but not for his XXXXXXXXXX course; and,
- he can be tested for a learning disability which might give him additional accommodations for XXXX.

The Vice President also advised him to attend his meeting with the DSP & S counselor on September XX, discuss with him the difficulties encountered in XXXX, and request accommodations for the XXXXXXXXXX course. She concluded her message by discussing the complainant's e-mail message to the XXXXXXXXXX instructor. She offered her support to the extent that the message was intended to repair the relationship between the two but also warned him that some of it may have been read as disrespectful. She reminded him that he needed to comport his behavior to acceptable standards and meet her halfway in order for her to help him.

Also on September X, 2013, after receiving the above-stated e-mail message, the complainant responded to the Vice President, thanked her for her help, and informed her that the assertion that he met with a DSP & S counselor on May XX was false. The Vice President acknowledged the complainant's message and stated that she would check on it on Monday and that, either way, the complainant should still show up for any testing that might be necessary.

On September X, 2013, the complainant sent an e-mail message to the same individuals to whom he addressed his September X message and he stated:

Look, that is a bald face lie that I saw [the DSP & S counselor]. I'm so f[*****] sick of this bullshit school. Don't bother calling me or responding to this email. It's "teachers" like [the XXXXXXXXXX instructor] that make me sick. I'm pretty much done with this school, I should never have to come to you about all the shit I had too. F[***] your school. I'm done. You had long enough to fix the issues. Please remove me from the [--]. Thank you [Admissions Director]. You'll never see me again.

Later on September X, 2013, the Vice President responded to the complainant's e-mail message and stated that she and the Director of Admissions had attempted to help the complainant but he was not willing to meet them halfway and his earlier e-mail message was the latest example of an unwillingness to change his behavior. Thus, she stated, the complainant compelled her to initiate the disciplinary process and she understood that he had already withdrawn from classes.

On September XX, 2013, the complainant responded to the September X e-mail message and stated, in pertinent part:

I'm sorry if I was rude or disconcerting but since you want yo [sic] go through with the student discipline I'm going to go ahead and contact

every veterans and disability advocacy group that will listen to me about your school.

On September XX, 2013, after the complainant received the discipline letter from the College, he sent an e-mail message to the Vice President in which he stated, in pertinent part:

I'm sorry to inform you, that I've already submitted my complaint to OCR last week after my meeting with [] and I will also file complaints with other agencies accordingly. I also am not planning on returning to a school where they treat their disabled minority Veterans with such disdain and disrespect. Even if it's unappealable [sic], I will do everything I can to expose this retaliation against me for asserting my disability rights. Thank you for nothing and hopefully this goes all the way to the top.

III. Analysis

Allegation #1

The Section 504 and Title II regulations require recipient colleges and universities to make modifications to their academic requirements that are necessary to ensure that such requirements do not discriminate, or have the effect of discriminating, against qualified students with disabilities. In addition, recipient colleges and universities must take steps to ensure that no qualified disabled student is denied the benefits of, excluded from participation in, or otherwise subjected to, discrimination in a postsecondary education program because of the absence of educational auxiliary aids. Once a student has provided sufficient documentation to establish the he or she is a qualified individual with a disability, the regulations require the use of an interactive process whereby the parties will have open and collaborative discussion about what are reasonable and appropriate accommodations for the individual to receive and the institution to provide. The accommodations that can be provided vary with each situation and individual and the ones requested by the complainant, extra time, a distraction free environment and the use of notes for tests, are some of the most common ones that are requested and approved. A post-secondary institution, however, does not need to provide an accommodation that would impose an undue burden on it or fundamentally alter the nature of the program in question.

Although neither the regulations nor OCR have stated a specific time period by which a student's request for accommodations must be acted on by a post-secondary institution, the time that an institution takes must be reasonable under the circumstances. In this matter, the College did not review the complainant's application and supporting medical information until approximately 45 days after he submitted it. Thereafter, it took an additional nine days for the College to notify the complainant of the results of its review. While there may be valid reasons for delays in some situations, the College did not provide an explanation for the nearly two-month delay. OCR concluded that the delay was not reasonable in the specific factual context of this matter.

As previously stated, the complainant was left to undertake his final examinations during the spring 2013 semester without the benefit of any of his requested accommodations. Further, the lack of the accommodations caused confusion in his XXXX class and eventual conflict with his XXXX instructor as his XXXX instructor had no knowledge of whether the complainant was eligible or approved for accommodations and the complainant had no knowledge if his request to use notes during an examination had been approved or not. Had the accommodation approval process occurred in a more timely manner and the complainant had been notified of the approval of his requested accommodations prior to the start of his final examinations then the issue between him and his XXXX instructor would never have occurred and the complainant could have taken the examination using the accommodations to which he was entitled.

While OCR understands that mistakes do occur and mistakes may more likely occur in situations where there is a shortage in staffing or resources, this cannot serve as a justification or adequate reason for denying a student with a disability the equal opportunity to participate in a public entity's program and receive the benefits of it using reasonable accommodations to which he is entitled.

As such, there is sufficient evidence to support the allegation that the College discriminated against the complainant when it did not timely provide to him the accommodations he requested and to which he was entitled in order to equally participate in and receive the benefits of the College's programs.

Allegation #2¹³

Colleges provide program benefits, services, and opportunities to students through the responsibilities given to employees. If an employee who is acting, or reasonably appears to be acting, in the context of carrying out these responsibilities engages in disability-based harassment that is sufficiently serious to deny or limit a student's ability to participate in or benefit from the program, the college is responsible for the discriminatory conduct whether or not it has notice.

Disability harassment under Section 504 is intimidation or abusive behavior toward a student based on disability that creates a hostile environment by interfering with or denying the student's participation in or receipt of benefits, services, or opportunities in the institution's program. Harassing conduct may take many forms, including verbal acts and name-calling, as well as nonverbal behavior, such as graphic and written statements, or conduct that is physically threatening, harmful, or humiliating. Harassment does not have to include intent to harm, be directed at a specific target, or involve repeated incidents. In analyzing claims of harassment based on disability, OCR considers the totality of the circumstances to determine whether a hostile environment has been created, i.e., whether the harassing conduct is sufficiently severe, persistent, or pervasive that it denies or limits a student's ability to participate in or benefit from the

¹³The complainant did not assert to OCR that the actions of the XXXXXXXXX instructor were harassing and, thus, it has limited its investigation and resolution to the one instructor identified by the complainant.

school's program. In evaluating the seriousness of the conduct, OCR considers factors such as the context, nature, scope, frequency, duration, and location of incidents, as well as the identity and relationships between the persons involved.

An institution is responsible for addressing harassment incidents about which it knows or reasonably should have known. In some situations, harassment may be in plain sight, widespread, or well known to students and staff. In other situations, the institution may become aware of misconduct, triggering an investigation that could lead to the discovery of additional incidents that, taken together, may constitute a hostile environment.

Where the institution learns of harassment based on disability, it must investigate the incident(s) promptly and respond appropriately. The responsibility to respond to harassment based on disability, when it does occur, includes taking prompt and effective action reasonably calculated to end the harassment, eliminating any hostile environment that has been created, preventing it from recurring, and where appropriate, remedying the effects of the harassment on the student who was harassed.

In this matter, the complainant and the instructor provided conflicting versions of what occurred and of what was stated in the classroom on May XX, 2013. However, it is not necessary for OCR to resolve the conflict and determine which view is correct because, even if OCR accepted the complainant's version of what occurred, the behavior does not rise to the level of harassing activity.

Assuming for purposes of analysis that the instructor stated to the complainant that students with mental disabilities are always complaining and making excuses, the statement, by itself, does not meet the threshold for conduct that is sufficiently serious to rise to the level of a hostile environment. While the statement would be unprofessional, improper, and unfortunate if made, it cannot be characterized as severe, persistent, or pervasive in nature. Further, if the complainant viewed the statement as harassing, he did not report the statement to the College despite having the opportunity to do so during his numerous meetings with College administrators including one meeting the day after the comment was allegedly made.

Additionally, even if the comment was considered serious enough to meet the threshold of action that could be characterized as severe, persistent, or pervasive, the information provided to OCR did not show that it had any impact on the complainant's ability to attend, use, and benefit from the College's programs and activities and, in fact, he enrolled for courses at the College the following semester.

Based on the above, there is insufficient evidence to support the allegation that the complainant was harassed by a College instructor.

Allegation #3

The Section 504 and Title II regulations prohibit the College from retaliating against an individual because that individual has engaged in activity protected by those laws. An

individual's reporting to an entity such as OCR of an institution's discriminatory or harassing conduct because of disability is protected activity under the laws enforced by OCR. Likewise, an individual informing an institution of his intent to report such conduct is protected activity.

In this matter, the complainant alleged that the College initiated disciplinary action against him when he informed the College's Vice President that he would report the College's actions to OCR or advocacy groups. On September XX, 2013, the complainant stated to the Vice President that he would "contact every veterans and disability advocacy group" about the College and, on September XX, 2013, he further informed her that he submitted a complaint to OCR the previous week and would file complaints with other agencies. The complainant's statements constituted protected activity since they advised the College of his intent to report unlawful discrimination based on disability by it or of his having already made such a report.

Although the complainant engaged in protected activity, the College's determination to initiate disciplinary action against him was not in response to his protected activity. In an e-mail message on September X, 2013, the College's Vice President informed the complainant of her determination to begin the disciplinary process against him because of his actions. The e-mail message from her preceded the complainant's protected activity by at least one day. Because an adverse action that predates an individual's protected activity can never be in response to the protected activity, the College's determination to initiate the disciplinary process against the complainant was not retaliatory in nature.

Based on the above, there is insufficient information to find that the College retaliated against the complainant.

IV. Conclusion

OCR concluded that the preponderance of the evidence established that the College failed to timely approve and provide to the complainant his requested accommodations.

The College has agreed to the enclosed Resolution Agreement to resolve the compliance issue in this case. The Agreement provides that the College will take measures to improve the timeliness of its review and approval of requests for academic adjustments and accommodations and will implement a procedure to track each application for services that it receives in order to ensure that it is timely completed.

OCR concludes that the actions agreed to by the College in the enclosed Agreement will resolve the compliance issues in this case and OCR will monitor its implementation.

This concludes OCR's investigation of the complaint and 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 herein.

This letter sets forth OCR's determination in an individual OCR case, 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.

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, it 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.

The complainant may file a private suit in federal court whether or not OCR found a violation.

OCR thanks you and your staff, specifically Dr. Kristin Clark and XXXXXXXX XXXXXX, for your assistance and cooperation in resolving this matter. If you have any questions about this letter, please contact Alan Konig, Civil Rights Attorney, at (415) 486-5527 or Alan.Konig@ed.gov.

Sincerely,

/s/

James M. Wood
Team Leader

Enclosure

cc: Kristin Clark, Ed.D., Vice President of Student Services