



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION I
5 POST OFFICE SQUARE, 8th FLOOR
BOSTON, MASSACHUSETTS 02109-3921

December 19, 2017

Dr. Susan West Engelkemeyer
President
Nichols College
c/o Paul J. Murphy, esq.
Sent via e-mail to murphyp@gtlaw.com

Re: Complaint No. 01-17-2063
Nichols College

Dear President West Engelkemeyer:

This letter is to advise you of the outcome of the complaint that the U.S. Department of Education (Department), Office for Civil Rights (OCR) received against Nichols College (the College) alleging disability discrimination. Specifically, the Complainant alleged that after he experienced a mental health episode XXXXXX, the College failed to respond appropriately when other students excluded him from activities of the XXXXXXXXXXXXXXXXXXXX beginning in August 2016. As explained further below, before OCR completed its investigation, the College expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement. The following is a discussion of the relevant legal standards and information obtained by OCR during the investigation that informed the development of the Resolution Agreement

OCR opened the complaint for investigation under Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation found at 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability and also prohibits retaliation against any individual for taking any action guaranteed by Section 504. The College is subject to Section 504 because it receives financial assistance from the U.S. Department of Education.

Based on the information presented, OCR proceeded to investigate the following legal issue:

Whether the College failed to provide a prompt and equitable response to notice of disability discrimination by other students, in violation of the regulations implementing Section 504 at 34 C.F.R. Sections 104.4 and 104.7.

Legal Standards

The regulation implementing Section 504 at 34 C.F.R. Section 104.7(b) requires that a recipient adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504 and its implementing regulation. In evaluating whether a district's response has been prompt and equitable, OCR examines whether it included a prompt, adequate, and impartial investigation of the complaint; notice to the parties of the outcome; and, if discrimination occurred, ending the discrimination, preventing its recurrence, and remedying its effects.

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

Summary of Preliminary Investigation

During the course of the investigation, OCR reviewed information from both the Complainant and College related to the concerns the Complainant raised and the College's response. The information included affidavits from College staff as well as internal and external email correspondence. OCR also reviewed the College's policies related to responding to complaints of discrimination and the Student Alumni Society.

Conclusion

Prior to the conclusion of OCR's investigation and pursuant to Section 302 of OCR's *Case Processing Manual*, the College expressed an interest in resolving this complaint. Subsequent discussions between OCR and the College resulted in the College signing the enclosed Agreement which, when fully implemented, will resolve the issues raised in this complaint. The terms of the Agreement are aligned with the complaint allegations and are consistent with the applicable laws and regulations. OCR will monitor the College's implementation of the Agreement and continue to do so until it has determined that the College has complied with the terms of the Agreement. Failure to implement the Agreement could result in OCR reopening the complaint.

This concludes OCR's investigation of the complaint. 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 have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the College 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 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, you may contact Civil Rights Investigator Molly O'Halloran at (617) 289-0058 or by e-mail at Molly.O'Halloran@ed.gov.

Sincerely,

/s/

Ramzi Ajami
Compliance Team Leader

Enclosure