



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

8<sup>TH</sup> FLOOR, 5 POST OFFICE SQUARE  
BOSTON, MA 02109-3921

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October 28, 2022

President Richard DeCristofaro

By email: [rdecristofaro@quincycollege.edu](mailto:rdecristofaro@quincycollege.edu)

Re: Complaint No. 01-22-2190  
Quincy College

Dear President DeCristofaro:

This letter is to advise you of the outcome of the complaint that the U.S. Department of Education, Office for Civil Rights (OCR) received against Quincy College (College). The Complainant alleges that the College discriminated against her on the basis of disability. Specifically, the Complainant alleges that during the XXXXXXXXXXXXX, her XXXXXXXXXXXXXXXXXXXX failed to implement provisions of her approved disability accommodations that provide for XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX (Allegation 1). In addition, the Complainant alleges that a few days after the XXXX intervened on her behalf, the professor accused her of plagiarism and gave her a failing grade in retaliation for complaining of discrimination to the XXXX (Allegation 2). As explained further below, before OCR completed its investigation, the College expressed a willingness to resolve Allegation 1 by taking the steps set out in the enclosed Resolution Agreement. OCR found insufficient evidence to support Allegation 2.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. Section 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in any program or activity receiving federal financial assistance from the U.S. Department of Education. OCR also enforces Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. Section 12131 et seq., and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive federal financial assistance from the U.S. Department of Education. The laws enforced by OCR prohibit retaliation against any individual who asserts rights or privileges under these laws or their implementing regulations, or who files a complaint, testifies, assists, or participates in a proceeding under these laws. Because the College receives federal financial assistance from the U.S. Department of Education and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

OCR opened the following legal issues for investigation:

- Whether the College discriminated against the Complainant on the basis of disability by refusing to provide her approved academic adjustments of

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XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX, in violation of 34 C.F.R. Section 104.44 and 28 C.F.R. Section 35.130; and

- Whether the College retaliated against the Complainant for complaining of disability discrimination when her XXXXXXXXXXXXXXXXXXXX professor accused her of plagiarism and gave her a failing grade, in violation of 34 C.F.R. Section 104.61 (incorporating 34 C.F.R. Section 100.7(e) by reference).

### Legal Standards

The regulation at § 104.44(a) requires a recipient to modify its academic requirements as necessary to ensure that such requirements do not discriminate or have the effect of discriminating on the basis of disability against a qualified student with a disability.

Recipients may establish reasonable requirements and procedures for students to provide documentation of their disability and request academic adjustments and auxiliary aids and services. Students are responsible for obtaining disability documentation and for knowing and following the procedures established by the recipient, assuming those procedures are adequately publicized. Once the student has provided adequate notice and documentation of his/her disability and the need for modifications due to the disability, the recipient must provide the student with appropriate academic adjustments and auxiliary aids and services that are necessary to afford the student an equal opportunity to participate in the recipient's program.

In determining what modifications are appropriate for a student with a disability, the recipient should familiarize itself with the student's disability and documentation, explore potential modifications, and exercise professional judgment. The question of whether a recipient has to make modifications to its academic requirements or provide auxiliary aids is determined on a case-by-case basis. OCR generally does not substitute its judgment for that of qualified educators and professionals regarding modifications. Instead, OCR reviews relevant factual evidence to determine whether a recipient acted in a reasonable manner and whether it took appropriate steps consistent with Section 504 in making decisions regarding a student's eligibility for academic adjustments. Section 504 envisions a meaningful and informed process with respect to the provision of modifications, e.g., through an interactive and collaborative process between the recipient and the student. If a recipient denies a request for a modification, it should clearly communicate the reasons for its decision to the student so that the student has a reasonable opportunity to respond and provide additional documentation that would address the recipient's objections.

The Section 504 regulation, at 34 C.F.R. § 104.61, which incorporates the procedural provisions of the regulation implementing Title VI of the Civil Rights Act of 1964, prohibits retaliation against any individual who asserts rights or privileges under Section 504 or who files a complaint, testifies, assists, or participates in a proceeding under Section 504.

In analyzing an individual's claim of retaliation against a recipient, OCR first analyzes whether: (1) the individual engaged in a protected activity;<sup>1</sup> (2) the individual experienced an adverse action caused by the recipient;<sup>2</sup> and (3) there is some evidence of a causal connection between the adverse action and the protected activity. If all these elements are present, this establishes an initial, or *prima facie*, case of retaliation. OCR then determines whether the recipient has identified a legitimate, non-retaliatory reason for taking the adverse action. OCR next examines this reason to determine whether it is a pretext for retaliation, or whether the recipient had multiple motives (illegitimate, retaliatory reasons and legitimate, non-retaliatory reasons) for taking the adverse action. If OCR finds that the reason was pretextual, then OCR will make a finding of retaliation; conversely, if OCR finds that the recipient proffered a legitimate, non-retaliatory reason for the action at issue and that the reason was not pretextual, then OCR will find insufficient evidence of a violation.

## Findings of Fact

[illegible][illegible]

Documents provided by the College show that the professor reached out to the Complainant on XXXXXXXXXXXX, stating that she was concerned about the Complainant's lack of participation. The Complainant responded on XX XXXX. She also stated that she was having difficulty with some assignments and quizzes, because her academic adjustments did not take into account the "XXXXXXXXXXXXXXXXXX" of the class. She discussed various assignments and tests she was working on, when she estimated some would be complete, and requested some extensions, including for past due work. According to the College, this was the first time the Complainant contacted the professor; there were only two weeks remaining until the final exam.

<sup>1</sup> A “protected activity” is the exercise of a right that is protected under OCR’s non-discrimination laws.

<sup>2</sup> An adverse action is something that could deter a reasonable person from engaging in further protected activity.

On XXXXXXXX, the XXXXXXXXXXXXXXXXXXXX, who, according to the College, was responsible for “organizing all student accommodation requests,” emailed the professor. The XXXXXXXXXXXXXXXXXXXX wrote that she had XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXX.

[illegible]

The Complainant told OCR that the contract required her to “waive [her] access services.” The College provided a copy of the proposed contract. Contrary to the professor’s statement in the email, the contract states that as long as the Complainant turned in the specified work by XXXX, it would be given “full credit” and not be subject to a “late penalty.” The contract also states: “XXXX XXXXXXXXXXXXXXXXXXXX XXXXXXX XXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXX XX XXXXXX XXX.” Finally, the contract also states that it applies only to work still outstanding, not work already turned in late: “XXXX XXXXXXXXXXXXXXXXXXXX XXXXXXX XXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXX XX XXXXXX XXX.” There is no other reference in the contract to the Complainant’s academic adjustments.

The Complainant told OCR that she refused to sign the contract. In addition, on XXXXXXXX, she emailed the XXXXXXXXXXXXX to state that she wanted to file a discrimination complaint.<sup>3</sup>

The Complainant told OCR that thereafter, the professor accused her of plagiarism, which resulted in her failing the course. According to the College, on XXXXXXXX, the College discovered that the Complainant had plagiarized a XXX. The College provided a Plagiarism Scan Report, dated XXXXXXXX, which found that XXX of the Complainant's XXXXXXXX had been plagiarized. OCR contacted the Complainant to give her the opportunity to provide additional information regarding her retaliation allegation. She informed OCR that she did not believe she copied anything verbatim, although she acknowledged having referenced the website from which the professor got her assignments. The Complainant told OCR that she downloaded the same plagiarism tool used by the College and "nothing came back with a match other than the standard assignment documents used for labs, which are also used at several universities."<sup>4</sup>

<sup>3</sup> The Complainant referred to the XXXXXXXXXXXX as the XXXXX.

<sup>4</sup> The College informed OCR that the reason the Complainant's XXX was flagged was because the quality of writing and the responses to the assignment were not reflective of her previous writing. The College told OCR that

She did not dispute that the College's Plagiarism Scan Report found that XXX of her XXXXXXXX had been plagiarized.

The College also provided OCR printouts from the electronic database students used to take the XXX quizzes in the professor's class. The printouts showed that for each of the first XXX quizzes, the Complainant was provided XXXXXXXXXXXXXXXXXXXX and for the XXXX quiz, she was provided XXXXXXXXXXXXXXXXXXXX.

Finally, the Complainant told OCR that even though she failed the course, the College allowed her to XX  
XXXXX.

## Analysis

Based on the investigation to date, OCR has concerns that there did not appear to be a shared understanding between the College and the Complainant about what the Complainant's accommodations were and what they required of her. From the information gathered to date, it appears that the Complainant did not understand her accommodations to require her to seek XXXXXXXXXXXXXXXXXXXX, although OCR notes that the Complainant did not reach out to the professor to XXXXXXXXXXXXXXXXXXXX her need for XXXXXXXXXXXX, as required by the accommodations letter, until two weeks before the final exam, and then only in response to the professor seeking the Complainant out. By contrast, the College, including the professor, appeared to interpret the Complainant's accommodations letter to allow for XXXXXXXXXXXX only when requested in advance. It is not clear whether either party understood the letter to mean that XXXXXXXXXXXX were permitted only in the event that the Complainant's disability required her to undergo XXXXXXXXXXXXXXXXXXXXXXXXXXXX. It appears that it was not until late XXXXXXXXXXXX that the Complainant's accommodations were explained to her by the XXXXXXXXXXXX. OCR also notes that the XXXXXXXXXXXX acknowledged that it was not uncommon for students to be confused about what the accommodations were that the College had provided.

At this stage of the investigation OCR has not determined what accommodations the College intended to grant to the Complainant at the time the accommodations letter was issued. Nor has OCR determined whether, at that point, the College clarified to the Complainant exactly what her accommodations were and what, if anything, was expected of her in order to invoke them. OCR notes that if the parties do not have a shared understanding, they cannot meaningfully engage in the required interactive process. Finally, OCR has also not determined whether the College ensured that the Complainant's accommodations were clear to her professors.

With regard to the contract proffered by the professor, at this stage of the investigation OCR has not determined if the contract applied to any assignments not yet due (as opposed to overdue but not yet submitted). If it did, OCR is concerned that the professor may have attempted to substitute the contract for the Complainant's approved academic adjustments.

there was one other student that the professor found plagiarized that semester, and that student was also given a failing grade on the assignment.

In sum, at this point OCR has not determined whether the professor failed to implement the XXXXXXXXXXXX element of the Complainant's accommodations because it is not clear what the accommodation was.<sup>5</sup> Furthermore, OCR has not determined whether the professor's contract sought to alter the Complainant's approved academic adjustments. To make a compliance determination, OCR would need more information about the parties' discussions during the interactive process, what was conveyed about the meaning of the letter at the time it was issued, and deadlines for the assignments listed in the contract.

OCR determined the Complainant engaged in a protected activity both when she requested disability-based accommodations and when she requested to file a discrimination complaint. In addition, OCR determined that being accused of plagiarism is an adverse action.<sup>6</sup> There is also some evidence of a causal connection between the Complainant's request to file a discrimination complaint on XXXXXX, and the plagiarism accusation only a few days later. Therefore, OCR finds that there is a *prima facie* case of retaliation.

The College offered a legitimate, nonretaliatory reason for accusing the Complainant of plagiarism: the professor, determining that the quality of the Complainant's XXX assignment differed from her previous assignments, conducted a plagiarism scan, and the Plagiarism Scan Report showed that XXX of the Complainant's assignment had been plagiarized. OCR does not find that the reason offered by the College was pretext for retaliation.

### Conclusion

Prior to OCR completing its investigation of Allegation 1 and making any findings, the College requested to voluntarily resolve this allegation under Section 302 of OCR's *Case Processing Manual*, which OCR determined is appropriate. Subsequent discussions between OCR and the College resulted in the College signing the enclosed Agreement which, when fully implemented, will address all this allegation.

With regard to Allegation 2, OCR finds, pursuant to Section 303(a) of OCR's *Case Processing Manual*, the evidence is insufficient to conclude that the College violated Section 504 or Title II. OCR will take no further action regarding this allegation.

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 a right to file a private suit in federal court whether or not OCR finds a violation.

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<sup>5</sup> OCR notes that the Complainant does appear to have been granted the required XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX.

<sup>6</sup> Here, OCR does not find that the professor's decision to run the Complainant's assignment through the plagiarism scan was an adverse action: a reasonable person would not be dissuaded from engaging in further protected activity because their assignment was run through an electronic scan programmed to detect plagiarism.

The Complainant has a right to appeal OCR's determination concerning Allegation 2 within 60 calendar days of the date indicated on this letter. In the appeal, the Complainant must explain why the factual information described here was incomplete or incorrect, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal. If the Complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the College. The College has the option to submit to OCR a response to the appeal. The College must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the College.

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.

Sincerely,

/s/  
Michelle Kalka  
Compliance Team Leader

Enclosure

cc: Vineesha S. Sow, Esq.  
vsow@mhtl.com