



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

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January 17, 2018

Sue Henderson, Ph.D.  
President  
New Jersey City University  
Hepburn Hall, Room 313  
2039 Kennedy Blvd.  
Jersey City, New Jersey 07305

Re: Case No. 02-17-2244  
New Jersey City University

Dear Dr. Henderson:

This letter is to notify you of the determination made by the U.S. Department of Education, Office for Civil Rights (OCR), with respect to the above-referenced complaint filed against the New Jersey City University (the University). The complainant alleged that the University retaliated against her daughter (the Student) for the complainant's and the Student's disability-related advocacy, including filing a complaint of discrimination against the University with OCR on xxxxx, by dismissing the Student from a sports team (the team) on xxxxxx, 2017.

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 and activities receiving financial assistance from the U.S. Department of Education (the Department). OCR also is responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (the 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 University is a recipient of financial assistance from the Department and is a public postsecondary educational institution. Therefore, OCR has jurisdictional authority to investigate this complaint under Section 504 and the ADA.

The regulation implementing Section 504, at 34 C.F.R. § 104.61, incorporates by reference 34 C.F.R. § 100.7(e) of the regulation implementing Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*, which provides that no recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any

right or privilege secured by regulations enforced by OCR or because one has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing held in connection with a complaint. The regulation implementing the ADA contains a similar provision at 28 C.F.R. § 35.134.

In analyzing whether retaliation occurred, OCR must first determine whether the three prima facie elements of retaliation can be established: (1) whether a recipient or other person subjected an individual to an adverse action; (2) whether the recipient or other person (a) knew that the individual engaged in a protected activity or (b) believed that the individual might engage in a protected activity in the future; and, (3) there is some evidence of a causal connection between the adverse action and protected activity. When a prima facie case of retaliation has been established, OCR then determines whether there is a facially legitimate, non-retaliatory reason for the adverse action; and if so, whether the facially legitimate, non-retaliatory reason is a pretext for retaliation.

In its investigation, OCR reviewed documentation that the complainant and the University submitted, and audio recordings that the complainant submitted. OCR also interviewed the complainant, the Student, and University staff. OCR made the following determinations.

OCR determined that the Student was enrolled at the University during academic year 2016-2017, and was a member of the team. The Student was initially dismissed from the team on xxxxxx, 2016, for “failing to fulfill her various obligations as a student athlete”; including, among others, failing to attend tutoring and practices, and not notifying staff in advance of her inability to attend.

On or about xxxxxx, 2016, the complainant and the Student met with University staff regarding the Student’s dismissal from the team and the impact of the Student’s disability on the incidents that led to her dismissal; and, requested that the decision be reconsidered. The University requested medical documentation regarding the Student’s disability, which the Student’s therapist provided to the University on or about xxxxxx, 2017. The University agreed to reinstate the Student to the team with the following conditions: she was required to meet with the athletic trainer once per week; provide the University with a copy of her updated therapy schedule; and abide by team protocols. The University also developed a support plan for the Student, which included accommodations for the Student to miss practices due to scheduled physician appointments; and, monitoring of the Student’s well-being by the University’s athletic department. The Student was reinstated to the team on xxxxxx, 2017.

On xxxxxx, 2017, the athletics trainer sent an electronic mail message (email) to the Student asking her to provide a copy of her updated therapist’s schedule; however, the Student did not immediately respond. On or about xxxxxx, 2017, the athletics director met with the Student and advised her that she would be suspended from the team effective xxxxxx, 2017, until she provided the updated therapist’s schedule. The Student provided an updated therapist’s schedule to the athletics director by facsimile on xxxxxx, 2017, and the athletics director sent the Student an email on that date clearing her to return to the team effective xxxxxx, 2017.

The Associate Vice President for Student Affairs (the associate) emailed the Student in the morning of xxxxxx, 2017, and stated, in part, for her to have a good season. Later that day, the

associate summoned the Student to his office and informed her that she was dismissed from the team.

The complainant alleged that the University dismissed the Student from the team in retaliation for her and the Student's disability-related advocacy, including filing a complaint of discrimination against the University with OCR on xxxxxxx. OCR determined that the complainant and the Student engaged in protected activity by advocating on the Student's behalf with respect to seeking accommodations for the Student's disability on the team in fall 2016, and spring 2017. The complainant filed a prior complaint against the University with OCR, assigned Case No. xxxxx, on xxxxxx, alleging that the coach discriminated against the Student because of her disability; however, OCR did not notify the University of the complaint until xxxxxxx. Nevertheless, OCR determined that prior to notifying the University of the complaint filed with OCR, the University believed that the Student had or might engage in a protected activity because on or about xxxxxx, 2017, the Student discussed taking legal action against the coach with at least one teammate. The University was aware of the complainant's and Student's protected activities. OCR determined that the Student experienced an adverse action when she was dismissed from the team on xxxxxx, 2017.

The coach informed OCR that during team practices on xxxxxx and xx, 2017, while the Student was suspended, several members of the team informed xxxx that the Student had asked them to testify in a lawsuit against the coach.<sup>1</sup> The coach stated that members of the team were upset and did not want to play on the team in this environment.<sup>2</sup> The coach also stated that the University had received a telephone call and email from a team member's parents that complained about the Student's actions. The coach stated that the Student was creating a hostile environment on the team, and that xxxx found the Student's conduct disrespectful and in violation of the University's Student-Athlete Code of Conduct (the code).

By email dated xxxxxx, 2017, the coach informed the athletics director and the associate that on xxxxxx and xx, 2017, "concerned" players had informed xxxxx of statements made by the Student earlier that week "in regards to legal actions against [the coach]"; complaining of mistreatment against her by staff and members of the athletic department. The coach stated that the Student concluded each statement asking if the student athlete would be willing to "testify" in court regarding her treatment. The coach stated that the Student's behavior "continued to jeopardize the integrity of the team both as individual student-athletes and the program as a whole."

On the afternoon of xxxxxx, 2017, the associate and coach met with the Student and informed her that she was dismissed from the team because she arrived 25 minutes late for a practice; left practice early and did not notify anyone in advance; did not comply with the trainer's request for her updated therapy appointments; and, harassed her teammates to help her out in a lawsuit against the coach and the University.<sup>3</sup>

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<sup>1</sup> The alleged lawsuit was related to the University's alleged discrimination of the Student based on her disability.

<sup>2</sup> The Student confirmed that some student-athletes xxxxx because they were concerned that the coach might lose xxxx job because of the Student's actions.

<sup>3</sup> The athletics director did not attend the meeting, but had conferred with the coach and associate prior to the decision and agreed to the Student's dismissal.

The associate stated to OCR that the University's decision to dismiss the Student from the team was not based on the lawsuit, but was based on the Student's behavior, which was "tearing the team apart." The University informed OCR that the Student was dismissed from the team for violating the code. The code prohibits, in relevant part, "[a]ny sort of disrespect shown towards coaches, support staff, teammates, professors, and the like..."; "There is a zero tolerance policy for laziness, poor attitudes, pouting, etc."; and players must "show respect to coaches, teammates." The code requires players to conduct themselves "in an appropriate fashion on and off the campus, and never embarrass the University, coach, team, or student body through misconduct"; must be "careful of associations and remarks, public or private, about the University, coach or team"; and willful disregard of the code "can bring suspension or dismissal from the team." The University also asserted that the Student violated a provision in the University's Student-Athlete Eligibility Handbook that states that "the head coach of each sport, in conjunction with the Director of Athletics, has the prerogative of setting training rules, discipline for the squad and standards of behavior as described in the [University's] code....[t]his details a clear understanding of what the coach expects of the players with an emphasis on sportsmanship."

The Student denied asking any of her teammates to testify in a lawsuit. The Student stated that she told only one teammate about her complaint with OCR, and asked two other teammates for copies of a group message that had been sent about her first dismissal. The Student stated that the coach was the one asking team members if the Student had approached them regarding a lawsuit.<sup>4</sup>

Based on the above, OCR determined that the University proffered facially legitimate, non-retaliatory reasons for the Student's dismissal from the team on xxxxxx, 2017; namely, that the Student had violated the conditions of her reinstatement to the team and had engaged in conduct in violation of the code that warranted dismissal. OCR determined, however, that the proffered reasons were a pretext for retaliation. With respect to the position that the Student was dismissed from the team for violating the conditions of her reinstatement, OCR determined that the Student's suspension for the violation of the conditions of her reinstatement ended and she was cleared to play on the team on xxxxxx, 2017; however, when the coach emailed the associate and director on xxxxxx, 2017, stating that on xxxxxx and xx, 2017, "concerned" players had informed xxxx of statements made by the Student earlier that week "regarding taking legal action against [xxxx]" and concluded each statement asking if the student athlete would be willing to "testify" in court regarding her treatment, she was dismissed later in the day on xxxxxx, 2017. With respect to the position that the Student had violated the code, OCR determined that the conduct that allegedly violated the code was the belief that the Student was informing team members that she intended to file suit against the coach alleging that the coach had discriminated against the Student on the basis of her disability, which is a protected activity. Therefore, OCR determined that there was sufficient evidence to substantiate the complainant's allegation that the University retaliated against the Student for the complainant's and Student's disability-related advocacy, by dismissing the Student from the team on xxxxxx, 2017, in violation of the regulations implementing Section 504 and the ADA.<sup>5</sup>

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<sup>4</sup> OCR contacted all of the student-athletes on the team; however, none responded to OCR's requests for interviews.

<sup>5</sup> The complainant informed OCR that the Student does not want to return to the University.

On January 9, 2018, the University signed the enclosed resolution agreement to resolve the above-referenced compliance issues. OCR will monitor the implementation of the agreement.

This letter should not be interpreted to address the University'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 University 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 individual may file a 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 that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions, please contact R. Colin Power, Compliance Team Attorney, at (646) 428-3832 or [R.Colin.Power@ed.gov](mailto:R.Colin.Power@ed.gov); Tracey Beers, Senior Compliance Team Attorney, at (646) 428-3804 or [Tracey.Beers@ed.gov](mailto:Tracey.Beers@ed.gov); or Anna Moretto Cramer, Compliance Team Leader, at (646) 428-3826 or [Anna.Moretto.Cramer@ed.gov](mailto:Anna.Moretto.Cramer@ed.gov).

Sincerely,

/s/

Timothy C.J. Blanchard

Encl.

cc: xxxxxxxxxxxxxxxx, Esq.