



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION III
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KENTUCKY
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November 14, 2014

IN RESPONSE, PLEASE REFER TO: 03122112

Dr. Eric J. Barron, President
Pennsylvania State University
201 Old Main
University Park, Pennsylvania 16802

Dear Dr. Barron:

This is to notify you of the resolution of the above-referenced complaint filed with the U.S. Department of Education (the Department), Office for Civil Rights (OCR), against Pennsylvania State University (the University). The Complainant, XXXXXX, alleged that the University discriminated against her on the basis of disability and retaliated against her because she XXXXXX XXXXX XXXXXX XXXXXX XXXXXX XXXXX XXXXX XXXXX XXXX . Specifically, the Complainant alleged that the University discriminated against her and retaliated against her by failing to adequately respond to XXXX XXXX XXXXXX XXXXXX XXXXXX XXXXX XXXXX.

OCR enforces:

- Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibits discrimination on the basis of disability by recipients of Federal financial assistance. Section 504 also prohibits retaliation.
- Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131, and its implementing regulation, 28 C.F.R. Part 35, prohibit discrimination on the basis of disability by public entities. Title II also prohibits retaliation.
- Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681, and its implementing regulation, 34 C.F.R. Part 106. Title IX prohibits discrimination on the basis of sex by recipients of Federal financial assistance. Title IX also prohibits retaliation.

The Section 504 regulation at 34 C.F.R. § 104.7(b) states that a recipient that employs 15 or more persons shall 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. Pursuant to OCR policy, there are certain minimum elements that are necessary to meet the standard for a prompt and equitable grievance procedure under Section 504:

- notice to students and employees of the procedure, including how and where to file a complaint;

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

- application of the procedure to complaints alleging disability discrimination carried out by students, employees, or third parties;
- adequate, reliable, and impartial investigation, including the opportunity for both parties to present witnesses and other evidence;
- designated and reasonably prompt timeframes for the major stages of the complaint process;
- notice to the parties of the outcome of the complaint; and
- an assurance that the recipient will take steps to prevent the recurrence of any prohibited actions and to correct its effects on the complainant and others, if appropriate.

To establish a prima facie case of retaliation, OCR must determine whether: (1) the Complainant engaged in a protected activity; (2) the University was aware of the protected activity; (3) the University took adverse action against the Complainant contemporaneous with or subsequent to participation in a protected activity; and (4) there is a causal connection between the protected activity and the adverse action. If one of the elements cannot be established, OCR finds insufficient evidence of a violation. If all of the above elements are established, OCR then determines whether the recipient has a legitimate, non-discriminatory explanation for the adverse action. If such an explanation is proffered, OCR examines whether the reason given is merely a pretext for retaliation.

Under OCR procedures, a complaint may be resolved before the conclusion of an investigation if a recipient asks to resolve the complaint by signing a resolution agreement. The provisions of the resolution agreement must be aligned with the complaint allegations or the information obtained during the investigation, and be consistent with applicable regulations. Such a request does not constitute an admission of a violation on the part of the University, nor does it constitute a determination by OCR of any violation of our regulations.

Consistent with OCR's procedures, the University requested to resolve this complaint through a resolution agreement, which was executed by the University on November 10, 2014. A copy of the signed Agreement is enclosed. As is our standard practice, OCR will monitor the University's implementation of the Agreement.

Accordingly, OCR is concluding its investigation of this allegation as of the date of this letter. This letter is not intended, nor should it be construed, to cover any other issues regarding the University's compliance with Section 504, Title II, and Title VI and their implementing regulations that may exist and are not discussed herein. The Complainant may have the right to file a private lawsuit 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, you 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.

Thank you for your cooperation in this matter. If you have any questions, please contact Ms. Regina Sheehan at 215-656-8563 or Regina.Sheehan@ed.gov.

Sincerely,

/s/

Joseph P. Mahoney
Program Manager

Enclosure