



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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REGION III  
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November 6, 2013

**IN RESPONSE, PLEASE REFER TO: #03132275**

Dr. Judith Gay  
President  
Community College of Philadelphia  
1700 Spring Garden Street  
Philadelphia, PA 19130

Dear Dr. Gay:

This is to advise you that we have completed our investigation and reached a determination in the above-referenced complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against the Community College of Philadelphia (the College) alleging discrimination on the basis of disability. Specifically, XX XXXX XXXXXX (the Complainant) alleged that the College discriminated against XXX on the basis of disability by:

1. subjecting XXX to a hostile environment by failing to address disability harassment of which it had notice; and
2. XXXXXX X XXXX XX XXX XXXXXXXXX XX XXXXX XX XXXX; and

The Complainant also alleged that the College retaliated against XXX XXXX XXXX XXXX XXXX XXXXXXXXX XXXXXXXXXXXX complaints in XXXXX XXX XXXXX XXXX by:

3. XXXXXX X XXXX XX XXX XXXXXXXXX XX XXXXX XX XXXX.

OCR is responsible for enforcing:

- Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit 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), and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities such as elementary and secondary education systems. Title II also prohibits retaliation.

The College is a recipient of Federal financial and a public entity and therefore subject to the requirements of Section 504 and Title II.

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

OCR applies a preponderance of the evidence standard to determine whether the evidence is sufficient to support a particular conclusion. Specifically, OCR examines the evidence in support of and against a particular conclusion to determine whether the greater weight of the evidence supports the conclusion or whether the evidence is insufficient to support the conclusion.

In reaching a determination in this complaint, OCR reviewed documentation provided by the Complainant and the College. OCR also interviewed the Complainant, students, College faculty, and administrators. Based on our investigation, OCR has determined there is insufficient evidence to support a conclusion that the Complainant was discriminated or retaliated against as alleged. However, OCR's investigation identified compliance concerns with regard to the College's grievance procedures. The College voluntarily agreed to resolve these concerns through the attached agreement. The bases for OCR's determination are summarized below.

The regulation implementing Section 504, at 34 C.F.R. § 104.4(a), provides that no qualified disabled person shall, on the basis on disability be excluded from participation in, be denied the benefits of, or otherwise subjected to discrimination under any program or activity which receives Federal financial assistance. The Title II regulation, at 28 C.F.R. § 35.130(a), provides that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

When investigating a different treatment claim, OCR examines whether the student was treated differently than similarly situated non-disabled students. If such different treatment is found, OCR then examines any legitimate nondiscriminatory justification offered by the recipient. Finally, OCR will review any justification offered by the recipient to determine whether it is pretext for discrimination.

A recipient, such as the College, has a duty to provide a nondiscriminatory environment that is conducive to learning. The existence of a hostile environment that a recipient creates, encourages, accepts, tolerates, or leaves uncorrected constitutes different treatment on the basis of disability in violation of Section 504 or Title II. OCR will find that a recipient violates Section 504 and/or Title II when it determines, based upon a review of evidence, that: 1) a student was subjected to harassment on the basis of disability; 2) the harassment rose to a level (was so severe, persistent, and pervasive) that it denied or interfered with the student's ability to participate in or benefit from the educational program, services, activities, or privileges provided by the recipient; 3) the recipient had actual or constructive notice of the harassment; and, 4) the recipient failed to take prompt and remedial action to end the harassment and prevent its reoccurrence.

OCR considers the totality of all relevant circumstances to determine whether the alleged harassing conduct is sufficiently severe, persistent, or pervasive to rise to the level of a hostile environment so as to interfere with or limit the ability of a student to participate in or benefit from the recipient's programs or activities. Factors considered include the context, nature, scope, frequency, duration, and location of the alleged harassment, as well as the age, identity, number, and relationships of the persons involved. OCR evaluates the conduct and circumstances from both a subjective and objective perspective.

Once a recipient is on notice of the existence of a hostile environment, an appropriate response includes taking immediate steps to determine what occurred, ending any harassment and eliminating the hostile environment, and preventing harassment from occurring again, and remedying the effects of the harassment.

In addition to the nondiscrimination provisions, the Section 504 regulation, at 34 C.F.R. §104.8, requires recipients to publish a notice of nondiscrimination. The regulation at 34 C.F.R. §104.7(a), requires that recipients designate at least one employee to coordinate compliance with the regulation. Further, the regulation, at 34 C.F.R. §104.7(b), requires recipients to adopt and publish a policy against disability discrimination and grievance procedures providing for prompt and equitable resolution of complaints of discrimination on the basis of disability. The Title II regulation, at 28 C.F.R. § 35.107 contains similar requirements.

The regulation implementing Title VI, at 34 C.F.R. § 100.7(e) 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 because he has made a complaint, testified, assisted or participated in any manner in an investigation, proceeding or hearing. The prohibition against retaliation is incorporated by reference in the Section 504 regulation at 34 C.F.R. § 104.61. The Title II regulation at 28 C.F.R. § 35.134 prohibits retaliation by public entities.

When investigating a retaliation claim, OCR examines whether: (1) the individual engaged in a protected activity; (2) the recipient had notice of the individual's protected activity; (3) the individual was subjected to an adverse action; and (4) there was a causal connection between the protected activity and the adverse action. If any of those elements cannot be established, then OCR cannot find evidence of a retaliation violation. If all of these elements are established, then OCR considers whether the recipient has identified a legitimate, non-retaliatory reason for taking the adverse action, and whether the reason asserted is a pretext for retaliation.

A causal connection is inferred in most OCR cases when the adverse action occurs in a close proximity in time with the protected activity. However, this determination is made on a case-by-case basis and must consider all the facts in the given case. Additional evidence that would demonstrate a causal connection includes: a change in treatment of the individual before and after engaging in the protected activity; treatment of the individual that is different from treatment of other similarly situated individuals; and, deviation from established practice or procedure.

## **FACTUAL SUMMARY**

## *Background*

The complainant enrolled at the Community College of Philadelphia in XXXXX. She approached College officials about obtaining academic adjustments. XXX submitted documentation in January 2013. The evaluation stated that XXXX XXXXXX XXXXX XXXXXX XXXX XXXXXXXXXX XXXX XXXXXXXXXXXXXX XXXXXXXXXXXXXXX XXXXXX XXXX XXXXXXXXXX. The College agreed to provide academic adjustments in January 2013.

The Complainant enrolled in two courses during the 2013 spring semester, XXXXXXXXXX and XXXXXXXX. The allegations of discrimination and retaliation all relate to issues arising in

XXXXXXX XXXXX. Early in the semester, the Complainant informed XXXXX XXXXX XXXXXX XXXXXX .

*Relevant Procedures*

The College has a policy prohibiting disability discrimination and affording the opportunity to file complaints alleging such discrimination. The College's Grievance Procedure offers a complainant informal and formal complaint processes. Informal complaints are described as verbal complaints initiated by an applicant, employee or student with the Office of Equity and Diversity. Formal complaints are written complaints. Complaints alleging violations of Section 504>Title II or Section 504 can also be filed with their respective Department Chair or Division dean. Information about the grievance procedures is readily accessible to students, including on the College's website.

The College also has a procedure in its student Code of Conduct, which provides that any member of the College community may file charges for misconduct against any student with the Judicial Affairs Officer. The College uses a Behavioral Reporting Form for initiating such actions. The Judicial Affairs Officer may conduct an investigation to determine whether the charges have merit and/or whether they may be disposed of administratively by mutual consent of the parties as part of an informal disciplinary procedure. Such disposition is final and there are no subsequent proceedings. If the charges cannot be disposed of by mutual consent, the Judicial Affairs Officer may later submit the case to the Judicial Hearing Committee for a formal hearing. During a Judicial Hearing the parties are permitted to present witnesses and information. The Judicial Hearing Committee's determination is made on the basis of whether it is more likely than not that the accused student violated the Code of Conduct.

*Facts*

The Complainant asserted that XXXXXXXXXXXX XXXX XXXXX XXXXXXXXXXX toward XXX regarding XXX disability. Additionally, the Complainant stated that XXXXXXXXXXXX XXXXXXXXXXXX XXXXX XXXXX XXXXX XXXXX XXXX XX XX XXXXXX XXXX XXXX XXXX XXX XXX XXXXXX X X XXXXXXXXXXXX XXXXXX XXXX XXXXXX The Complainant alleged that XXXXXX XXXXXX XXXXX XXXXXXXX. Interviews with the course instructor and other students did not substantiate assertions related to XXX disability. The instructor stated that XXXX XXXX XXXX XXXXXXXX XXXXXXXX XXXX.

X---paragraph redacted---X

## **LEGAL ANALYSIS:**

## **Issue #1 - Hostile environment - disability harassment**

Using the above reference legal standard, OCR's investigation could not establish the existence of a hostile environment. The evidence reflects that in March and April 2013, the Complainant was X---paragraph redacted---X

X---paragraph redacted---X

In addition, OCR's investigation could not establish that the Complainant was subjected to disability harassment. Therefore, there is insufficient evidence to support the allegation that the College subjected the Student to a hostile environment based on disability.

**Issue #2 - Different Treatment – XXXX XX XXXXXX.**

**Issue #3 - Retaliation – XXXX XX XXXXXX.**

The Complaint contends that the College retaliated against XXXXXX XXXXXXXX XXXXXXXXX XXXXXXXXXXXX XXXXXXXXX . OCR confirmed that the complainant did participate in a protected activity of which the College had notice by filing a complaint alleging disability discrimination with the College on XXXXX XX XXX. The Complainant was subjected to an adverse action (X XXXX XX XXX XXXXXX) immediately following her complaint filing. However, we do not find a causal connection between the protected activity and the adverse action. Rather, OCR's investigation established that the College XXXXX XXXX XXXXX XXXXX XXXXXX XXXXXXXX XXXXXXXX XXXXXXX XXXXXXX XXX XXXX XXX X X X XXXX XX X. As such, we conclude that the College was following its usual practice and the Complainant was treated in the same manner as other similarly situated students. Therefore, OCR was unable to establish that College retaliated against the Complainant on the basis of XXXX XXXXXX XXXXXX XXXXXXXXXXXX XXXXXXXXX XXXXX .

## **Issue #4 - Grievance Procedures**

Although not specifically alleged by the Complainant, during this investigation, OCR identified some deficiencies in the College's published policies and procedures for addressing grievances of disability discrimination. The College has voluntarily agreed to take the corrective actions set forth in the enclosed Resolution Agreement (the Agreement). OCR concludes that the College will be in compliance with Section 504 with respect to the identified compliance concerns upon full implementation of the actions contained in the Agreement. As is standard OCR practice, the College's implementation of the Agreement will be monitored, and the College's continued compliance with Section 504 is contingent on the College's full implementation of the Agreement.

This concludes OCR's investigation and 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. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

This letter is a letter of findings issued by OCR to address an individual OCR case. Letters of findings contain fact-specific investigative findings and dispositions of individual cases. Letters of findings are not formal statements of OCR policy and they 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, 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. OCR is committed to a high-quality resolution of every case. If you have questions or concerns

about OCR's findings, you may contact Ihor Stefan Bilynsky, Equal Opportunity Specialist, at 215-656-8521, or by email at: [Ihor.Bilynsky@ed.gov](mailto:Ihor.Bilynsky@ed.gov)

Thank you for your cooperation with this matter.

Very truly yours,

/s/

Joseph. P. Mahoney  
Program Manager

Enclosure