



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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February 20, 2015

IN RESPONSE, PLEASE REFER TO: 03142384

Dr. Michael B. McCall, Chief Executive Officer
Jefferson Community and Technical College System
300 North Main Street
Versailles, KY 40383

Dear Dr. McCall:

This is to notify you of the resolution of the above-referenced complaint filed with the U.S. Department of Education, Office for Civil Rights (OCR) against Jefferson Community and Technical College (the College). XXXXXX (the Complainant) alleged that the College discriminated against XXXXXX on the bases of sex, disability and retaliated against XXXXXX. Specifically, he alleged that the College:

1. Discriminated against XXXXXX on the basis of sex, when the XXXXXX (the Professor) treated XXXXXX differently than XXXXXX students who were permitted to take breaks during class, by reprimanding XXXXXX.
2. XXXXXX.
3. Retaliated against XXXXXX for complaining to the Dean of Students and the Division Chair that the Professor discriminated against him on the bases of sex and disability by XXXXXX.

OCR enforces:

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

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

As a recipient of Federal financial assistance from the Department and a public entity, the College is subject to Title IX, Section 504, Title II and their implementing regulations.

Legal Standards

Sex Discrimination

The regulation implementing Title IX, at 34 C.F.R. § 106.31(a), provides that no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other program or activity operated by a recipient which receives financial assistance from the Department. Specific obligations are set forth at 34 C.F.R. § 106.31(b), including a recipient's obligation to ensure that its students are not denied or limited in their ability to participate in or benefit from the recipient's programs or activities on the basis of sex. To establish a prima facie case of discrimination, OCR must find that the College treated individuals differently from similarly situated individuals on the basis of sex. If OCR finds a prima facie case of discrimination, it then determines whether the College has articulated a legitimate, nondiscriminatory reason for the different treatment. Once the College articulates a legitimate, nondiscriminatory reason for its actions, OCR determines whether the reason is merely a pretext for unlawful discrimination.

Disability Discrimination

The Section 504 regulation, at 34 C.F.R. Section 104.3(j), defines a person with a disability as any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment. Any mental or psychological disorder is considered to be a mental impairment under 34 C.F.R. Section 104.3(j)(2)(i)(B). Learning is considered to be a major life activity under 34 C.F.R. Section 104.3(j)(2)(ii). With regard to post-secondary students, a "qualified" individual with a disability is one who meets the institution's academic and technical standards for admission or participation in the academic program. See 34 C.F.R. § 104.3(l)(3).

The regulation implementing Section 504, at 34 C.F.R. §104.4(a), provides that no person with a disability may, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance. When a recipient offers an individual a benefit or service, it is prohibited from denying the benefit or service on the basis of his or her disability, in accordance with 34 C.F.R. §104.4 (b)(1)(i). Section 504, at 34 C.F.R. § 104.43 (a), provides that a qualified individual with a disability may not, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any postsecondary education program or activity of a recipient of Federal financial assistance from the Department. Additionally, 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.

X---REDACTED---X.

X---REDACTED---X

Retaliation

When investigating a retaliation claim, OCR must determine 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 contemporaneous with or subsequent to the protected activity; and (4) there was a causal connection between the protected activity and the adverse action. If one of the elements cannot be established, then OCR finds insufficient evidence of a violation. If all of these elements are established, then OCR considers whether the recipient has identified a legitimate, non-discriminatory reason for taking the adverse action. If so, OCR then considers whether the reason asserted is a pretext for discrimination. While OCR would need to address all of the elements in order to find a violation, OCR need not address all these elements in order to find insufficient evidence of a violation, where the evidence otherwise demonstrates that retaliation cannot be established.

In order for an activity to be considered "protected," the individual must have either opposed conduct prohibited by one of the laws that OCR enforces or participated in an investigation conducted under the laws that OCR enforces. Notice of the protected activity to the recipient, and not necessarily to the alleged individual retaliator(s), is sufficient to establish the notice requirement. In determining whether an action taken by the recipient is adverse, OCR considers whether the alleged adverse action caused lasting and tangible harm, or had a deterrent effect. Merely unpleasant or transient incidents usually are not considered adverse. Generally, the more time in between the protected activity and the adverse action, the weaker the presumption of a causal connection. 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.

Conclusion

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 and be consistent with applicable regulations. Such a request does not constitute an admission of a violation on the part of the College, nor does it constitute a determination by OCR of any violation of our regulations.

Consistent with OCR's procedures, the College requested to resolve the complaint through a Voluntary Resolution Agreement (the Agreement). On February 20, 2015, the College signed this Agreement. As is our standard practice, OCR will monitor the College's implementation of the Agreement, a copy of which is enclosed. Accordingly, OCR is concluding its investigation of these allegations as of the date of this letter.

This letter is not intended nor should it be construed to cover any other issues regarding the College's compliance with Title IX, Section 504, and Title II, which may exist and are not discussed herein. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

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, to the extent provided by law, personal information that, if released, could constitute an unwarranted invasion of privacy.

Please be advised that Federal regulations prohibit recipients of Federal financial assistance from taking actions that intimidate, threaten, coerce, interfere, or discriminate against any individuals who exercise their statutory rights under the laws that OCR enforces, including filing a complaint with our office or taking part in the complaint resolution process.

If you have any questions, please contact Beverly Johnson, Investigator, at (215) 656-8581 or by email at beverly.johnson@ed.gov or Meg Willoughby, attorney, at (215) 656-8579 or by e-mail at meg.willoughby@ed.gov.

Sincerely,

/s/
Vicki Piel
Supervisory Attorney/Team Leader
Philadelphia Office

Enclosure

cc: Nancy Ray, Esquire (via email)