



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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June 18, 2015

IN RESPONSE, PLEASE REFER TO: 03152062

President John Sygielski
Harrisburg Area Community College
1 HACC Drive
Harrisburg, PA 17011

Dear President Sygielski:

This is to notify you of the resolution of the complaint that was filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against the against the Harrisburg Area Community College (the College) alleging discrimination and retaliation. Specifically, the Complainant, XXXXXX, alleged that XXXXXX discriminated against her on the basis of her disability as follows:

- 1) XXXXXX;
- 2) XXXXXX;
- 3) XXXXXX.

Furthermore, the Complainant alleged that after she complained to the Dean of Academic Affairs and personnel in the College's Office of Disability Services, beginning on XXXXXX:

- 4) XXXXXX;
- 5) XXXXXX; and,
- 6) XXXXXX.

OCR enforces:

- 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 (Title II), and its implementing regulation at 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities such as elementary and secondary education systems. Title II also prohibits retaliation.

Legal Standards

Section 504 and the ADA have equivalent standards. Title II is interpreted as adopting the standards of Section 504 in areas where Title II has not adopted a different standard. Therefore, OCR will apply Section 504.

An individual with a disability under Section 504 is any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such an impairment. 34 C.F.R. Section 104.3(j)(1) and (2). For the purpose of postsecondary programs, a “qualified” person with a disability is a person with a disability who meets the academic and technical standards requisite to admission or participation in the recipient’s educational program or activity. 34 C.F.R. §104.3(l)(3).

The regulation implementing Section 504 at 34 C.F.R. §§104.4(a), (b)(1)(i), (ii) and (vii), provides that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance. A recipient, in providing any aid, benefit, or service, may not, on the basis of disability, deny a qualified person with a disability the opportunity to participate in or benefit from an aid, benefit, or service; afford a qualified person with a disability the opportunity to participate in or benefit from an aid, benefit, or service that is not equal to that afforded others; or otherwise limit a qualified person with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

Under 34 C.F.R. §104.44(a) and 28 C.F.R. §35.130(b)(7), a public entity must make reasonable modifications in policies, practices or procedures when necessary to avoid discrimination on the basis of disability, unless doing so would fundamentally alter the nature of the service, program or activity. In making a compliance determination regarding the provision of modifications in the postsecondary setting, OCR considers whether the student provided adequate notice to the postsecondary institution of the nature of the disability and the need for a modification. Once an institution receives such notice, it has an obligation to engage the student in an interactive process concerning the student’s disability and related needs. Generally, a postsecondary institution’s evaluation of a student’s request for modification requires a fact-specific, case-by-case inquiry and this evaluation process should include an exchange of information between the student and the postsecondary institution to arrive at a conclusion about the modification requested. As part of this process, the institution may request that the student provide documentation, such as medical, psychological or educational assessments, of the impairment, functional limitations, and suggested accommodations. If the student provides such notice, OCR proceeds to evaluate whether an accommodation was

necessary, whether the accommodation was provided, and whether the accommodation was of adequate quality and effectiveness.

In order to establish a violation for an allegation of different treatment based on disability, OCR would have to find that the Complainant was treated differently than similarly-situated nondisabled students in a way that limited the Complainant's opportunity to participate in or benefit from a school program or activity, and that either the College cannot articulate a legitimate nondiscriminatory reason for the different treatment or that the College has articulated a legitimate nondiscriminatory reason for the different treatment, but the reason is pretext for discrimination. Additionally, OCR examines whether the recipient treated the Complainant in a manner that was consistent with established policies and practices and whether there is any other evidence of discrimination based on disability.

The Section 504 regulation, at 34 C.F.R. § 104.61, prohibits a recipient from retaliating against or harassing individuals who file complaints or otherwise assist in an investigation under Section 504. That Section 504 regulation incorporates by reference the non-retaliation section of the regulation implementing Title VI of the Civil Rights Act of 1964 (Title VI), at 34 C.F.R. § 100.7(e).

To establish a prima facie case of retaliation, OCR must determine whether: (1) the Complainant engaged in a protected activity; (2) the College had notice of the Complainant's protected activity; (3) the College took 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 any of those elements cannot be established, then OCR cannot find evidence of a retaliation violation. While OCR would need to address all the elements in order to find a violation, it is not necessary to address all these elements in order to find insufficient evidence of a violation, where the evidence otherwise demonstrates that retaliation cannot be established. If these four elements are present, then a prima facie case of retaliation is established, and OCR next considers whether the College has identified a legitimate, nondiscriminatory reason for taking the adverse action. If so, OCR then considers whether the reason asserted is a pretext for discrimination.

In order for an activity to be considered "protected," the Complainant 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 College, and not necessarily to the alleged individual retaliator, is sufficient to establish the notice requirement. In determining whether an action taken by the College was adverse, OCR considers whether the action reasonably acted as a deterrent to further protected activity, or if the individual was, because of the challenged action, precluded from pursuing his or her discrimination claims. In addition, 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.

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 this complaint through a resolution agreement, and on June 17, 2015 the College signed a Voluntary Resolution Agreement (Agreement) with OCR in order to resolve the matter. Accordingly, OCR is concluding its investigation of this complaint. As is our standard practice, OCR will monitor the College's implementation of the Agreement, a copy of which is enclosed.

This letter is not intended, nor should it be construed, to cover any other issues regarding the College's compliance with Section 504 or Title II, and their implementing regulations. that 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.

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.

Thank you for your cooperation with this matter. If you have any questions, please contact Dale Leska, Investigator, at 215-656-8562 or Dale.Leska@ed.gov. Additionally, please feel free to contact Meg Willoughby, Attorney, at 215-656-8579 or Meg.Willoughby@ed.gov.

Sincerely,

/s/

Vicki Piel
Team Leader/Supervisory Attorney
Philadelphia Office

Enclosure

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cc: David J. Freedman, Esquire (via email, w/encl.)