



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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June 3, 2016

Ms. Cecelia Fitzgibbon
President
Moore College of Art and Design
1916 Race Street
Philadelphia, PA 19103-1179

RE: OCR Complaint No. 03-15-2426

Dear Ms. Fitzgibbon:

This letter is to advise you of the outcome of the complaint that the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) XXXXXX against Moore College of Art and Design (the College). The Complainant alleged that XXXXXX

xx- paragraphs redacted-xx

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, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance. As a recipient of Federal financial assistance from the Department, the College is subject to Section 504 and its implementing regulation. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

Before OCR completed its investigation, the College expressed a willingness to resolve the complaint allegations by taking the steps set out in the enclosed Resolution Agreement. The following is a discussion of the relevant legal standards and information obtained by OCR during the investigation that informed the development of the Resolution Agreement. In the course of our investigation, OCR found that the College did not have an individual designated as its Section 504 Coordinator as required by the Section 504 regulation, nor did its notice of nondiscrimination meet relevant legal standards. The Resolution Agreement requires the College to take actions to address these concerns. The bases for our determinations are summarized below.

Applicable Legal Standards

The regulation implementing Section 504, at 34 C.F.R. § 104.3(j)(1), defines an individual with a disability as 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

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impairment. Section 504, at 34 C.F.R. § 104.3(j)(2)(iv), further provides that a person is regarded as having an impairment when the person: has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation; has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or has none of the impairments defined by the regulation, but is treated by a recipient as having such an impairment. With regard to postsecondary education, 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 Section 504 regulation, at 34 C.F.R. § 104.43(a), provides that no qualified student with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any academic, research, occupational training, housing, health insurance, counseling, financial aid, physical education, athletics, recreation, transportation, other extracurricular, or other postsecondary education aid, benefits, or services to which this subpart applies. See also 34 C.F.R. §§ 104.4(a), (b)(1)(i).

In determining whether an individual has been subjected to discrimination on the basis of disability, OCR applies a different treatment analysis. This analysis requires OCR to examine whether an individual was treated differently from similarly situated, non-disabled individuals. OCR will also consider whether the individual was treated in a manner that is inconsistent with the recipient’s established policies or practices, or if there is other evidence of disability animus. If OCR determines that different treatment did occur, we examine the recipient’s reason for the difference in treatment to determine whether it is a legitimate nondiscriminatory justification for the difference in treatment. OCR then examines whether the justification offered by the recipient is a pretext for discrimination. If the evidence fails to establish one of the components of this analysis, OCR will find that there is insufficient evidence to support a finding of noncompliance.

The regulation implementing Section 504, at 34 C.F.R. § 104.7(a), states that a recipient that employs fifteen or more persons shall designate at least one person to coordinate its efforts to comply with the regulation. The Section 504 regulation, at 34 C.F.R. § 104.7(b), also requires a recipient that employs 15 or more persons to adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints of Section 504 violations. OCR examines a number of factors in evaluating whether a recipient’s grievance procedures are prompt and equitable, including whether the procedures provide for the following: notice of the procedures to students, parents and employees, including where to file complaints; application of the procedures to complaints alleging discrimination by employees, other students, or third parties; adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence; designated and reasonably prompt timeframes for major stages of the complaint process; written notice to the parties of the outcome of the complaint; and an assurance that steps will be taken to prevent recurrence of any discrimination and to correct its effects.

In addition, the regulation implementing Section 504, at 34 C.F.R. § 104.8(a), provides that a recipient that employs fifteen or more persons shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, that it does not discriminate on the basis of disability in violation of Section 504. The notification is required to state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its program or activity. The notification must also include an identification of the responsible employee designated pursuant to 34 C.F.R. § 104.7(a).

Factual Background

The Complainant enrolled at the College xx- paragraphs redacted-xx

College Policies and Procedures

During the course of OCR's investigation, the College provided copies of several procedures. OCR reviewed those and noted the following with regard to the issues raised in this complaint.

Section 504 Coordinator

The College informed OCR that it has a Disability Committee that fulfills the role "sometimes referred to as a Section 504 Coordinator." This Committee includes the Director of Educational Support Services, the Associate Dean for Emotional Support Services, and the Dean of Students, supported when necessary by consultations with the Director of Health Services, the Director of Counseling Services, the Director of Residence Life, and the Academic Advisor. This Committee is in charge of administering disability services.

The College does not have an individual designated to coordinate its efforts to comply with Section 504. Although the College indicated that it has a committee in place to perform this function, this arrangement does not meet the requirements of the Section 504 regulation, at 34 C.F.R. § 104.7(a).

Notice of Nondiscrimination

The College submitted to OCR its notice of nondiscrimination, which is found in several College publications, including the Student Handbook, the College's "Viewbook" which is disseminated to prospective students as part of the admissions process, and the College's information related to student housing. OCR notes that none of these notices is identical in their wording. None direct individuals with disability related concerns to the College's Section 504 Coordinator. OCR's review of the notices also established that they are not broadly publicized as suggested by the Section 504 regulation, which states that notification "may include the posting of notices, publication in newspapers and magazines, placement of notices in recipients' publication, and distribution of memoranda or other written communications." The College's notification methods are generally internal-facing methods. In addition, although the College's various forms of notice do indicate the College's general policy of nondiscrimination or principle

of equal educational opportunity, they do not all include a clear statement that the College does not discriminate on any of the bases that are prohibited by OCR's regulations. For the reasons noted, OCR has determined that the College's nondiscrimination statement is not compliant with the requirements of the Section 504 regulation, at 34 C.F.R. Section 104.8(a) and (b).

Under OCR procedures, a complaint may be resolved before the conclusion of an investigation if a recipient asks to resolve the complaint issues 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 University, nor does it constitute a determination by OCR of any violation of our regulations. Consistent with OCR's procedures, the University voluntarily requested to resolve the allegations in this complaint through a Resolution Agreement. The College signed the enclosed Resolution Agreement (the Agreement) on May 19, 2016 which, when fully implemented, will resolve the allegations raised in this complaint.

Moreover, the College has agreed to address the noted compliance concerns by signing the enclosed Agreement with OCR. When fully implemented, the Agreement will address all of OCR's compliance concerns.

The provisions of the Agreement are aligned with the allegations and issues raised by the Complainant and the information discussed above that was obtained during OCR's investigation, and are consistent with applicable law and regulation. OCR will monitor the College's implementation of the Agreement until the College is in compliance with Section 504, at 34 C.F.R. §§ 104.4(a) and (b)(1)(i), 104.43(a), and 104.7(a) and (b), and 104.8(a) and (b). Failure to implement the Agreement could result in OCR reopening the complaint.

This concludes OCR's investigation of the complaint. This letter 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. 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 College must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, or participates in an OCR proceeding. If this happens, the individual may file a retaliation complaint with OCR.

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

We appreciate the College's cooperation in the resolution of this complaint. If you have any questions, please contact Aysha Ames, the OCR attorney assigned to this complaint, at (215) 656-5792 or aysha.ames@ed.gov.

Sincerely,

/s/

Melissa M. Corbin
Philadelphia Office
Office for Civil Rights

Enclosures

cc: Michael Sacks, Esquire (via email only)