



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS, REGION IV

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October 29, 2013

Dr. Edward P. Wimberly  
Interim President  
Interdenominational Theological Center  
700 Martin Luther King Jr. Drive, SW  
Atlanta, Georgia 30314

Re: Complaint # 04-13-2360

Dear Dr. Wimberly:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of Issue #2 of the above-referenced complaint filed on April 17, 2013, against Interdenominational Theological Center (ITC) alleging discrimination on the basis of disability. Regarding Issue #1, ITC requested to resolve the issue prior to the conclusion of the investigation.

Specifically, the Complainant alleged the following:

1. ITC discriminated against the Complainant based on her disability when it delayed providing her with academic adjustments in her classes after she enrolled in fall 2012.
2. ITC retaliated against the Complainant when it ignored her requests for dormitory room plumbing repairs during the 2012 - 2013 school year, because she advocated for academic adjustments throughout the 2012 - 2013 school year.

OCR investigated this complaint pursuant to 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. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance (FFA). ITC is a recipient of FFA from the Department. Accordingly, OCR had jurisdiction over this complaint.

OCR investigated the following legal issues:

1. Whether ITC discriminated against the Complainant based on her disability when ITC failed to provide her with academic adjustments, in noncompliance with the Section 504 regulation at 34 C.F. R. §§ 104.44(a)(b) and 104.44(d)(1)(2)
2. Whether ITC retaliated against the Complainant because of her advocacy for her rights as a student with a disability when ITC refused to fix the plumbing in her dormitory room, in noncompliance with the Section 504 implementing regulation, at 34 C.F.R. § 104.61.

## Legal Standards

The regulations implementing Section 504 at 34 C.F.R. §§ 104.4(a) and 104.42(a), provide that an 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 program or activity which receives Federal financial assistance.

The Section 504 implementing regulation at 34 C.F.R. § 104.44(a) states that recipients shall make such modifications to its academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating, on the basis of disability, against a qualified applicant or student with a disability. Academic requirements that the recipient can demonstrate are essential to the instruction being pursued by such student or to any directly related licensing requirement will not be regarded as discriminatory within the meaning of this section. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted.

The Section 504 implementing regulation at 34 C.F.R. § 104.44(b) states that a recipient may not impose upon students with disabilities other rules, such as prohibition of tape recorders in classrooms or of dog guides in campus buildings, that have the effect of limiting the participation of students with disabilities in the recipient's educational program or activity.

The Section 504 implementing regulation at 34 C.F.R. §§ 104.44(d)(1) and (2) states that recipients shall take such steps as are necessary to ensure that no student with a disability is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination because of the absence of educational auxiliary aids for students with impaired sensory, manual, or speaking skills. It also states that auxiliary aids may include taped texts, interpreters or other effective methods of making orally delivered materials available to students with hearing impairments, readers in libraries for students with visual impairments, classroom equipment adapted for use by students with manual impairments, and other similar services and actions. Recipients need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

The Section 504 implementing regulation at 34 C.F.R. § 104.61 adopts the anti-retaliation provisions of the regulation implementing Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d, *et. seq.* and its implementing regulation at 34 C.F.R. § 100.7(e). The Title VI anti-retaliation regulation states 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 secured by Title VI, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under this part.

A *prima facie* case of retaliation is established by showing that: (1) the Complainant engaged in a protected activity; (2) ITC was aware of the Complainant's activity; (3) ITC took adverse action against the Complainant contemporaneous with or subsequent to the protected activity; and (4) there was an apparent causal connection between the adverse action and participation in the protected activity. If the elements of a *prima facie* case are established, then OCR determines whether the University has a legitimate, non-retaliatory reason for taking action adverse to the Complainant. The evidence is then analyzed to determine whether the proffered reason is a pretext for retaliation.

OCR's investigation of the complaint included an analysis of the documentation provided by both parties and interviews with the Complainant and ITC staff. OCR reviews evidence under the preponderance of the evidence standard. Under the preponderance of the evidence standard, 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.

## **Background**

ITC is a private Christian college located in metro Atlanta. The Complainant first enrolled in ITC in fall 2012. She identified herself as a person with a disability in August 2012 and requested early entrance into the dormitory. She also requested that ITC provide academic adjustments to her for her fall 2012 classes. The Complainant has a depressive disorder, posttraumatic stress disorder, breast cancer, and hypersomnia.

Prior to the conclusion of the investigation, ITC agreed to resolve Issue #1. Accordingly, OCR conducted no further investigation of this issue. The Case Resolution Team proposes that Issue #1 be resolved with the attached resolution agreement. With regards to Issue 2, after a thorough review of all of the evidence, OCR has determined that there is insufficient evidence that ITC retaliated against the Complainant as alleged. The factual and legal bases for our determination are set forth below.

## **Factual Findings and Analysis**

### **Whether ITC discriminated against the Complainant based on her disability when ITC failed to provide her with academic adjustments, in noncompliance with Section 504 at 34 C.F. R. § 104.44(a).**

The Complainant requested academic adjustments be provided to her in September 2012. She did not request specific academic adjustments. She subsequently submitted a letter from her doctor that listed specific recommendations for academic adjustments. The doctor's letter was dated October 3, 2012. The XXXXX XXXXXXXXXXXX XXXXXXXXXXXX told OCR that the doctor's statement and the Complainant's request for academic adjustments were lost or misplaced when staff who worked with students with disabilities left ITC. ITC met with the Complainant and a list of approved academic adjustments was developed on November 5, 2012. The Complainant signed the document agreeing to the academic adjustments.

OCR obtained conflicting information as to when instructors were sent and received a list of approved academic adjustments. The XXXXXXXX indicated that notices were sent to instructors at or near the beginning of the semester; however, since classes started in August 2012 and academic adjustments were approved on November 5, 2012, no instructors could have received the list of the approved academic adjustments prior to that date.

The Complainant failed one class in fall 2012. Since the doctor's statement recommending academic adjustments was dated October 3, 2012, and ITC did not make a decision about what academic adjustments she should receive until November 5, 2012, this adversely impacted the Complainant's grades in class. Further, the Complainant told OCR that her instructor did not provide her with academic adjustments for the class after they were approved.<sup>1</sup>

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<sup>1</sup> The academic adjustments approved for the Complainant in November 2012 included the following: (1) extended time to take tests; (2) reading tests to Complainant or rephrasing questions; (3) note taker or record lectures and access to instructors notes; (4) tutoring, division of assignments to meet deadlines and provision of summaries for assignments; (5) leniency with regard to attendance and arrival to classes, allow Complainant to leave class and take breaks or stand in back of class as needed; (6) access to early registration, early access to reading lists and course syllabi; and (7) the Complainant may choose to utilize any student support services currently offered by ITC.

The Complainant made an additional request for academic adjustments on January 14, 2013. ITC did not respond to her request for academic adjustments, which included her request for taped texts that were recommended by her doctor.

The XXXXXXXX XX XXXXX XXXXXXXXXXXX told OCR that cost was a factor in not providing academic adjustments to the Complainant. Staff also said that they had not handled requests for taped texts before, and this was an issue since ITC does not have a library. During this time, the administrator in charge of serving students with disabilities was changed. The XX XXXXXXXX said that the XX XX XXXXXXXX XXXXXXXX was supposed to handle requests for accommodations in January 2013. The XX XX XXXXXXXX XXXXXXXX said that his office did not handle these types of requests and told OCR that the XX XXXXXXXX was supposed to handle the request in January 2013. OCR found that neither office handled the Complainant's requests for academic adjustments in January 2013.

Pursuant to § 302 of OCR's Case Processing Manual (CPM), a complaint may be resolved when, before the conclusion of an investigation, the recipient asks to resolve the complaint. Regarding Issue #1, OCR interviewed some staff and the Complainant during the investigation. Prior to the conclusion of the investigation, ITC informed OCR that it was willing to resolve Issue #1 pursuant to § 302 of the CPM.

The attached Agreement resolves the issues of the failure to provide academic adjustments to the Complainant.

**Whether ITC retaliated against the Complainant because of her advocacy for her rights as a student with a disability when ITC refused to fix the plumbing in her dormitory room, in noncompliance with the Section 504 implementing regulation, at 34 C.F.R. § 104.61.**

As discussed in the above-stated legal standards, OCR must first determine whether the Complainant has established a *prima facie* case of retaliation.

### **Protected Activity and Knowledge of Protected Activity**

An individual engages in a protected activity if the individual has opposed any act or policy that is unlawful under one of the laws that OCR enforces or if he or she has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing conducted under the laws that OCR enforces.

The Complainant first identified herself as a person with a disability when she enrolled in ITC in fall 2012. She requested early access to her dormitory and accommodations for her disability. She complained about not receiving academic adjustments in fall 2012. OCR therefore concludes that there was protected activity and knowledge of the protected activity prior to when ITC allegedly retaliated against the Complainant by failing to fix the Complainant's plumbing in April 2013.

### **Adverse Action**

To determine whether an action is adverse, the recipient's action must significantly disadvantage the Complainant as to his or her status as a student or employee, or his or her ability to gain the benefits of the program or if the action has a chilling effect on the person who has engaged in protected activity. Transient incidents usually are not considered adverse.

The Complainant informed OCR that she had plumbing problems in her dormitory apartment. She provided OCR with pictures of water stains and evidence that plumbing problems existed. She said that ITC never fixed

the plumbing problems. ITC admits that the Complainant reported the plumbing problems and requested repairs to be made. ITC staff also told OCR that the plumbing problems were not fixed before she moved out of the campus apartment.

OCR concludes that there is sufficient evidence that plumbing problems existed and, if the plumbing problems were not addressed by ITC, this could be considered an adverse action against the Complainant.

### **Causal Connection**

OCR next looks for evidence of a causal connection between the adverse action and the protected activity. Several factors can establish a causal connection, including: (1) closeness in time between knowledge of the protected activity and the adverse action; (2) change in treatment of the individual after ITC had knowledge of the protected activity; and (3) different treatment of the individual compared to other similarly-situated persons.

The XXXXXXXXXXXX XXXXXXXXXXXX who managed the building that the Complainant lived in was responsible for obtaining a contractor to make repairs to dorms/apartments on campus.<sup>2</sup> He told OCR that he knew that the Complainant had a disability, but did not know what the disability was. He had knowledge of her protected activity because he was asked to give up his apartment for the Complainant as an accommodation for her disability.

The Complainant requested academic adjustments in fall 2012 and January 2013. The Complainant experienced plumbing problems in her apartment in March 2013. Her plumbing problems were not fixed, while other students had their plumbing problems repaired. OCR concludes that there was closeness in time between the Complainant's protected activity and the adverse action of not fixing her plumbing problems. Accordingly, based on the close temporal proximity between the protected activity and the adverse action, OCR concludes that the causal connection element has been established.

Based on the above, OCR concludes that the Complainant has established a *prima facie* case of retaliation.

### **Legitimate Nondiscriminatory, Non-Pretextual Reasons**

OCR next considered whether ITC had legitimate, nondiscriminatory and non-pretextual reasons for its actions.

The Complainant reported plumbing problems to the XXXXXXXXXXXX XXXXXXXXXXXX on March 23 and March 28, 2013. The XXXXXXXXXXXX XXXXXXXXXXXX told OCR that he asked the Complainant if the problem caused an emergency situation or was dangerous to her health; she told him no. He said that he followed his normal procedure of contacting the plumbing contractor to check out the problem. He advised the Complainant on March 28, 2013, that he had attempted to contact the repair person, but had not heard back from the contractor. He offered to move the Complainant into another apartment and she declined.

On rebuttal, the Complainant told OCR that she requested to be moved to another apartment and was told that none were available. She told OCR that she was not told there would be a delay in sending a contractor to investigate her plumbing problem. The Complainant advised staff before March 29, 2013, that she wanted to terminate her lease and move out by April 11, 2013.

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<sup>2</sup> The Residential Coordinator works for Turner Seminary who owns the building. He is not an employee of ITC, and he contacts contractors to fix problems with the apartments.

The contractor contacted the XXXXXXXXXXXX XXXXXXXXXXXX on March 29, 2013, and advised him that he was out of town and would not be able to look at the problem until April 2, 2013. The XXXXXXXXXXXX XXXXXXXXXXXX told OCR that when the contractor looked at the Complainant's apartment, he concluded that the water leak in the Complainant's ceiling was intermittent and a roofer should be contacted to determine if a roof leak was causing the problem. A roofing company inspected the roof and concluded that there was not a roof leak. The President of XXXXXX XXXXXXXXXXXX XXXXXXXXXXXX acknowledged maintenance problems with the Complainant's room and granted the Complainant's request to move out of her apartment and break her lease. He further agreed to refund her \$942.37. He told OCR that he had allowed other tenants in the past to break their lease, but had never refunded rent to anyone before.

OCR finds that ITC took steps to address the Complainant's plumbing problems. While a fix may not have occurred immediately, due to the contractor being unreachable and then unavailable. However, upon inspection by the contractor, the problems were determined to possibly be a roof leak. ITC then undertook steps to have a roofing company inspect the problem. Based on the above, OCR concludes that ITC proffered legitimate, nondiscriminatory reason for not fixing the Complainant's problem.

### **Pretext analysis**

Having found that ITC proffered legitimate, nondiscriminatory reasons for not fixing the Complainant's plumbing immediately, OCR next proceeded with its pretext analysis. Pretext may be shown when, among other things: (1) ITC's reasons for releasing the Complainant were not believable; (2) that similarly situated individuals were treated differently; or (3) deviation from ITC's procedures or other guidelines concerning the subject matter of the proffered legitimate, non-retaliatory reasons.

The explanation for not fixing the plumbing more quickly because the regular repair person was out of town and the problem required a roofer to inspect the roof to exclude water coming in from the roof were believable. ITC work orders indicate that no repairs were done to any student apartments during the time period when the Complainant reported the plumbing problem and the contractor was reportedly out of town. The Complainant confirmed to OCR that a roofer was called. The XXXXXXXXXXXX XXXXXXXXXXXX informed OCR that the Complainant was offered the option of moving to another apartment and declined the offer. She requested to break her lease and move out. Her request was granted and part of her rent was refunded to her. No other tenants who broke their lease were refunded a portion of the rent.

### **Conclusion**

The Complainant and the XXXXXXXXXXXX XXXXXXXXXXXX made conflicting statements about offering to move her to another apartment and offering to contact another contractor to do repairs in the Complainant's apartment. OCR was unable to corroborate whose version of events was correct. OCR concludes that there is insufficient evidence to conclude that the reasons given for not fixing the plumbing problems were pretextual. Accordingly, based on the preponderance of the evidence, OCR finds that there is insufficient evidence that ITC retaliated against the Complainant, in noncompliance with Section 504, as alleged.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records, upon request. If we receive 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.

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.

Please be advised that ITC 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.

This concludes OCR's consideration of the complaint and should not be interpreted to address ITC's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. OCR is committed to a high quality resolution of every case. If you have any questions regarding this matter, please contact XXXXX XXXXXX, at (XXX) XXX-XXXX, or XXXX X XXXXXXXX, Team Leader, at (XXX) XXX-XXXX.

Sincerely,

Cynthia G. Pierre, Ph.D.  
Regional Director