



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

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ATLANTA, GA 30303-8927

REGION IV
ALABAMA
FLORIDA
GEORGIA
TENNESSEE

March 19, 2018

Fiesal Elkabbani
President
Georgia Institute of Cosmetology
605 Buford Highway NE
Sugar Hill 30518

Re: OCR Complaint # 04-16-2173

Dear Mr. Elkabbani:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed against the Georgia Institute of Cosmetology (Institute). The Complainant alleged that the Institute discriminated against her in the following ways:

1. The Complainant was told that she would not receive accommodations because it would be a disservice to the Student because the State Board would not give her any type of accommodations when taking the State test.
2. The Complainant was made fun of by her Instructor multiple times regarding her learning disability: the instructor told the Student that she refused to teach her because you can't teach stupid, that the Student was unteachable and was called retarded.

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. The Institute is a recipient of Federal financial assistance. Accordingly, it is subject to the requirements of the foregoing statutes and their implementing regulations.

Based on the complaint allegations, OCR investigated the following legal issues:

1. Whether the Institute discriminated against the Complainant on the basis of disability by failing to provide her with academic adjustments and/or auxiliary aids, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.44 (a)-(d), and the Title II implementing regulation at 28 C.F.R. § 35.130 (a) and (b)(1)(i).
2. Whether the Institute subjected the Complainant to a hostile environment based on disability, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.43 (a), and the Title II implementing regulation at 28 C.F.R. § 35.130 (a).

OCR reviews evidence under the preponderance of the evidence standard. Under this 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. OCR's investigation included a review and analysis of the documents submitted by the Complainant and the Institute and interviews of the Complainant and Institute staff. Regarding Issue #1, prior to the conclusion of the investigation, the Institute requested to address Issue #1 with a voluntary resolution agreement (Agreement) pursuant to Section 302 of OCR's Case Processing Manual (CPM). Regarding Issue#2, OCR has determined that there is insufficient evidence to support a finding that the Institute discriminated against the Complainant, in noncompliance with Section 504 and Title II. The bases for OCR's determinations are set forth below.

Applicable Regulations

Academic Adjustments

The Section 504 implementing regulation at 34 C.F.R. §104.44(a) states that a recipient to which this subpart applies 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 handicap, against a qualified handicapped applicant or student. 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 to which this subpart applies may not impose upon handicapped students other rules, such as the prohibition of tape recorders in classrooms or of dog guides in campus buildings that have the effect of limiting the participation of handicapped students in the recipient's education program or activity.

The Section 504 implementing regulation at 34 C.F.R. §104.44(c) states that in its course examinations or other procedures for evaluating students' academic achievement, a recipient to which this subpart applies shall provide such methods for evaluating the achievement of students who have a handicap that impairs sensory, manual, or speaking skills as will best ensure that the results of the evaluation represents the student's achievement in the course, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where such skills are the factors that the test purports to measure).

Disability Harassment

The Section 504 implementing regulation at 34 C.F.R. § 104.4(a) provides that no qualified student with a disability shall, on the basis of their 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. § 104.4(b) provides that a recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability: (i) Deny a qualified student with a disability the opportunity to participate in or benefit from the aid, benefit, or service; (ii) Afford a qualified student with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others; (iii) Provide a qualified student with a disability an aid, benefit, or service that is not as effective as that provided to others; (iv) Provide different or separate aid, benefits, or services to students with disabilities or to any class of student with disability unless such action is necessary to provide the student with a disability with aid, benefits, or services that are as effective as those provided to others; (v) Aid or perpetuate discrimination against a qualified student with a disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the recipient's program or activity; or (vi) Otherwise limit a qualified student with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

Disability harassment under Section 504 includes intimidation or abusive behavior toward a student based on disability that is sufficiently serious that it creates a hostile environment by interfering with or denying a student's participation in or receipt of benefits, services, or opportunities in the institution's program. Harassing conduct may take many forms, including verbal acts and name-calling, as well as nonverbal behavior, such as graphic and written statements, or conduct that is physically threatening, harmful, or humiliating.

Factual Findings and Analysis/Conclusion

Issue#1: Failure to provide Academic Adjustments/Auxiliary Aids

Prior to the completion of OCR's investigation, the Institute requested to voluntarily resolve this complaint. Pursuant to Section 302 of OCR's Case Processing Manual, a complaint may be resolved, before the conclusion of an investigation, when the recipient or public entity expresses an interest in resolving the complaint. The attached Resolution Agreement (Agreement) will require the Institute to take actions to remedy any compliance concerns regarding compensatory education services.

Specifically, the Institute agreed to 1) develop a grievance procedure that meets the requirements of Section 504's implementing regulation 34 C.F.R. §104.7(b); provide training to its faculty and staff on the new Section 504 policy and grievance procedures identified in the resolution agreement, and Section 504's general requirements to provide academic adjustments and auxiliary aids; 3) to forgive any balance owed by the Complainant to the Institute.

Issue #2 – Disability Harassment

The Complainant alleged that an Instructor at the Institute continuously made disparaging comments to her in August and September, 2015 related to her disability by telling her, “you can’t teach stupid”, “you can’t learn”, or “your retarded”.

To determine whether the Institute subjected the Complainant to a hostile environment and failed to take responsive action to redress disability-based harassment, OCR considered: (1) whether the Complainant was subjected to unwelcome comments or conduct based upon her protected class status (disability), (2) whether the conduct was sufficiently serious to deny or limit the Student’s ability to benefit from or participate in the educational program, (3) whether the Recipient knew or should have known of the harassment and failed to take immediate and appropriate corrective action; and (4) whether the Recipient had some control over the individual who committed the harassment. After reviewing the evidence, OCR determined that there was insufficient evidence to conclude that the Complainant was subjected to comments or comments based upon her disability.

The evidence shows that the Complainant, on one occasion during the alleged time period (September 28, 2015) advised the Director of the Institute (Director) that an Instructor spoke to her in a derogatory manner. The evidence also shows that on the same day, the Director spoke with the Instructor about the Complainant’s allegations and even though the Instructor denied making the comments, the Instructor was issued a verbal warning advising her to speak appropriately with students while teaching. OCR also notes that the Complainant did not describe the alleged discriminatory statements to the Institute the same way she described the statements to OCR. In an email to the Institute on February 26, 2016, almost five months after the incident occurred, the Complainant said that the Instructor said, “if I am not smart enough to read the sign off sheet paper then she was not going to bother to teach me”. This statement is substantially different from the Complainant’s characterization to OCR, which included references to “retard”, and “you can’t teach stupid”.

In addition, the evidence does not show that the Complainant advised the Institute that she was disabled during August or September of 2015 when the comments were allegedly made. Indeed the first recorded time the Complainant stated to the Institute in writing that she had a learning disability was February 10, 2016, when she advised them via email, “that you don’t know what it is like to have a learning disability”. Even though the Complainant alleges that she repeatedly told the Director about her disability, the Director denies that she received any information from the Complainant regarding her disability or what accommodations she needed as a result of her disability until February, 2016. Finally, emails sent by the Complainant after she voluntarily went on a leave of absence from the Institute between October, 2015 and February, 2016 do not include any reference to a learning disability; only injuries from a car accident. During the investigation, the Complainant did not provide any information to corroborate that she advised the Institute in August or September, 2015 that she had a disability.

Conclusion:

In order to constitute disability harassment under Section 504, the behavior has to be sufficiently serious that it creates a hostile environment by interfering with or denying a student’s

participation in or receipt of benefits, services, or opportunities in the institution's program. The preponderance of the evidence showed that at the time the alleged statement was made the Institute was not aware that the Complainant had a disability. Moreover, OCR could not confirm that statements were made continuously or were as egregious in nature as alleged by the Complainant to OCR. In addition, the Institute immediately counseled the Instructor after the Complainant complained, and there were no additional complaints about additional incidents from the Complainant.

Accordingly, OCR finds that there is insufficient evidence to conclude that the Institute subjected the Complainant to disability harassment in non-compliance with Section 504 as alleged.

Regarding issue#1, On March 9, 2018, OCR received the enclosed signed Agreement that, when fully implemented, will resolve the complaint. OCR will monitor the Institute's implementation of this Agreement to ensure that it is fully implemented. If the Institute fails to fully implement the Agreement, OCR will reopen the case and take appropriate action to ensure compliance with Section 504 and Title II.

Regarding issue #2, 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.

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 possible, any personally identifiable information, the release of which could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Intimidation or retaliation against complainants by recipients of Federal financial assistance is prohibited. No recipient may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the laws OCR enforces, or because one has made a complaint, or participated in any manner in an investigation in connection with a complaint.

If you have any questions about this complaint, please contact Cassandra Williams, at 404-974-9393 or the undersigned at 404-974-9408.

Sincerely,

April England-Albright, Esq.
Supervisory General Attorney

Enclosures