



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

61 FORSYTH ST., SOUTHWEST, SUITE 19T10
ATLANTA, GA 30303-8927

REGION IV
ALABAMA
FLORIDA
GEORGIA
TENNESSEE

February 15, 2018

VIA USPS and EMAIL

XXXXX XXXXXX

American Institute

c/o XXXXXXX XXXXXXX, Esq.

XXXXX XXXXXX XXXXXX

XXXX XXXX XXXXXXXX XXXXX

XXXX XXXXXXXXXXX XXXXXX

XXXXX, XX XXXXX

XXXXXXXX@XXXXXXXXXXXXXXX

Re: Complaint #04-17-2052
Letter of Resolution

Dear XX. XXXXXX:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed against American Institute (Institute) alleging discrimination on the basis of disability and sex. Specifically, the Complainant, X XXXXXXX XXXXXXXX XXXXXXXX at the XXXXXXXXXX, alleges that the Institute discriminated against her on the basis of disability by treating her differently when she was XXXXXXXXXX XXX XX instructional days for an XXXXXXXXXXXXXXXX XXXXXXXX while a student without a disability was XXX XXXXXXXXXX for XXXXXXXX that was more XXXXXXXXXX; on the basis of disability by failing to take into consideration Complainant's disability-related mitigating factors in determining XXX XXXXXXXXXX; on the basis of disability by failing to provide a prompt and equitable response to Complainant's complaint about bullying; and on the basis of sex by failing to provide a prompt and equitable response to reports of a sexually hostile environment related to allegations of XXXXXXXXXXXXXXXX of other students to a XXXXXXXX XXX for XXXXXXXX purposes.

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, which prohibit recipients of Federal financial assistance from the Department from discriminating on the basis of disability, and Title IX of the Education Amendments of 1972 (Title IX), as amended, 20 U.S.C. §§ 1681 *et seq.*, and its implementing regulation, 34 C.F.R. § 106, which prohibit recipients of Federal financial assistance from the Department from discriminating on the basis of sex in any educational program or activity. As a recipient of Federal financial assistance from the Department, the Institute is subject to the requirements of Section 504 and Title IX. Accordingly, OCR has jurisdiction over this complaint.

OCR investigated the following legal issues:

- (1) Whether the Institute discriminated against the Complainant on the basis of her disability by treating her differently when it XXXXXXXXXXXX her for XX instructional days for an XXXXXXXXXXXXXXXXXXXX XXXXXXXX while the Institute did XXX XXXXXXXX another student without X XXXXXXXXXXXX for XXXXXXXX that was more XXXXXXXXXXXX in noncompliance with Section 504 and its implementing regulation at 34 C.F.R. § 104.4.
- (2) Whether the Institute discriminated against the Complainant on the basis of her disability by failing to consider her disability-related mitigating factors when determining to XXXXXXXX her in noncompliance with Section 504 and its implementing regulation at 34 C.F.R. § 104.4.
- (3) Whether the Institute discriminated against the Complainant on the basis of her disability by failing to provide a prompt and equitable response to the Complainant's complaint of bullying in noncompliance with Section 504 and its implementing regulation at 34 C.F.R. § 104.4.
- (4) Whether the Institute failed to provide a prompt and equitable response to reports of a possibly sexually hostile environment related to allegations of XXXXXXXXXXXX of other students to a XXXXXXXX XXX for XXXXXXXX purposes in noncompliance with Title IX and its implementing regulations at 34 C.F.R. §§ 106.8 and 106.31.

OCR's investigation included a review and analysis of the documents submitted by the Institute and several interviews with the Complainant. OCR evaluates evidence obtained during an investigation under a preponderance of the evidence standard to determine whether the greater weight of the evidence is sufficient to support a conclusion that the recipient (Institute) failed to comply with a law or regulation enforced by OCR or whether the evidence is insufficient to support such a conclusion.

Pursuant to Section 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. Prior to the conclusion of the investigation, the Institute, who denied all allegations, agreed to resolve the complaint allegations with a voluntary resolution agreement (Agreement) pursuant to Section 302 of OCR's CPM in order to voluntarily resolve the allegations in this complaint. OCR agreed with the Institute's proposed voluntary resolution pursuant to Section 302 of the CPM. The evidence reviewed, to date, and the terms of the enclosed Agreement are set forth below.

Applicable Legal Standards

Disability Based Different Treatment

The Section 504 regulation at 34 C.F.R. § 104.4 provides that no qualified individual with a disability shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under the Recipient's programs or activities on the basis of disability.

Disability Harassment

A Recipient's failure to respond promptly and effectively to disability-based harassment that it knew or should have known about, and that is sufficiently serious that it creates a hostile environment, is a form of discrimination prohibited by Section 504. A Recipient may also violate Section 504 if an employee engages in disability-based harassment of students in the context of the employee carrying out his/her responsibility to provide benefits and services, regardless of whether the Recipient had notice of the employee's behavior. Harassing conduct may take many forms, including verbal acts and name-calling; graphic and written statements, which may include use of cell phones or the Internet; physical conduct; or other conduct that may be physically threatening, harmful, or humiliating. Harassment creates a hostile environment when the conduct is sufficiently severe or pervasive as to interfere with or limit a student's ability to participate in or benefit from the Recipient's programs, activities, or services. When such harassment is based on disability, it violates Section 504.

To determine whether a hostile environment exists, OCR considers the totality of the circumstances from both an objective and subjective perspective and examines the context, nature, scope, frequency, duration, and location of incidents, as well as the identity, number, and relationships of the persons involved. Harassment must consist of more than casual, isolated incidents to constitute a hostile environment.

When responding to harassment, a Recipient must take immediate and appropriate action to investigate or otherwise determine what occurred. The specific steps in an investigation will vary depending upon the nature of the allegations, the source of the complaint, the age of the student or students involved, the size and administrative structure of the school, and other factors. In all cases, however, the inquiry should be prompt, thorough, and impartial. If an investigation reveals that discriminatory harassment has occurred, a Recipient must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring.

Sexual Harassment

Title IX of the Education Amendments of 1972 (Title IX) and its implementing regulations at 34 C.F.R. § 106.8 provide for the designation of a Title IX Coordinator and the adoption of grievance procedures. The designated Title IX Coordinator is an employee of the recipient, free of any conflict of interest, who coordinates the recipient's efforts to comply with Title IX, including investigation of any complaint communicated to the recipient alleging noncompliance with Title IX, and the recipient shall notify the students and employees of the name, office address, and telephone number of the Title IX Coordinator. The recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which constitutes sexual discrimination, harassment, or violence.

The Title IX implementing regulations at 34 C.F.R. § 106.31 prohibit discrimination on the basis of sex in education programs and activities. Specifically this section provides that no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient that receives Federal financial assistance. The recipient shall not, on the basis of sex, treat one person differently from another in determining whether such person satisfies any requirement or condition for receipt of such aid, benefit, or service; provide different aid, benefits, or services or in a different manner; deny any aid, benefit, or service; subject any person to separate rules of behavior, sanctions, or other treatment, or otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

Summary of the Investigation to Date

The Complainant was enrolled in the Institute XXXXXXXX program starting on XXX X, XXXX. The Complainant stated that she has disabilities (XXXX and XXXXXXXX XXXXXXXX XXXXXXXX). While the Complainant did not apply for academic accommodations, she stated that she did inform the Institute that she had disabilities and received Social Security benefits for her disabilities. She also states that she told specific individuals, including a career counselor (Counselor), her XXXXXXXX XXXXXXXX instructor (Instructor), and the president of the Institute's campus (President) in the context of making complaints. The Complainant alleged that she made complaints to the Institute based on disability-based harassment by another student, Student X. Additionally, the Complainant stated that she reported concerns about an off-campus XXXXXXXX business which she alleged was XXXXXXXXXXXX XXXXXXXX XXXXXXXX. The Complainant stated that she told the Institute that Student X was trying to XXXXXXXX other female students from the Institute to work at this off-campus XXXXXXXX business and XXXXXXXX XXXXXXXX XXXXXXXX. The Complainant stated she had a forty minute meeting with the Instructor and the Counselor who assured the Complainant that they knew all about Student X being a bully and would look into the XXXXXXXX and report it to the board of licensure. However, according to the Complainant, the Institute did not investigate either complaint.

In its response, the Institute denied the allegations. The Institute noted that the Complainant complained about being bullied, but the Institute stated that all of the reported bullying occurred off campus. The Institute stated that it informed the Complainant that the Institute had no jurisdiction over off-campus conduct. However, the Institute stated that they informed the Complainant that if anything happened on campus, the Complainant should immediately report the incident(s) to the President or the Director of Education (Director). In its documentation, the Institute also noted that the Complainant complained about the XXXXXXXX business in July, 2016. However, the Institute's report of the Complainant's complaint only notes that the Complainant reported that she had been approached to work at an off-campus, unlicensed XXX.

An incident on August 31, 2016 precipitated the Complainant's departure from the Institute. According to the Complainant, she experienced a disability-related response to a situation at the Institute's on-campus XXXXXXXX and the Institute subsequently XXXXXXXXXXXX her. While the

Complainant stated that she apologized and explained to the Instructor and the Director that her conduct was due to her disabilities, the Institute stated the Complainant did not inform anyone at the school about her disabilities until a later date.

During her XXXXXXXXXXXX in October, 2016, the Complainant contacted the Institute about her complaints. The Institute offered her readmission or a refund of her tuition. While the Complainant initially considered these options, she did not accept either offer in November, 2016. Later in December, 2016, the Complainant filed a complaint with the Florida Department of Education's Commission for Independent Education (CIE). In response, the Institute denied the allegations and again offered either the Complainant the option of readmission or a tuition refund. The CIE closed that case and later in February, 2017, the Complainant accepted the tuition refund. The Institute issued the Complainant a full refund of her tuition plus some additional out-of-pocket expenses.

Prior to OCR continuing with additional interviews to complete the investigation and making any findings, the Recipient negotiated a voluntary resolution to resolve the complaint pursuant to OCR CPM § 302.

Proposed Resolution

The Institute has agreed to a Resolution Agreement (Agreement) prior to the conclusion of the complaint investigation and any findings. Attached is a signed copy of the Agreement. The terms of the Agreement address the allegations and any compliance concerns raised by the Complainant under Section 504 and Title IX. The terms include the following: an offer of counseling; a review of the Complainant's transcript and correction of any disciplinary record; and training in the areas of disability harassment and Title IX. The Agreement does not constitute nor is it intended to constitute an admission of liability, non-compliance, or wrongdoing by the Institute.

These actions are outlined in the enclosed Agreement which also contains monitoring provisions. When fully implemented, the Agreement will resolve the alleged compliance issues. OCR will monitor the implementation of the Agreement until the recipient is in compliance with the statutes and regulations at issue in the case.

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 duly authorized OCR officials 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. 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.

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.

This concludes OCR's consideration of this complaint, which we are closing effective the date of this letter. If you have any questions about this complaint, please contact Miyong Loughlin, Attorney, at (404) 974-9444, or the Compliance Team Leader, Arthur Manigault at (404) 974-9376.

Sincerely,

Melanie Velez
Atlanta Office Director

Enclosure (Executed Resolution Agreement)