



**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

November 30, 2018

Margaret McKeon, JD, BSN
Chief Compliance Officer
Philadelphia College of Osteopathic Medicine
Georgia Campus
625 Old Peachtree Road NW
Suwanee, Georgia 30024
margaremc@pcom.edu

Letter sent via email
OCR Docket # [04-18-2277]

Dear Ms. McKeon:

On June 4, 2018, the U.S. Department of Education, Office for Civil Rights (OCR), received the above-referenced complaint filed by the Complainant alleging discrimination and retaliation based on XXX disability (XXX), by the Georgia campus of the Philadelphia College of Osteopathic Medicine (College)¹ as follows:

1. Harassment based on disability by the Associate Dean in an email to the Complainant on December 13, 2017, essentially threatening that XX would rather the Complainant not attend XXX XXX class than use a computer,² that the Complainant did not need to take notes, and that the Complainant could have XX group text XX when it was time for the group to present to come to class. XX copied the Complainant's XXX professor in the email which was humiliating in front of a colleague. The Complainant filed a grievance regarding this harassment allegation on December 18, 2017 with the College's Student Affairs Office, but nothing has been done.
2. Retaliation by the Associate Dean for filing a grievance against XX, by talking about the Complainant to XX other professors, which resulted in the professors in XX XXX class purposely knocking off points on XX practical assignments in order to fail XX in XXX.
3. Disability discrimination against the Complainant, by not implementing the following approved accommodations: use of computer for one day in XXX class on December 13, 2017; use of phone videotaping in XXX class on December 14, 2017; the accommodation of phone videotaping being removed by Disability Office as an approved accommodation in December 2017/January 2018; the Disability Office misleading the Complainant to accept an alternate accommodation of online videos, instead for the entire remainder of

¹ A private, non-profit graduate college, with a main campus located in Philadelphia, Pennsylvania, and an additional campus located in Suwanee, Georgia.

² At that time, this was an approved accommodation from the College's Disability Services Office for XXX XXX and the Dean was aware of this accommodation.

XXX class in Jan-May 2017 which the Complainant subsequently found out from the XXX Head was an inadequate method to learn the materials.

OCR is responsible for enforcing 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 discrimination on the basis of disability by recipients of Federal financial assistance (FFA). As a recipient of FFA, the College is subject to this law.

Based on the allegations above, OCR investigated the following legal issues pursuant to the following statutory authority:

1. Whether the Complainant was subjected to a hostile environment based on XX disability a) when an Associated Dean publicly humiliated XX in front of XX professor and threatened to not allow the Complainant to use XX accommodations, and b) when the College failed to respond to XX internal grievance on the matter, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. §104.4(a) and (b)(1)(i-iv,vii).
2. Whether the Complainant was subject to retaliation by the Associate Dean for XX internal grievance against XX when XX actions triggered XX XXX Professor to deduct points on XX practical assignments in order to fail XX, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. §104.61.
3. Whether the Complainant was discriminated against based on XX disability by the College in December 2017-May 2018, by failing to consistently provide XX approved accommodations and in one instance, replacing an accommodation with an alternate that was inadequate, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. §104.44.

Pursuant to OCR's *Case Processing Manual* at Section 302, a complaint may be resolved when, before the conclusion of an investigation, "the recipient expresses an interest in resolving the allegations and issues *and* OCR determines that it is appropriate to resolve them with an agreement during the course of an investigation."

For Issue (1) and (3) the College requested to voluntarily resolve this matter, prior to OCR's completion of its investigation. Accordingly, OCR has not issued findings concerning these issues. Set forth below is a summary of the evidence obtained thus far for Issue (1) and (3), prior to the signing of the resolution agreement and the terms of the resolution agreement. With respect to Issue (2), OCR determined that the Complaint had been resolved prior to the completion of the investigation and dismissed the complaint as set forth below.

Issue 1: Harassment

The Complainant alleged that XX was subjected to a hostile environment due to XX disability when an Associate Dean, sent XX an email advising XX that XX could not use XX approved accommodation of using XX personal computer during class to take notes.

The investigation completed thus far revealed that the Complainant had several accommodations approved by the College, as evidenced in a Memorandum from Student Disability Services, Office of Student Affairs, to Faculty of the Complainant, dated August 8, 2017, which stated among the accommodations approved, “The use of a personal computer, for note taking”. The evidence thus far also shows that in response to an email from a Professor stating that students could not use their personal computer in class, the Complainant sent an email to the Professor reminding the Professor of XX accommodation, which allowed XX to use a computer in class. In response, an Associate Dean emailed the Complainant on December 13, 2017 stating, “There is no need to take notes during these sessions. You will not need a computer. During the case presentations in XXX, you were allowed to your laptop and I observed you checking email during the presentations. That was unprofessional behavior. I would prefer you not be in class rather than to be the only student in the class with a computer open. You can have your group mates text you when your group goes up to present.”

The Complainant submitted a complaint regarding this email to the Interim Director of Student Affairs, who responded the next day notifying the Complainant that XX could bring XX computer to the class meeting, which had already begun at the time of the notification. The evidence also revealed that the Complainant filed via email an internal grievance with the Former Chief Student Affairs Officer on December 18, 2017 regarding the email from the Associate Dean, and XX email grievance stated that XX was filing “...both a formal Harassment Complaint” and beginning the “Informal Non-discrimination Grievance Procedure.” Under the College’s Informal Complaint procedures, the allegations are assumed to be true (not as a substantive finding) and a meeting is arranged to resolve the allegations, or through a formal investigation.

On January 5, 2018, in response to XX grievance, the Complainant met with several administrators and notes of the meeting reveal that the Complainant essentially requested that the following four actions be taken to resolve XX complaint: 1) change XX approved accommodation regarding use of computer to remove the term “for notetaking purposes”, 2) improve the College’s process related to accommodations including measures to respond to issues before escalation, 3) address the hostile environment by removing the Associate Dean from involvement in the Complainant’s program and 4) give XX financial compensation for XX grievance.

The evidence reveals that effective January 11, 2018, Interim Protective Measures (IPM) was implemented, which addressed most of the Complainant’s resolution requests, except for financial compensation. The IPM specifically included 1) removal of the phrase, “for notetaking purposes” from the Complainant’s approved accommodations, 2) removal of the Associate Dean from overseeing the Complainant’s program and grades, 3) appointment of the Chief Academic Officer to oversee the Complainant’s program and the Interim Student Affairs Director to act as the Complainant’s point person for any problems or concerns related to XX accommodations;³ 4) implementation of weekly meetings between the Complainant, the Interim Student Affairs Director and the Chief Compliance Officer for three months, then biweekly for two months and then monthly thereafter, to ensure any of the Complainant’s concerns would be addressed and a report of each session provided to the Chief Academic Officer and Chief Human Resources

³ The College’s Student Disability Services Office is part of the Office of Student Affairs.

Officer, and 5) performance of record access audits on the Complainant's electronic file on the same schedule as the status meetings. The Complainant and the Associate Dean were provided a copy of the IPM.

Finally, the evidence shows that several actions were taken to improve the College's accommodations process, as requested by the Complainant. OCR notes that the College posted for and hired a Disability Services Coordinator who completed ATIXA504 Coordinator Certification training, as did the Interim Student Affairs Director, and several other College leadership positions will receive such training in 2019. Also, the Associate Dean was provided Section 504 online training as well as Section 504 one-on-one with the new Disability Services Coordinator, and the Associate Dean was educated regarding the need to contact Disability Services and allow them to handle any questions or concerns regarding accommodations.

While the weekly status meetings with the Complainant were ongoing, another meeting with the Complainant and administrators regarding XX grievance was held on April 17, 2018, during which the Complainant expressed that XX was not satisfied with the resolution and wanted a formal investigation. It is unclear from the documentation provided to what extent any formal investigation was conducted or completed after that point.

However, prior to the completion of OCR's investigation of Issue 1, the College requested to voluntarily resolve this issue and OCR agreed, pursuant to Section 302 of OCR's Case Processing Manual (CPM). The enclosed Resolution Agreement (Agreement) requires that the Associate Dean be counseled regarding the statement XX made in XX email dated December 13, 2017. Specifically, the Associate Dean will be advised and trained on Section 504's prohibition against harassment based on disability, what constitutes disability harassment and Section 504's requirement to provide academic adjustments and auxiliary aids, which have been approved by the College in accordance with Section 504, without modification, unless modified through a deliberative process. The Agreement also requires investigative training for all staff who conduct or oversee investigations of complaints of disability discrimination/harassment. OCR commends the College for already taking numerous actions discussed above in an effort towards fully resolving this issue. Once the actions remaining that are listed in the Agreement are taken, this Issue will be fully resolved.

Issue 2: Retaliation

The Complainant alleges that the Associate Dean may have conspired with four of the five instructors for one of XX course practicums to fail XX on XX demonstrated procedures techniques. The evidence thus far reveals that this failed practicum brought XX practicum final average down to a XX in that course, and a XX is needed to pass. However, XX and XX classmates were provided an opportunity to remediate their practicum by taking a rescue exam using student scholar resources. The Complainant took advantage of that opportunity and passed that rescue exam, resulting in raising XX final grade in that course to a passing grade of XX, according to XX official transcript. Even though the evidence thus far does not corroborate the Complainant's retaliation allegation, OCR notes that the Associate Dean was provided online retaliation training as well as one-on-one retaliation training by the new Disability Services Coordinator. Under OCR's CPM section (j), if OCR obtains credible information indicating that

the allegation raised by the Complainant has been resolved and therefore no longer appropriate for investigation, OCR will dismiss that allegation. Based on the above actions taken by the College, and the remediation completed by the Complainant, OCR is dismissing this allegation as resolved.

Issue 3: Failure to provide accommodation: Use of phone accommodation

The Complainant alleges that one of XX professors stopped XX from using XX approved accommodation of using XX personal cell phone to record the professor's demonstrations of procedures during a class which XX initially failed.⁴ XX also alleges that XX was denied use of XX computer for one day in another class but OCR notes that this was already addressed under Issue 1 above. With regard to the use of the Complainant's cell phone to record class demonstrations, the evidence thus far does not include a formal request for this accommodation to the College's Office of Disability Services. Instead, the evidence shows that the Complainant sent an email to the Interim Student Affairs Director on September 6, 2017, requesting to use XX phone to record one of XX professors demonstrating techniques during class meetings. In response, the Interim Student Affairs Director replied by stating "I spoke with Dr. ____ [XX] said...as long as XX does so unobtrusively. Also, you may not leave your assigned group." The Complainant construed this response as an approval of a request for an accommodation even though XX did not refer to it as a request for an accommodation in XX September 7, 2016 email and it was never included on XX Memo of Approved Accommodations as an accommodation. The College asserts this email by the Complainant was not considered an official request for accommodations and was approved by the instructor as a courtesy.

Prior to the completion of OCR's investigation on this issue, the College requested to voluntarily resolve this issue pursuant to Section 302 of OCR's CPM. The enclosed Agreement requires that the College offer the Complainant the opportunity to request from the Disability Services Office an accommodation to use XX phone to record during class if XX desires, and if so, for Disability Services to consider such request and make a determination, allowing the Complainant due process for that determination.

On November 30, 2018, OCR received the enclosed signed Agreement that, when fully implemented, will fully resolve Issues (1) and (3) in this complaint pursuant to CPM Section 302, as discussed above. OCR will monitor the College's implementation of this Agreement to ensure that it is fully implemented. If the College fails to fully implement the Agreement, OCR will reopen the case and take appropriate action to ensure compliance with Section 504.

The Complainant may file a private suit in federal court whether or not OCR finds a violation. Please be advised that the College may not harass, coerce, or discriminate against any individual because XX or XX 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. If OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information that, if released, could

⁴ However, as noted under Issue 2, the Complainant subsequently remediated in that course and passed.

constitute an unwarranted invasion of privacy.

If you have any questions, please contact Senior Attorney Angela Collins at (404) 974-9346, or by email at angela.collins@ed.gov, or the undersigned at (404) 974-9408.

Sincerely,

April England-Albright
Supervisory General Attorney

Enclosure