



**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS**

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August 5, 2015

Ms. Arshele Stevens
President
Kennedy-King College
City Colleges of Chicago
6301 South Halsted Street
Chicago, IL 60621

Re: OCR Docket # 05-15-2127

Dear Ms. Stevens:

The U.S. Department of Education (Department), Office for Civil Rights (OCR) has completed its investigation of the above-referenced complaint filed against Kennedy-King College of the City Colleges of Chicago (College) alleging discrimination on the bases of race XXXXXXand disability XXXXXXXXXXXX).

Specifically, the complaint alleged that:

1. The College subjected the Complainant, an XXXXXXXXXXXXXXXX student who was enrolled in its XXXXXXXXXXXXXXXX (Program), to discrimination based on race in January and February 2014 when the Complainant's classmates subjected her to racial harassment and the College failed to take action to address the harassment; and
2. The College discriminated against the Complainant based on her disabilities in February 2014 by denying her requests for academic adjustments, auxiliary aids and services, and modifications necessary for her to participate in the Program.

OCR is responsible for enforcing Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d – 2000d-7, and its implementing regulation, 34 C.F.R. Part 100, which prohibits discrimination on the basis of race by recipients of Federal financial assistance. OCR is also 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, and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131-12134, and its implementing regulation, 28 C.F.R. Part 35. Section 504 and Title II respectively prohibit discrimination on the basis of disability by recipients of Federal financial assistance and public entities. As a recipient of Federal financial assistance from the Department and a public entity, the College is subject to these laws. Additional information about the laws OCR enforces can be found at www.ed.gov/ocr.

In making its determination, OCR interviewed the Complainant and College staff and reviewed documentation provided by the Complainant and the College, including the results of the

College’s internal investigation into the Complainant’s allegations that she was discriminated on the bases of race and disability. Based on a careful analysis of all the information, OCR has determined that there is insufficient evidence to establish that the Complainant was subjected to harassment based on her race in violation of Title VI. However, OCR finds that the College discriminated against the Complainant on the basis of her disabilities to the extent that it failed to make such modifications to its academic requirements as were necessary to ensure that such requirements did not discriminate against the Complainant on the basis of her disabilities. The bases for OCR’s determinations are set forth below.

Background

Relevant College Policies and Procedures

Notice of Non-Discrimination and Section 504 Coordinator

The College’s Notice of Non-Discrimination, which is available on its website, provides the name and contact information of the designated Section 504 Coordinator for each campus, including Kennedy King College.¹ The Notice of Non-Discrimination also indicates that students may contact the College’s designated Section 504 Coordinators for inquiries “regarding the Americans with Disabilities Act and the Amendments Act, the Rehabilitation Act, and related statutes and City Colleges of Chicago policies.” The Notice of Non-Discrimination also directs students to OCR for further information.

The College’s website as well as the Student Policy Manual include information about the College’s policies on equal access for students with disabilities to its programs and services and information regarding how to integrate students with disabilities into the College’s courses and programs, along with related procedures governing the implementation of the College’s policies.²

Non-Discrimination Policy

The College's Policy of Non-Discrimination (Non-Discrimination Policy) states that the College “does not discriminate on the basis of race, . . . , [and/or] disability or handicap... with respect to... admissions, or participation in Board programs, services, or activities as required by...the Americans with Disabilities Act of 1990 and the Amendments Act, Section 504 of the Rehabilitation Act of 1973, Title VI...and other applicable statutes....”

The Non-Discrimination Policy is available on the College’s website,³ the College’s Equal Opportunity (EEO) Office’s webpage,⁴ and in the Student Policy Manual.⁵

¹ <http://ccc.edu/departments/Pages/Annual-Notification-of-Non-Discrimination-.aspx>

² <http://ccc.edu/departments/Pages/Disability-Access-Center.aspx>, and <http://www.ccc.edu/colleges/kennedy/departments/Pages/Disability-Access-Center.aspx>.

³ <http://www.ccc.edu/menu/Pages/Policies.aspx>.

⁴ [http://www.ccc.edu/departments/Pages/Equal-Opportunity-Office-\(EEO\).aspx](http://www.ccc.edu/departments/Pages/Equal-Opportunity-Office-(EEO).aspx).

⁵ http://www.ccc.edu/menu/Documents/Student%20Policy%20Manual/2015_May_CCC_Student_Policy_Manual_APPROVED.pdf

Equal Opportunity Policy and Complaint Process

A separate policy entitled “City Colleges Equal Opportunity Policy and Complaint Procedures,” (EEO Policy and Grievance Procedures),⁶ states:

The City Colleges of Chicago is strongly committed to ensuring that its learning and working environments are free of discrimination and harassmentCity Colleges of Chicago will take action to stop discrimination or harassment, remedy discrimination or harassment and prevent recurrence of discrimination or harassment. The Board of Trustees of the City Colleges of Chicago (“CCC”) prohibits unlawful discrimination or harassment with respect to ... participation in Board programs, services, or activities (regardless of whether such programs, services or activities occur on CCC property) on the basis of race, ... disability, ... or status as a member of any other protected class under federal, state, or city law.

Prohibited harassment under this policy includes: using racial or ethnic slurs, making religious, [or] ethnic... specific jokes, distributing offensive cartoons or figures, ..., and other conduct which interferes with the individual's ... academic performance or creates an intimidating, hostile, or offensive ... learning environment.

Under this policy, “CCC employees are required to report any incidents of discrimination, harassment, or hostile... learning environment to the EEO Office regardless of whether the individual being harassed is an employee, student, participant in Board programs, activities, or services, or other person,” and if employees observe acts of harassment “it is recommended that they intervene to stop the harassment unless circumstances would make intervention dangerous.” Students are also “encouraged to immediately report any incidents of discrimination, harassment, or hostile work or learning environment to the EEO Office.”

The EEO Policy and Grievance Procedures set forth, among other things, where and how complaints of discrimination and/or harassment must be submitted, time frames for the investigation of a complaint (within 45 days after submission of the complaint), and include information about interim measures to modify academic or working conditions of the complainant and/or respondent while an investigation is pending if the EEO Office believes there is a threat of imminent harm. The EEO Policy and Grievance Procedures further state that the College prohibits “retaliation against and/or intimidation of employees, students, program participants, witnesses or any other persons who make complaints or who cooperate in EEO investigations.”

⁶ <http://ccc.edu/departments/Documents/Human%20Resources%20Documents/Equal%20Employment/EEO%20Complaint%20Proc2.pdf>.

College's Policies for Requesting and Receiving Academic Adjustments

Students with a disability who wish to request academic adjustments under the College's policies are directed to the Disability Access Center (DAC), where they are asked to schedule an intake appointment and submit supporting documentation of a disability. Pursuant to the College's policies, a request for academic adjustments should be made at least six weeks before the start of classes.

Students approved to receive academic adjustments are given an "accommodation letter" from DAC, which describes academic adjustments for which the student is approved, and which the student is instructed to provide to his/her instructors. The College's policy further advises students of the need to renew a request for academic adjustments every semester and to inform the DAC of schedule changes, including course withdrawals.⁷

Facts

Prior to enrolling in the XXXXXXXXXXXXXXXX Program at the College's XXXXXXXXXXXX School (School), the Complainant had enrolled at XXXXXXXXXXXX College of the City Colleges of Chicago, where she completed her Associates Degree in General Studies and Fine Arts in XXXXX. Documentation produced by the College shows the Complainant applied for and received academic adjustments during her participation in that program through XXXXXX College's DAC. She received exam aids, extended time on class work and tests, and a note taker. After completing her degree at XXXXXX College, she subsequently enrolled at XXXXXX University, where she earned a bachelor's degree.

In January 2014, the Complainant enrolled in the XXXXXXXXXXXXXXXX Program at the School after working with a vocational rehabilitation counselor (Vocational Counselor) from the XXXXXXXX Department of the Human Services Division of Rehabilitation Services (DRS). The Vocational Counselor helped the Complainant apply to the Program and get funding from DRS to pay for the program's tuition. A total of 16 students were enrolled in the Complainant's section of the XXXXXXXXXXXXXXXX Program during the Spring term of 2014. Of those students 6.25% were African American, 37.5% were Latino, 43.75% were Caucasian, and 1.25% were Asian. The Complainant was XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX.

The Complainant remained in the Program from XXXXXXXXXXXXXXXXXXXX, at which time she dropped out of the Program. She filed an internal complaint with the EEO Office on March 5, 2014 alleging that the College discriminated against her based on race and disability by failing to respond to her complaints that students were harassing her based on race, and by failing to provide her with necessary academic adjustments for her disabilities. The College completed its investigation into her allegations on December 10, 2014, concluding that there was insufficient evidence that the College or Complainant's classmates discriminated against her on the bases of race and disability. The College, however, recommended that the School's administrators and staff undergo discrimination and harassment training to recognize and address potentially

⁷ <http://www.ccc.edu/colleges/kennedy/services/Pages/Request-Disability-Accommodation.aspx>.

harassing conduct and training by the DAC to ensure that students who request academic adjustments are directed to contact the DAC.⁸

The Complainant's Requests for Academic Adjustments

During the application process (Spring and Summer 2013), the Complainant states that she notified the Finance Director on three occasions that she needed academic adjustments to address her disabilities (XXXXXXXXXXXXXXXXXX) and requested a note-taker, tutoring, a quiet location for testing, use of spell check with computer assistance for all tests, and all books recorded on tape. She states that the Finance Director informed her that the School would provide the academic adjustments if she brought documentation of her disabilities to orientation. The Complainant asserts that she brought documentation supporting her need for academic adjustments during orientation on or around XXXXXXXXXXXXXXXX to the School's admissions department, but she did not receive any response regarding her request for academic adjustments before her first day of instruction in the Program.

After starting the Program, the Complainant states that she continued to request academic adjustments from her instructors and from School administrators, but was told by the Dean of Student Affairs of the School (Dean) that she would not get the adjustments she requested because then every other student would want the same adjustments. She also states she requested academic adjustments from the School's Director of Operations (Operations Director) on XXXXXXXXXXXXXXXX, and that he also said she could not get these adjustments. Additionally, between the time she applied for admission to the Program and February 14, 2014, none of the administrators and teachers in the School with whom the Complainant discussed her need for academic adjustments ever referred her to the College's Disability Access Center (DAC).⁹

The Complainant states that after she informed one of her instructors (Chef A) that she was having a hard time keeping up with the course work in the Program and needed the academic adjustments she had requested before starting the Program, Chef A instead suggested that she participate in "Production." The Complainant understood that Chef A suggested that she participate in Production because she would not receive the academic adjustments she requested. According to the Complainant, another instructor (Chef B) informed her that "Production" focused on food packaging. Neither Chef offered the Complainant the assistance with her course work in the Program (a note-taker, tutoring, recorded books, etc.) that she was requesting.

⁸ Consistent with the College's recommendations, the DAC Director at XXXXXXXXXXXX College provided training on academic adjustments for students with disabilities to the School's staff on December 30, 2014. In addition, the DAC will continue to work with the XXXXXXXXXXXX School administration to address student questions and requests for academic adjustments. The College's EEO Office has worked with the School's administration to administer online non-discrimination and anti-harassment training to its staff. Finally, the School has included information on its website regarding the services of the DAC and the College's non-discrimination policy.

⁹ The College's policies do not require administrators and faculty to refer students to the DAC when they request academic adjustments. However, XXXXXXXXXXXX College's DAC Director stated during the College's investigation that the School should have contacted her to assess the Complainant's needs for her requested adjustments.

During the investigation conducted by the College's EEO Office into the March 21, 2014 discrimination complaint that the Complainant filed, the School's Finance Director admitted that the Complainant advised her of her disabilities and told her she may need additional time to complete class assignments. The Finance Director stated that she told the Complainant to submit documentation of her disability to the School's admissions department for an evaluation of the adjustments she may need, and that she advised the School staff that the Complainant may need additional time for her exams. The Finance Director further stated she did not know if a request for a note taker was made for the Complainant, and that if it was, it was done either by the admissions department or the Complainant. The Finance Director did not refer the Complainant to the DAC.

The Dean also acknowledged during the College's investigation into the Complainant's EEO complaint that the Complainant mentioned to him that she had problems learning in the beginning of the Program, but that the medical documentation she provided stated she could participate in the Program. Despite Complainant's assertions that she did not receive any adjustments or support during her participation in the Program, the Dean represented that the Complainant was seated at a table by herself with a "mentor" provided by the School in an effort to accommodate her disability. The Dean added that the Complainant did not request a note taker, but that even if she did, the School does not allow note takers in class, but does allow students to audio tape and record their classes. Consequently, he stated he informed the Complainant that she was allowed to audio tape and record her class with her own recording device.

The Operations Director explained during the College's EEO investigation that he learned of the Complainant's disability through a data sheet and a letter from her health provider in her file describing her medical history. The Operations Director asserted that the School tried to accommodate the Complainant at every step and that he told her she could audio tape the entire Program. He said the Complainant did not request a note taker until XXXXXXXXXXXXXXX, but that the School was working with her to schedule other help as she requested it, offered her tutoring and gave her extra time based on her needs, as the letter from her doctor recommended. The Operations Director also admitted in his interview during the College's investigation that the Director of the DAC (DAC Director) at the College contacted him after the Complainant withdrew from the Program and asked why the School had not contacted her or anyone at the DAC to assist with the Complainant's repeated requests for academic adjustments. The investigation report further indicates that the Operations Director responded to the DAC Director's question by stating that he did not think the Complainant needed the services of the DAC and that based on his judgment the School was providing the Complainant with the adjustments she needed based on the letter from her doctor.

The DAC Director stated that although it is generally up to the student to reach out to the DAC, she contacted the Operations Director of the School to advise him that he should have contacted her about the Complainant's needs. She added that when students receive specific academic adjustments at one campus, they should be able to receive the same academic adjustments at another campus and that she could have worked with the School's staff to make sure the Complainant got notes for her classes, which she had received as an approved academic adjustment while a student at XXXXXXXX College.

The College did not produce to OCR any documents detailing the discussions the School's administration and faculty had with the Complainant regarding her need for academic adjustments during her participation in the Program or the adjustments the School provided to the Complainant.

Harassment of Complainant

The Complainant reported to OCR that she began to experience hostility from some classmates, specifically partners with whom she was assigned to work, starting on the first day of class on or about XXXXXXXXXXXX. She states that her first partner, Student A, refused to share any food preparation tasks and relegated the Complainant to perform only menial tasks, such as washing dishes. The Complainant states she notified two chefs who worked for the School of the problem and the following week she was switched to a new partner, Student B, with whom she worked well. After her experience with Student A, the chefs also informed everyone in class that every student in the Program had the right to work on food preparation and "handle the product."

Only one week after she was assigned to work with Student B, around the first week of XXXXXXXX, the Complainant was reassigned to work with a third partner, Student C. The Complainant explained that this occurred because under the Program's rules, the students were required to switch partners every two weeks to have the opportunity to work with different people because in the professional world they would also have to work with different people. Consequently, the week she worked with Student B completed the two weeks that she was supposed to have been partners with Student A.

The Complainant states that she began to have problems with Student C during the first week that they were paired to work together. She asserts that Student C, a XXXXXXXXXXXX student, denied her the opportunity to participate in the preparation of food and only allowed her to wash dishes and squeeze ingredients from a pastry bag. The Complainant also states that Student C was very rude to her.

The Complainant states that over the two weeks she was partnered with Student C, Student C escalated her hostility, even threatening the Complainant with physical harm. During that period, on at least 2 occasions, including XXXXXXXXXXXX, which was supposed to be the last day the Complainant and Student C were to work as partners, Student C became upset and confronted the Complainant over allegedly joining the other students before being dismissed from class and not waiting for Student C to finish her chores. On another occasion, the Complainant states that Student C sprayed a bonding product used for training in decoration on the Complainant and her cake. The Complainant states the instructor at the time, Chef B, witnessed the event, but did not do or say anything. She believes Chef B did not speak up because she was intimidated by Student C, who is larger and taller than Chef B.

The Complainant stated she complained to her instructor and school administrators about her partner's hostility towards her. She complained to Chef B, whom the Complainant asserts acted as if Student C's behavior was not out of the norm. The Complainant also complained to the School Dean and Operations Director on different occasions, stating to both of them that she

believed Student C was harassing her because of her race, but nothing was done and Student C's hostility escalated. The last time she complained about Student C's treatment of her was on XXXXXXXXXXXX when she met with the Operations Director. The Complainant stated that the Operations Director was very dismissive, and reminded her that during orientation he told all the students they would have altercations with classmates and that it was part of the industry. She states that the Director seemed relieved that the hostility had not gotten physical, but did not state whether he was going to intervene to prevent that from happening and just advised her to develop a "thick skin." When the Complainant asked that the Director switch her to another partner, he told her to ride it out for one week, which was one week more than the two-week rotation required under the Program rules.

After she came back from her meeting with the Operations Director on XXXXXXXXXXXX, the Complainant states that Student C confronted her in the classroom and made comments such as "you feel better now?" and "you suck." The Complainant said she ignored her, but recalls that over the weekend Student C called her at least twice and left messages saying "you suck."

On Monday, XXXXXXXXXXXX, Student C again made hostile and aggressive comments to the Complainant while they were in the locker room and, according to the Complainant, tried to incite a physical fight. The Complainant states that she was afraid for her physical safety, and decided to leave the College, missing her class that day. She states she did not report the incident to the College because she felt it would have been futile, given the response she had received from the School administration the week before.

Although Student A and Student C did not make any racial comments to her, the Complainant informed OCR that she perceived racial animus by both students towards her because she was the XXXXXXXXXXXX student in the class. Additionally, the Complainant states that she observed that Students A and C were not only hostile to her, but they were also hostile towards other XXXXXX students and instructors in class. For instance, the Complainant asserts that Student C was rude and confrontational to Chef B, who was a XXXXXXXXXXXX instructor, and that Student A made an XXXXX student in the class cry. The Complainant also states that Student B told her that Student C was rude to her boyfriend, a XXXXX XXXX, when he came to pick her up at the School.

The Operations Director and the Dean acknowledged during the College's EEO investigation that they knew that the Complainant had problems with Student C, but they only knew of one incident in which Student C told the Complainant to "get her A game on." The Dean stated that they talked to Student C who stated that she and the Complainant had clashing personalities. The Operations Director also said he and the Dean met with the Complainant and counseled her that she needed to work with others, with the chef, and to communicate effectively. He also denied telling the Complainant to develop a thick skin.

Student B, a XXXXXXXXXXXX student, reported in her EEO interview that she worked with the Complainant for one week and worked well with her. She said she observed the Complainant washing dishes a lot when she was partnered with Student A, but was not close enough to determine if they had any arguments. Student B also said that the Complainant and Student C did not work well together, that Student C would give the Complainant "attitude," and

that she observed the Complainant walking away from Student C on occasion. She said, however, that Student C seemed to be fine with others, including herself. She also mentioned that Student C had a run-in with her boyfriend, a XXXXXXXXX, while he was waiting for her and told him to f*** off. Student B said she spoke to Student C and that it did not happen again.

Students A and C were also interviewed during the College’s investigation and both stated they did not work well with the Complainant. Student A stated it was difficult to work with the Complainant because they did not communicate well, in part because Student A has XXXXXXXXX. Student A denied that she made the Complainant do dishes and kept her from doing more hands-on tasks when they were partners. Student C admitted that she did not get along with the Complainant. She stated the Complainant liked to be “babied” and loved individual attention and to have her hand held. She added that the Complainant was not focused and would just talk about her personal life. Student C said after they had an argument, the Complainant ignored her. She denied their conversations ever turned physical or volatile and stated that she never felt their interactions would turn physical.

OCR interviewed Chef B to inquire about her observations of the interactions between Students A and C and the Complainant and/or other students. She stated that she did not observe or hear from others that Students A and C did not allow the Complainant to participate in food preparation and would only let her wash dishes. Chef B also stated that she did not observe and nobody informed her that Students A and C did not get along with other students, including students of XXXXXXXXXXXX backgrounds different than their own. She added that based on her own observations, the two students appeared to get along with other students in the class. Chef B also stated Student A and C were not hostile or disrespectful towards her, as an XXXXXXXXXXXX.

The Complainant stated that the School’s failure to provide her with academic adjustments and its failure to stop the harassment of Student C caused her to withdraw from the Program on XXXXXXXXXXXX.

Legal Standards

Discrimination Generally

The Title VI implementing regulation, at 34 C.F.R. § 100.3(a), provides that no person shall, on the basis of race, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity of a recipient. The Title VI regulation at 34 C.F.R. § 100.3(b)(1)(ii) also prohibits a recipient, on the basis of race, from providing any service or other benefit to a student that is different, or from providing such service or benefit in a different manner than it is provided to other students.

The Section 504 implementing regulation, at 34 C.F.R. § 104.4(a), provides that no qualified person 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 program or activity which receives or benefits from Federal financial assistance. The standards adopted by Title II were designed not to restrict the rights or remedies available under Section 504. OCR has

determined that the Title II regulations applicable to the issues raised in this complaint do not provide greater protection than the applicable Section 504 regulations and has, therefore, applied the relevant Section 504 standards in its analysis of this complaint.

Grievance Procedures, Nondiscrimination Coordinator, and Notice of Nondiscrimination

Race – Grievance Procedures

The regulation implementing Title VI does not contain an explicit requirement that recipients adopt and implement grievance procedures to address allegations of discrimination based on race, nor does the regulation require recipients to designate a nondiscrimination coordinator or issue a notice of nondiscrimination, with respect to race discrimination. However, grievance procedures that encompass race discrimination can be part of a prompt and effective response to harassment or other forms of discrimination prohibited by Title VI. In addition, a recipient that has adopted discrimination complaint procedures must apply the procedures in a manner that does not constitute discrimination prohibited by Title VI.

Disability – Grievance Procedures

The Section 504 regulation, at 34 C.F.R. § 104.7(b), requires recipients that employ fifteen or more persons to adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging action prohibited by Section 504, including disability harassment.

Whether or not it has such procedures, a recipient is responsible for addressing harassment incidents about which it knows or reasonably should have known.

OCR has identified a number of elements in evaluating whether a recipient's grievance procedures provide for the prompt and equitable resolution of complaints of discrimination and harassment. These include:

- Notice to students and employees of the grievance procedures, including where complaints may be filed, as well as contact information for the recipient's Section 504 coordinator, including name, address and telephone number;
- Adequate definitions of prohibited harassment, with specific examples and an explanation that the procedures apply to complaints alleging harassment carried out by employees, other students, or third parties;
- Adequate, reliable, and impartial investigation of complaints, including the opportunity for both parties to present witnesses and other evidence;
- Designated and reasonably prompt time frames for the major stages of the complaint process;
- Written notice to both parties of the outcome of the complaint; and,
- An assurance that the recipient will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate.

Disability – Section 504 Coordinator

The Section 504 regulation, at 34 C.F.R. § 104.7(a), requires recipients that employ at least fifteen persons to designate at least one person to coordinate compliance with Section 504.

Disability – Notice of Nondiscrimination

The Section 504 regulation, at 34 C.F.R. § 104.8, requires recipients who employ fifteen or more persons to notify participants, beneficiaries, applicants, and employees that the recipient does not discriminate on the basis of disability in violation of Section 504. The notification shall also include an identification of the responsible employee designated to coordinate compliance with Section 504. Pursuant to Section 504, the notice must specify the bases for non-discrimination and identify the name or title, address, and telephone number of the personnel who coordinate the complaint with these regulations (i.e., the Section 504 Coordinator(s)) and also should refer individuals to OCR. If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it shall include in those materials or publications this notification.

Race Harassment

Harassment on the bases of race is a form of discrimination prohibited by the Title VI regulations. Racial harassment is intimidation or abusive behavior toward a student based on race that creates a hostile environment by interfering with or denying a student's participation in or receipt of benefits, services, or opportunities in the recipient'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. Harassment does not have to include intent to harm, be directed at a specific target, or involve repeated incidents. Conduct is unwelcome if the student did not request or invite the conduct and regarded it as undesirable or offensive. OCR considers the conduct in question from both an objective perspective and the subjective perspective of the student allegedly subjected to harassment.

OCR determines whether conduct constitutes a hostile environment based on race by examining the totality of the circumstances. These circumstances include the context, nature, scope, frequency, duration, and location of the harassment incidents, as well as the identity, number, and relationships of the persons involved. To show harassment under a hostile environment approach, the evidence must establish that:

- (1) a hostile environment existed, i.e., harassing conduct (physical, verbal, graphic, or written) occurred on the basis of race that was sufficiently severe, pervasive or persistent so as to interfere with or limit the ability of an individual to participate in or benefit from the services, activities or privileges provided by a recipient;
- (2) the recipient had notice of the hostile environment; and
- (3) the recipient failed to respond adequately to address the hostile environment.

In some situations harassment may be in plain sight, widespread, or well-known to students and staff, such as harassment occurring in hallways, during academic classes, during College-sponsored activities, or through graffiti in public areas. In these cases, the obvious signs of the harassment are sufficient to put the recipient on notice.

Once a recipient has notice of a hostile environment based on race, the recipient is required to take immediate and appropriate action reasonably calculated to end the harassment, eliminate any hostile environment that has been created, prevent its recurrence and, where appropriate, remedy the effects of the harassment on the student(s) subjected to the harassment. In addition to counseling and taking disciplinary action against the harasser(s), effective corrective action may require changes to the recipient's overall services or policies.

In some situations, if the recipient knows of incidents of harassment, the exercise of reasonable care should trigger an investigation that would lead to a discovery of additional incidents. The specific steps in a recipient's 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 college, and other factors. In all cases, however, the inquiry should be prompt, thorough, and impartial.

When taking steps to separate an alleged target of harassment from the alleged perpetrator during and subsequent to an investigation, a recipient should minimize the burden on the alleged victim, and thus should not, as a matter of course, remove the alleged victim from his or her classes while allowing the alleged perpetrator to remain. A recipient may also be required to provide other services to the student who was harassed if necessary to address the effects of the harassment on that student.

Depending on how widespread the harassment was and whether there have been any prior incidents, the recipient may need to provide training for the larger college community to ensure that students, parents, and teachers can recognize harassment if it recurs and know how to respond.

Finally, the recipient should take steps to stop further harassment and prevent any retaliation against the person who made the complaint (or was the subject of the harassment) or against those who provided information as witnesses. At a minimum, the recipient's responsibilities include making sure that the harassed students and their families know how to report any subsequent problems, conducting follow-up inquiries to see if there have been any new incidents or any instances of retaliation, and responding promptly and appropriately to address continuing or new problems.

Academic Adjustments for Students with Disabilities

The Section 504 implementing regulation at 34 C.F.R. § 104.44(a) requires a recipient to 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 student with a disability. 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(d), requires a recipient to take such steps as are necessary to ensure that persons with disabilities are not denied the benefits of, excluded from participation in, or otherwise subjected to discrimination because of the absence of academic adjustments.

Under the applicable regulations, recipients may require a student to follow reasonable procedures to request and document the need for academic adjustments, including modifications to policies, practices, and procedures. In postsecondary settings generally, if a student with a disability believes that he or she needs an academic adjustment and/or other modification, the student has the obligation to identify him or herself as having a disability and to request the provision of academic adjustments. If the request for an academic adjustment is not initially granted, the student and the recipient are expected to engage in an interactive process to determine what, if any, academic adjustments will be made, and the appropriate scope of the academic adjustments. Under the applicable regulations, in determining what academic adjustments are necessary, a recipient shall give primary consideration to the request of the individual with disabilities.

Although students may request academic adjustments at any time, students needing services should notify the institution as early as possible to ensure that the institution has enough time to review their request and provide an appropriate academic adjustment. In disputes over the need for specific academic adjustments or modifications, OCR examines whether the recipient took reasonable steps to obtain a professional determination of whether the requested adjustment or modification is necessary for the student to effectively participate in the recipient's program. If the academic adjustment and/or modifications provided are not effective in meeting the student's needs, then it is the student's responsibility to notify the recipient as soon as possible. The student and the recipient should work together to resolve the problem, including as appropriate, by modifying the adjustments and/or modifications being provided or identifying other effective academic adjustments and/or modifications to be provided. It may be too late to correct the problem if the student waits until the course or activity is completed; recipients are not required to provide students with retroactive academic adjustments. In resolving a dispute as to whether an academic adjustment or modification was adequate for the student, OCR examines whether the recipient and the student acted in a reasonable manner under the circumstances; and whether the academic adjustments and auxiliary aids were of adequate quality and effectiveness.

Analysis and Findings

Allegation #1 -- XXXX-Based Harassment

OCR finds insufficient evidence that the Complainant was subjected to harassment based on her XXXX while a student in the XXXXXXXXXXXXXXXX School. Although the information obtained during OCR's investigation establishes that the Complainant's relationship with Students A and C was strained, the Complainant did not provide any information, and OCR was unable to obtain any information, to establish that these difficult interactions were based on the Complainant's

XXXX as opposed to personality conflicts or different working styles.¹⁰ The Complainant did not describe any XXXXXXXXXX charged comments or provide information to demonstrate that her difficulties with Students A and C were based on XXXX. Moreover, to the extent that the Complainant asserted that Students A and C similarly harassed other students and instructors in the Program who were also XXXXXXXXXX, OCR was unable to corroborate this assertion. The information obtained during OCR's investigation refutes the assertion that either Student A or Student C singled out other program participants or instructors for XXXX-based harassment. Specifically, all of the witnesses who provided testimony in this case, including Student B and Chef B, observed that Students A and C got along well with other students in the class, except for the Complainant. Considering all of the information obtained in this case, OCR has determined there is insufficient evidence from which to conclude the Complainant was discriminated against on the basis of XXXX in violation of XXXX as alleged. Therefore, OCR has closed this allegation effective the date of this letter.

Allegation 2--Failure to Provide Academic Adjustments

OCR reviewed the College's internal investigation into the Complainant's allegation that she was denied academic adjustments in violation of Section 504 and Title II.

OCR finds that that the College failed to take steps to ensure that the Complainant was not denied the benefits of, excluded from participation in, or otherwise subjected to discrimination because of the absence of academic adjustments in the Program. Although the College had published procedures for students who wish to request academic adjustments, which the Complainant did not follow in this case,¹¹ on the whole, OCR determined that the repeated failure of the School and Program staff to refer the Complainant to the DAC to properly determine the academic adjustments she needed despite her multiple requests for academic adjustments, subjected her to discrimination on the basis of her disability.

The Complainant repeatedly requested academic adjustments before and after she enrolled in the Program and she provided the School with medical documentation supporting her need for those adjustments. She provided her requests and supporting documentation to the Program's admission's staff during orientation, because she was misdirected to do so by the Finance Director.

OCR further finds that the Program administrators knew from the start of the Program that the Complainant had documented disabilities and that she requested academic adjustments. Although the Complainant did not make her requests for academic adjustments through the DAC, OCR found that her requests were direct and specific enough that the School should have worked with the Complainant in an interactive process to determine what, if any, academic adjustments were needed, and the appropriate scope of the academic adjustments. Instead, the Dean and the Operations Director stated the School tried to meet the Complainant's needs, but only provided the academic adjustments they felt were necessary. When the Complainant

¹⁰ OCR attempted to contact Student B to clarify what she observed with respect to the Complainant's interactions with Students A and C, but was unsuccessful.

¹¹ Additionally, at that time, the School's website and printed materials did not contain information about XXXXXXXX DAC.

reported the ineffectiveness of these academic adjustments and sought additional adjustments, the Program denied her requests, stating that if they provided her with the requested adjustments, other students would request similar assistance. The evidence also shows the Complainant was not referred to the DAC and the Operations Director admitted he did not contact the DAC because he did not think the Complainant needed their services and that based on his judgment the School was providing the Complainant with the academic adjustments she needed in light of the letter from her doctor. Therefore the School, by failing to mention the DAC to the Complainant each time she requested academic adjustments, created the impression that the process for obtaining academic adjustments in the Program differed from the process that the Complainant followed while she was a student at XXXXXXXXXX College.

For all these reasons, OCR finds that the College failed to act in a reasonable manner under the circumstances to ensure the Complainant received academic adjustments of adequate quality and effectiveness. Accordingly, OCR determined that the College discriminated against the Complainant based on her disabilities to the extent that it failed to make such modifications to its academic requirements as were necessary to ensure that such requirements did not discriminate against the Complainant on the basis of her disabilities, in violation of Section 504 and Title II of the ADA, as alleged.

To resolve the above-described Section 504 and Title II compliance determinations, the College agreed to enter into a resolution agreement (the Agreement) with OCR on August 3, 2015. Pursuant to the Agreement, the College will: (1) Provide effective training on the College's policies and procedures regarding the provision of academic adjustments, auxiliary aids and services, and modifications necessary for students with disabilities to participate in and benefit from the College's educational services to the administrators and faculty at the XXXXXXXXXXXXXXX and XXXXXXXXXXXXXXX and at any other program in which the Complainant chooses to enroll; (2) dismiss the collection action the School filed against the Complainant to recover unpaid tuition; (3) readmit the Complainant in the XXXXXXXX or give her the opportunity to seek admission into any other program XXXXXXXXXXXXXXX College offers; and (4) cover the cost of the XXXXXXXXXXXXXXX or any one program that XXXXXXXXXXXXXXX College offers in which the Complainant enrolls less any funding from DORS or other grants or scholarships she may be able to obtain.

OCR will monitor the College's implementation of the Resolution Agreement until the College is in compliance with the statutes and regulations at issue in this case. The full and effective implementation of the Resolution Agreement will address all of OCR's Section 504 and Title II compliance findings.

This concludes OCR's investigation of the complaint and should not be interpreted to address the District'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.

Please be advised that the College 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 individual may file a complaint alleging such treatment. The Complainant may also 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.

We wish to thank you and the College's Office of General Counsel for the cooperation extended to OCR during our investigation. If you have any questions, please do not hesitate to contact Alonzo Rivas by phone at 312-730-1684, or by e-mail at Alonzo.Rivas@ed.gov.

Sincerely,

Aleeza Strubel
Supervisory Attorney

cc: XXX

Enclosure