



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

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December 28, 2015

Dr. Steven G. Poskanzer
President
Carleton College
One North College Street
Northfield, Minnesota 55057

RE: OCR # 05-15-2417
OCR # 05-15-2482
Carleton College

Dear Dr. Poskanzer:

This is to advise you of the disposition of the complaints filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Carleton College (College) alleging discrimination on the basis of disability and retaliation.

Specifically, complaint # 1 (05-15-2417) alleged that the College subjected a College student (Complainant) to discrimination on the basis of disability (Depression, Anxiety Disorder and ADHD) when:

- (1) In spring 2015, the College failed to provide a reasonable accommodation of a modified sanction for her suspension;
- (2) Because the Complainant advocated for a reasonable accommodation in spring 2015, the College subsequently banned her from campus and social and extracurricular events on campus; and
- (3) The College does not have adequate grievance policies and procedures regarding disability discrimination.

Complaint # 2 (05-15-2482) alleged that because the Complainant filed complaint # 1 (*supra*) alleging disability discrimination, the College retaliated against her in June 2015 when it denied her request to bring her legal counsel to a meeting to discuss her readmission in the fall of 2015.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990

The Department of Education's mission is to promote achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

(Title II), 42 U.S.C. §§ 12131-12134, and its implementing regulation at 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities. These regulations also prohibit retaliation. As a recipient of Federal financial assistance from the Department and a public entity, the College is subject to these laws.

Factual Summary

Complaint # 1

According to information provided by the Complainant and the College, the Complainant enrolled as a freshman at the College in the fall of 2013. During her first year, the Complainant violated the College's XXXXXXXX policy on several occasions. On January 4, 2014, the Complainant was found smoking marijuana and drinking alcohol in a residence hall. She was placed on Residential Probation through January 15, 2015. On February 8, 2014, College security responded to a call for assistance and found the Complainant XXXXX at the College's campus center. As a result, the Complainant's residential probation was extended until February 12, 2015. On May 15, 2014, the Complainant was found XXXXXXXX in the College's arboretum. The Complainant did not receive discipline for this incident because the College staff could not schedule a meeting with her due to final exams and end-of-year commitments prior to the conclusion of the semester.

According to information provided by the Complainant and the College, at the beginning of her sophomore year, on September 14, 2014, the Complainant and her friends XXXXXXXXXXXX in a College dorm room. Several of the Complainant's friends XXXXXXXXXXXXXXXXXXXXXXXX. College security searched the Complainant's room and found XXXXXXXXXXXXXXXXXXXX. The Complainant acknowledged to the College and OCR that the XXXXXXXXXXXX belonged to her.

In a letter dated September 19, 2014, the College's Vice President wrote to the Complainant, "This letter will serve as official notification that you are being dismissed from the College effective today and you are not eligible to return." The letter explains that the dismissal is based on the Complainant's continuing violations of the College's Community Policies and Standards related to XXXX XXX in September 2014 and for violating the terms of previously-imposed terms of probation.

On September 18, 2014, the College's Associate Dean of Students (Associate Dean) met with the Complainant to notify her of the dismissal. The Complainant appealed her dismissal. As a result, the College's Judicial Board scheduled an appeal hearing on September 26, 2014. The Complainant stated that she received copies of the hearing procedures and met with the Associate Dean prior to the hearing. The Complainant said that she was allowed to submit documentation in support of her appeal and submitted a written statement regarding the

incident which led to her expulsion. The Complainant did not mention in her written statement that she had a disability or suffered depression or anxiety.

According to information provided by the Complainant and the College, the College's Judicial Board overturned the Vice President's dismissal and imposed a suspension on the Complainant for one calendar year, until fall 2015. The Head of the Judicial Board informed OCR that the Board reduced the Complainant's punishment from a dismissal to a suspension because it felt that the Complainant should not be permanently punished for her mistakes and should be given the opportunity to seek treatment and try to become a productive citizen and mature adult.

According to information provided by the Complainant and the College, the Board placed several conditions on the Complainant in order to return to the College for the fall 2015 semester. In a September 26, 2014 email, the Associate Dean, on behalf of the Board, informed the Complainant that she must, among other conditions, complete a XXXXXXXXXXXXXXX assessment, conduct community service XXXXXXXX XXXXX prevention/ education and conduct several in-person and phone meetings with the dean of her choice. The email also stated, "You are not banned from being on campus while you are suspended, however, it is expected that you contact the Dean of Students Office prior to being on campus at any time, so that we can temporarily activate your OneCard."

According to information provided by the Complainant and the College, throughout her suspension, the Complainant contacted the Dean of Students Office to seek permission to visit campus. On October 9, 2014, the Associate Dean granted the Complainant's request to stay in the residence halls with friends for two days until she could find housing in Minnesota. On October 20, 2014, the Associate Dean met with the Complainant to discuss her return to Minnesota. The Associate Dean advised the Complainant that she would not need to seek advance permission to visit the College's Zen garden, which was located on campus.

According to information provided by the Complainant and the College, in October 2014, the Complainant requested permission to attend a dance on campus. The Associate Dean said that she discussed the request with the Complainant, noting that the dance is typically a rowdy event. The Associate Dean said that the Complainant had a responsible and reasonable plan in place (leave early, only socialize with her friends) so she granted her request to attend. The Vice President overruled the Associate Dean's decision to permit the Complainant to attend the dance. The Vice President advised the Associate Dean to make it clear to the Complainant that she was permitted on campus for re-enrollment related events only, not social events. In an October 24, 2014, email, the Associate Dean advised the Complainant that she could not attend the dance and that in the future, if she wanted to visit the campus, she would need to submit a request in writing that would be forwarded to the Vice President who would approve any future requests.

According to information provided by the College, on October 28, 2014, the Associate Dean, with the Vice President's approval, granted the Complainant's request to visit campus to move items that had been stored in her friends' dorm room.

According to information provided by the Complainant and the College, on January 13, 2015, the Complainant's attorney forwarded correspondence to the Associate Dean requesting a modification to the Complainant's suspension as a reasonable accommodation for her disability. The correspondence indicated that the Complainant's challenges were related to poorly-controlled mental health issues, XXXXXXXXXXXXXXXX, and proposed a plan to help the Complainant successfully manage her mental health disability. As an accommodation, the Complainant's attorney requested that the Complainant's suspension be reduced and that the Complainant be allowed to return to the College for the spring 2015 semester.

According to documentation provided by the College, on January 19, 2015, the Associate Dean replied to the Complainant directly in an email and discussed the steps the Complainant would need to complete for readmission for the fall of 2015. The Associate Dean requested medical documentation from her new therapist and follow up information regarding her medical assessment. The Associate Dean did not address the reasonable accommodation request in her email.

According to documentation provided by the College, on February 9, 2015, the Complainant emailed the Associate Dean that she would like to be able to spend more time with her friends on campus and that it would be really helpful for her mental health. She further stated that she would like to drop off Valentine's Day cards in her friend's mailboxes on campus and attend a "break the Silence" event in the campus chapel. In a February 13, 2015 email, the Associate Dean said she conferred with the Vice President who replied "I will not lift the ban. She is eligible to be on campus in the fall 2015." On February 13, 2015, the Associate Dean emailed the Complainant and reported that the Vice President "will not lift the ban" and reiterated that the only time she could be on campus is when she needed to meet with someone about re-enrollment for the fall term.

According to information provided by the Complainant and the College, on February 17, 2015, the Complainant submitted correspondence to the Associate Dean reiterating her request of a reasonable accommodation to allow the Complainant to return to campus for the spring 2015 term and requesting the College lift any "restrictions" on her presence on campus, in light of the February 13, 2015 email which referenced the "ban." On February 25, 2015, the College's legal counsel responded that the Complainant was not "banned" from campus during her suspension and asserted that the Complainant's request for a reasonable accommodation was simply asking for a reduction in sanction. The College's attorney stated that the College would meet with the Complainant to discuss any reasonable accommodations she might need once she was readmitted to the College in the fall 2015.

According to information provided by the Complainant and the College, in early March 2015, the Complainant and the Associate Dean met to discuss her progress for readmission. In mid-April 2015, the Associate Dean made arrangements to provide the Complainant with a scooter she needed to travel around the city. The Associate Dean continued to assist the Complainant with her plans for re-enrollment for the fall of 2015. In July 2015, the Complainant re-enrolled in the College.

Complaint # 2

According to information provided by the Complainant and the College, on May 26, 2015, the Associate Dean emailed the Complainant to schedule an in-person meeting to discuss her progress and the terms of her re-enrollment. The Complainant responded that she would like to meet with the Associate Dean, however, she felt uncomfortable coming in alone (her personal friend was unavailable) and she would like to have her lawyer to accompany her to the meeting. The Associate Dean advised the Complainant that she did not think it was necessary for her to bring her lawyer because it was a regular status meeting about her progress, similar to the meetings they held in the past. The Associate Dean informed her that she did not object to the lawyer participating in the meeting, however, she would notify the College's legal counsel so that he could attend as well. The Associate Dean told the Complainant that she could either schedule a meeting when both attorneys were available or they could meet without either attorney. The Complainant advised her that she did not want to meet without her lawyer.

According to information provided by the Complainant and the College, a meeting with the Associate Dean was scheduled for May 29, 2015. On the morning of the meeting, the Complainant's attorney emailed the College's attorney stating that she planned to meet with the Associate Dean and assumed that he would be present, since she is not allowed to communicate with represented parties without their legal counsel. The College's attorney, who was not scheduled to work that day, responded that he would not be present and that he objected to her meeting with his client, without his presence. The May 29, 2015 meeting was canceled.

According to documentation provided by the Complainant and the College, throughout June 2015, the College's attorney and the Complainant's attorney exchanged several emails regarding the meeting with the Complainant, which OCR reviewed. The College's attorney asserted that the meeting was not a legal matter requiring his presence and that the College should not have to pay legal fees for him to attend an academic meeting between the College and a former student regarding readmission. The College's Attorney refused to attend the meeting and suggested that the Complainant select another support person to meet with the Associate Dean. The Complainant's attorney asserted that she should be able to participate in the meeting with the Complainant, especially in light of complaint # 1. The Complainant's

attorney averred that the College attorney's refusal to meet would either require her to engage in *ex parte* communications, or would effectively prohibit the Complainant from satisfying her obligation under her readmission requirements. The Complainant's attorney consulted the Minnesota Lawyer's Board regarding the dilemma and was advised that she could meet in the absence of the College's attorney as long as she remained silent to avoid breaking the ethical rule that says she cannot communicate with a represented party.

According to information provided by the Complainant and the College, in early July 2015, the Complainant's attorney, the Complainant and the Associate Dean held a teleconference without the College's legal counsel present, and satisfied the requirement of the meeting. Subsequently, the College determined that the Complainant had met all requirements for readmission and the Complainant received written confirmation on July 27, 2015, that she was eligible to return to the College in fall 2015.

The Associate Dean reported to OCR that she held a teleconference with the Complainant in August 2015 without legal counsel or a support person present, to discuss advising issues. The Complainant began classes in mid-September 2015.

Legal Standards

Individual with a Disability

The Section 504 implementing regulation, at 34 C.F.R. § 104.3(j), defines an individual with a disability as one who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. The regulation further provides, at 34 C.F.R. § 104.3(l)(3), that a qualified individual with a disability, with respect to postsecondary services, is an individual with a disability who meets the academic and technical standards requisite to admission or participation in the recipient's education program or activity.

Drug Use Exclusion

Section 504, at 29 U.S.C. § 705(20)(c)(i), provides that the term "individual with a disability" does not include an individual who is currently engaging in the illegal use of drugs, when a covered entity acts on the basis of such use. The Title II implementing regulation at 28 C.F.R. § 35.131(a) does not prohibit discrimination against an individual based on that individual's current illegal use of drugs.

Disability Discrimination

The Section 504 implementing regulation at 34 C.F.R. § 104.4(a) states 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 Section 504 regulation at 34 C.F.R. §104.4(b)(1)(i), (ii) and (iv) provides in relevant part that a recipient shall not deny a qualified individual with a disability an aid, benefit, or service or provide such aid, benefit or service to an individual that is not equal to or is different from that provided to others because of the individual's disability.

Retaliation

The regulations implementing Section 504 at 34 C.F.R. § 104.61 incorporate by reference the non-retaliation requirement in the regulation implementing Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d *et seq.*, which provides at 34 C.F.R. § 100.7(e), that no recipient shall “intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by” the statute, or because the individual has asserted a right protected by, made a complaint, or participated in an investigation, hearing, or proceeding under the statute.

A *prima facie* case of retaliation is established when it is determined that (1) an individual engaged in a protected activity (opposed a discriminatory policy, asserted protected rights, or participated in an OCR complaint or proceeding); (2) the recipient knew of this activity; (3) the recipient took an adverse action contemporaneous with or subsequent to the protected activity; and (4) a causal connection between the protected activity and the adverse action can be inferred. In assessing whether an individual has been subjected to an adverse action, OCR considers whether the recipient's action significantly disadvantaged the individual and whether the challenged action might reasonably have deterred or precluded the individual from engaging in further protected activity.

If all of the elements of a *prima facie* case of retaliation are established, OCR then considers whether the recipient had a legitimate, non-retaliatory justification for taking the adverse action, and whether the reason is a pretext for retaliation. Pretext may be shown by presenting evidence that the proffered justification for the adverse action is not credible, or is inconsistent with the recipient's policies or practices.

Grievance Procedures

The Section 504 implementing regulation, at 34 C.F.R. § 104.7(b), states that a recipient that employs fifteen or more persons shall adopt grievance procedures that incorporate

OCR determined that the Complainant engaged in an activity protected by Section 504 when she requested a reasonable accommodation based upon her disability. The evidence established that the College was aware of the request for a reasonable accommodation. Thus, the first two prongs of the *prima facie* case of retaliation have been established. However, the evidence fails to show that the College took an adverse action contemporaneous with or subsequent to the protected activity and as such, there is no causal connection between the protected activity and the alleged adverse action. Thus, the third and fourth prongs have not been established and a *prima facie* case of retaliation has not been met.

The Complainant asserted that the College banned her from attending campus events including mental health programs as well as college services such as mental health counseling during her suspension after her legal counsel, in January 2015, requested a reasonable accommodation based upon disability. However, the documentary evidence revealed that in October 2014, prior to the protected activity, she was informed that her visits to campus were restricted to re-enrollment purposes only. The College reiterated in February 2015, when the Complainant sought to deliver Valentine's Day cards, that she was allowed to visit campus for re-enrollment purposes only. Although the College used a misguided term such as "ban" in the email, OCR found no evidence that the Complainant received additional restrictions from campus beyond those imposed in October 2014. As such, the College's alleged adverse action took place prior to the Complainant's protected activity. As such, there is no causal connection between the protected activity and adverse act.

Based on the above, OCR has determined that the College did not engage in retaliation as alleged.

Complaint # 1, Allegation 3 - Grievance procedures

The Complainant alleged that the College does not maintain adequate grievance procedures pertaining to disability discrimination. OCR's investigation revealed that the College does not have sufficient disability discrimination grievance procedures or procedures to address the provision of academic adjustments and auxiliary aids to students with disabilities. The College's grievance procedures do not appear on the College's website and fail to reference retaliation or the process for filing and resolving disability complaints. The College's reasonable accommodation procedures do not explain the types of accommodations available to students, do not prohibit retaliation, nor do they explain the interactive process. Accordingly, OCR determined that the College is in violation of the Section 504 regulation, at 34 C.F.R. § 104.7(b) and 34 C.F.R. § 104.4(a). The College executed the enclosed Resolution Agreement, which when fully implemented, will resolve Allegation 3 of complaint # 1. OCR expects to receive the College's first monitoring report on February 26, 2016.

Complaint # 2 - Retaliation

The complaint alleged that because the Complainant filed complaint # 1 with OCR, the College retaliated against her in June 2015 when it denied her request to bring her legal counsel to a readmission meeting for the fall 2015.

OCR determined that the Complainant engaged in an activity protected by Section 504 when she filed complaint # 1 in April 2015, of which the College was aware. Thus, the first two prongs of a *prima facie* case of retaliation have been satisfied. However, the evidence does not show that the recipient took an adverse action against the Complainant and thus, the third and fourth prongs have not been established. As such, a *prima facie* case of retaliation has not been met.

OCR's investigation revealed that the College's staff did not take an adverse action or refuse to meet with the Complainant. There was a minor delay in scheduling, however, OCR's investigation revealed, that the delay was attributed to the communications between legal counsel and not the actions of the College staff. Moreover, the minor delay did not result in harm to the Complainant, because she was able to meet with the Associate Dean, satisfy her requirements for readmission, and begin classes in the fall 2015 semester. Additionally, information obtained from both the Complainant and the College established that College staff were willing, and did in fact meet with the Complainant prior to and subsequent to her protected activity. Accordingly, OCR has determined that the College did not engage in retaliation, as alleged.

This concludes OCR's investigation of the complaint and should not be interpreted to address the College'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 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. In the event that OCR receives such a

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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. The Complainant may file a private suit in federal court, whether or not OCR finds a violation.

We wish to thank you and College staff for their cooperation during OCR's processing of this case. In particular, we wish to thank the College's counsel, Dan Wilczek. If you have any questions, please contact Camille D. Lee, Civil Rights Attorney, at 312-730-1561 or by email at camille.lee@ed.gov.

Sincerely,

Ann Cook-Graver
Supervisory Attorney

cc: Mr. Dan Wilczek via email

Enclosure