



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

1999 BRYAN STREET, SUITE 1620
DALLAS, TEXAS 75201-6831

REGION VI
ARKANSAS
LOUISIANA
MISSISSIPPI
TEXAS

September 30, 2015

Ref. 06144015

John Blair, President
Ogle School of Hair, Skin, and Nails-Denton Campus
2324 San Jacinto Blvd.
Denton, Texas 76205

Dear Mr. Blair:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, has completed its investigation of the above-referenced complaint filed against the Ogle School of Hair, Skin, and Nails-Denton Campus (“OS” or “School”), which OCR received in our office on January 30, 2014. In the letter of complaint, the complainant alleged discrimination on the bases of disability (xxxxxx xxxxxxxx) and sex (female). After speaking to the complainant on February 27, 2014 regarding the complaint allegations, OCR determined that the complainant specifically alleged that during the xxxx fall semester, the School failed to provide her with accommodations for her disability. The complainant also alleged that the School allowed her to be subjected to sexual harassment by a xxxxx classmate, during the xxxx fall semester.

OCR is responsible for determining whether entities that receive or benefit from Federal financial assistance from the Department, or an agency that has delegated investigative authority to this Department, are in compliance with Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681, and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex. This agency is also responsible for determining whether organizations that receive or benefit from Federal financial assistance from the Department or an agency that has delegated investigative authority to the Department are in compliance with 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. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

OS is a recipient of Federal financial assistance from the Department. Therefore, OCR has jurisdictional authority to process this complaint for resolution under both Title IX and Section 504.

Based upon the letter of complaint and additional information received from the complainant during the evaluation process, OCR investigated the following issues:

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

1. Whether, in XXXXXX of xxxx, the School discriminated against the complainant on the basis of disability by failing to provide academic adjustments to accommodate the complainant’s disability (bipolar disorder), in violation of Section 504, at 34 C.F.R. §104.44; and,
2. Whether, in XXXXXXXXXX of xxxx, the School discriminated against the complainant on the basis of sex (female) when school officials failed to take prompt and effective action to address sexually harassing conduct sufficient to create a hostile environment (i.e., a xxxxx classmate xxxxxx the complainant’s xxxxxxxx on xxxxxxxx xxxxxxxx and xxxx xxxxxxxx xxxxxxxxxx xxxxxxxx towards the complainant, (e.g., xxxxxx xxxx x xxxxxxxxxx xxxxxxx xxx x xxxxx)), of which the School had or should have had notice, in violation of Title IX, at 34 C.F.R. §106.31.

Findings:

During the course of the investigation, OCR reviewed information provided by both the complainant and the School, as well as conducted interviews with the complainant, the OS School Director (Director)¹, and the OS Salon Manager (Manager). As a result of the investigation, OCR determined that there is insufficient evidence to support a conclusion of noncompliance with Section 504 with regard to Issue 1.

Regarding Issue 2, prior to the completion of OCR’s investigation, Ogle requested to enter into a resolution agreement (Agreement). However, during the investigation of Issue 2, found a compliance concern. Particularly, OCR determined that as per the OCR Sexual Harassment Policies and Procedures checklist, “an assurance that the institution will take steps to prevent recurrence of harassment and to correct its discriminatory effects on the complainant and others, if appropriate,” is not readily identifiable in the School’s sexual harassment/violence policy or its complaint and grievance procedures. Therefore, because further investigation is not needed to determine that the School’s Title IX policies and procedures don’t meet the standards as required, OCR will also address this concern via the Agreement.

The reasons for our specific findings are outlined below.

Issue 1:

Legal Standard

Qualified Individual with a Disability

OCR policy provides that students with disabilities have the obligation to provide adequate documentation to postsecondary education institutions evidencing the existence of their disability(ies) and their need for academic adjustments or auxiliary aids. The question of whether a student has provided documentation sufficient to evidence the existence of a disability requiring

¹ As of the date of this letter, OS-Denton has a new School Director, so “Director” refers to the former OS Director. Any references to the current School Director will be expressly indicated as such.

an academic adjustment/auxiliary aid must be decided on a case-by-case basis using a standard of reasonableness.

The regulation implementing Section 504 at 34 C.F.R. § 104.43 requires that no qualified student with a disability, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any postsecondary program or activity. The Section 504 regulation at 34 C.F.R. § 104.3(j)(1) defines an individual with a disability as any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record or such an impairment, or (iii) is regarded as having such an impairment. Major life activities, as defined in the Section 504 regulation at 34 C.F.R. § 104.3(j)(2)(ii), included caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. For postsecondary education purposes, the Section 504 regulation at 34 C.F.R. § 104.3(l)(3) defines a qualified individual with a disability as a person who meets the academic and technical standards requisite to admission or participation in the recipient’s education program or activity.

Academic Adjustments

The Section 504 regulation, at 104.44(a), requires a recipient postsecondary educational institution (a “recipient”) to make such modifications to its academic requirements as are necessary to ensure that those requirements do not discriminate or have the effect of discriminating against a qualified person with a disability. A postsecondary institution is not required to provide an academic adjustment that it can demonstrate would fundamentally alter or lower essential academic requirements.

An “academic adjustment” is a modification of an institution’s policies, practices or procedures. A recipient’s duty to provide academic adjustments arises after it has received adequate notice of a qualified individual’s disability and the need for academic adjustment(s). In evaluating a recipient’s compliance with the Section 504 regulation regarding the provision of academic adjustments, OCR uses a four-part test to determine: 1) whether the complainant notified the recipient, i.e., OS, of the need for such academic adjustments, 2) whether the academic adjustments were necessary, 3) whether OS provided the necessary academic adjustments, and 4) whether the academic adjustments provided were of adequate quality and effectiveness.

Analysis (Issue 1):

According to the complainant, she had an informal conversation with an OS official regarding taking medication for xxxxxx xxxxxxxx and xxxxxxxx xxxxxxxx on the xxxxxx xxx of the OS xxxx fall semester. However, the complainant later stated that she never made a formal request for any type of academic adjustments based on her disability, because OS never provided its students with information regarding how to do so. As part of its data response, OS submitted a copy of its xxxx Student Catalog (Catalog). After a review of the Catalog, OCR determined that on page 26 (which includes the School’s nondiscrimination notice, the School Director was identified as the person responsible for coordinating the School’s compliance with Section 504. Specifically, the Catalog provides that “any qualified individual with a disability requesting an accommodation...should notify the School Director in writing of the type of accommodation needed, date needed,

documentation of the nature and extent of the disability, and of the need for the accommodation or auxiliary aid.” Additionally, each OS campus School Director is identified on page 45 of the Catalog, along with the Director’s contact information.

During the initial interview between OCR and the Director on May 20, 2014, the Director stated that the School reviews the Catalog in detail with its students at orientation, and the Catalog is also covered the first day of classes. The Manager, who was also present during OCR’s interview with the Director, corroborated the Director’s assertions. The Director stated that she is the designated campus Section 504 Coordinator, and she never received a written or verbal accommodation request from the complainant. Therefore, she was unaware that the complainant needed any type of accommodations to participate in the School’s educational program. The Director also stated she never received any information from her staff regarding the complainant requesting accommodations. As part of its evidence, OS submitted a copy of the complainant’s application where the complainant explicitly indicates that she has “xx xxxxxx xxxxxx” that may prevent her from starting and/or finishing the School’s program. Lastly, the Director followed up with the OS IT Department and confirmed that the process for requesting accommodations under Section 504 is also on the OS website as part of its Catalog.

OCR contacted the complainant on May 28, 2014 to allow her to rebut the School’s assertions. During that time, the complainant stated that there was “nothing [she] can say” because “the information was all there,” referring to the fact that OCR determined the information regarding how to request accommodations was located in the Catalog. The complainant also acknowledged that she did not submit any formal requests for academic adjustments to the School while enrolled there in Xxxxxx through Xxxxxxxxxx of xxxx. The complainant alleged in her complaint that she received a copy of the Catalog, but it did not contain any information regarding how to request an accommodation based on disability. However, the complainant did not provide any information to OCR to rebut the School’s position that its students were made aware of how to request accommodations via orientation, and via information found on the website and in the OS Catalog, which was also reviewed by OCR.

A finding that a recipient has violated one of the laws that OCR enforces must be supported by a preponderance of the evidence (i.e., sufficient evidence to prove that it is more likely than not that unlawful discrimination occurred). When there is a significant conflict in the evidence and OCR is unable to resolve that conflict, for example, due to the lack of corroborating witness statements or additional evidence, OCR generally must conclude that there is insufficient evidence to establish a violation of the law.

Consequently, based on the evidence obtained during the investigation regarding Issue 1, the aforementioned legal standard fails at prong 1, because the evidence did not establish that the complainant was identified as a qualified individual with a disability by OS, nor was OCR able to determine that the complainant appropriately notified OS of her need for accommodations based on disability. Moreover, the complainant was unable to corroborate her assertion that she was never provided with any information regarding how to request an academic adjustment based on disability. Accordingly, there is insufficient evidence to conclude that OS violated Section 504 as alleged, and OCR will take no further action with regard to Issue 1 as of the date of this letter and considers it closed.

Issue 2:

Legal Standard

Title IX and its implementing regulations prohibit discrimination based on sex. Sexual harassment of students is a form of prohibited sex discrimination. To investigate or otherwise resolve issues of sexual harassment of students, OCR considers whether: (1) the recipient has a disseminated policy prohibiting sex discrimination under Title IX and effective grievance procedures; (2) the recipient appropriately investigated or otherwise responded to allegations of sexual harassment; and (3) the recipient has taken immediate and effective correction action responsive to any harassment that the investigation determined took place, including effective actions to end the harassment, prevent its recurrence, and, as appropriate, remedy its effects.

In accordance with the Title IX regulations, each recipient is required to “implement specific and continuing steps to notify . . . students . . . that it does not discriminate on the basis of sex in the educational program or activity which it operates, and that it is required by Title IX . . . not to discriminate in such a manner.” The Title IX regulations also require that each recipient “adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by [Title IX].” Finally, Title IX requires that each recipient “designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under [Title IX], including any investigation of any complaint communicated to such recipient alleging its noncompliance with [Title IX] or alleging any actions which would be prohibited by [Title IX].” Recipients are further required to notify all of their students and employees of the name, office address, and telephone number of the employee or employees designated as their Title IX Coordinator(s).

Analysis (Issue 2):

Prior to conducting interviews, in accordance with OCR guidance, OCR began its analysis by reviewing the School’s notice of non-discrimination to determine whether the school has a policy prohibiting sex discrimination under Title IX, as well as the School’s sexual harassment/violence policy and reporting procedure.

OCR reviewed the School’s non-discrimination notice, located on page 26 of the Catalog, which provides, “[OS] does not discriminate in admission or access to [its] courses on the basis of age, race, color, sex, disability, religion, sexual orientation, or national or ethnic origin.” With regard to the School’s sexual harassment/violence policy, it indicates that OS will not tolerate any form of sexual harassment, assault, or violence, whether committed by a stranger or an acquaintance. The policy further defined sexual harassment as “unwelcomed advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, when submission to or rejection of this conduct explicitly or implicitly affects a person’s employment or education, unreasonably interfered with a person’s work or educational performance, or creates an intimidating, hostile, or offensive working or learning environment.” In addition to utilizing the official sexual harassment policy, students are notified that they may also use the School’s “Student Concerns/Student

Complaint and Grievance” procedure. OCR found that the School’s policy appeared to be comprehensive, and that if implemented properly, capable of sufficiently initially addressing complaints alleging sexual harassment.

However, as previously mentioned, as a requirement of the OCR Sexual Harassment Policies and Procedures checklist when ascertaining a recipient’s compliance with Title IX, a recipient must have “an assurance that the institution will take steps to prevent recurrence of harassment and to correct its discriminatory effects on the complainant and others, if appropriate.” OCR determined that this information was not readily identifiable in the School’s sexual violence/harassment policy and procedures. Moreover, OCR was unable to readily find the OS Title IX Coordinator’s name and contact information in the Catalog. Therefore, OCR determined that OS is in noncompliance with Title IX at 34 C.F.R. §106.8 (designation of responsible employee and adoption of grievance procedures), and will address the concerns via the enclosed Agreement.

During a follow-up discussion with the Director and Manager on June 19, 2014, OS requested to voluntarily resolve Issue 2, prior to OCR’s completion of its investigation to determine whether OS violated Title IX, at 34 C.F.R. §106.31. OCR’s Case Processing Manual (CPM), at Section 302, provides that a complaint may be resolved at any time when, prior to the conclusion of the investigation, the recipient expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them with an agreement during the course of the investigation. CPM Section 302 also states that the provisions of the resolution agreement will be aligned with the complaint allegations or the information obtained during the investigation, and will be consistent with applicable regulations.

The School submitted the enclosed Agreement, signed by the current School Director, on September 23, 2015, to memorialize steps that it would take to resolve the identified compliance issue regarding Title IX. OCR has determined that the Agreement, when fully implemented, will satisfactorily resolve any outstanding concerns in Issue 2. Accordingly, as of the date of this letter, OCR will cease all investigative actions regarding Issue 2, but will actively monitor the School’s efforts to implement the Agreement. Please be advised that if OS fails to adhere to the actions outlined in the Agreement, OCR may immediately resume its compliance efforts.

Conclusion:

This concludes OCR’s investigation of the complaint and should not be interpreted to address the School’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. The complainant may have the right to file a private suit in Federal court whether or not OCR finds a violation.

Please be advised that OS 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, 5 U.S.C. § 552, it may be necessary to release this document and related correspondence and records upon request. In the event we receive 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 privacy.

OCR would like to thank your staff for the cooperation extended to OCR in our efforts to resolve this complaint. If you have any questions regarding this correspondence, please feel free to contact Adriane Martin, Supervisory General Attorney/Team Leader at (214) 661-9678, or adriane.martin@ed.gov, or Tonya Gentry, Senior Attorney, at (214) 661-9615 or tonya.gentry@ed.gov.

Sincerely,

Taylor D. August
Office Director
Office for Civil Rights
Region VI, Dallas Office

Enclosure

cc: Blaze McCarthy, Denton Campus School Director