



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VI
ARKANSAS
LOUISIANA
MISSISSIPPI
TEXAS

Alain LeNôtre
Culinary Institute LeNotre
7070 Allensby Street
Houston, TX 77022

Ref.: 06164031

Via first class mail

Dear Mr. LeNôtre:

This letter is to inform you that the U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, has reached a resolution in the above-referenced complaint which was received in our office on [redacted] and filed against the Culinary Institute LeNotre (the Institute, Recipient, CIL), in Houston, Texas. The complaint alleged that CIL discriminated against the Student on the basis of her disability.

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 Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794 (amended 1992), and its implementing regulations at 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability. The Institute is a recipient of Federal financial assistance from the Department. Therefore, OCR has personal jurisdictional authority to process this complaint for resolution under Section 504.

OCR opened the following issues for investigation:

1. Whether the Institute failed 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 disabled student, by failing to provide the complainant with necessary academic adjustments and auxiliary aids during [redacted], in violation of Section 504, at 34 C.F.R. § 104.44; and
2. Whether the Institute treated the Student differently on the basis of disability in the context of an educational program or activity without a legitimate, nondiscriminatory reason when it refused to [redacted] disabilities, and thereby, interfered with or limited the ability of the Student to participate in or benefit from the services, activities, or privileges provided by the Institute during the 2016 school year, in violation of Section 504, at 34 C.F.R. § 104.43.

During the course of the investigation, OCR obtained and reviewed data received from the Complainant and from the recipient, and conducted interviews with staff and former staff

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members. OCR provided the complainant the opportunity to rebut the District’s position; however, the information that the complainant provided did not alter OCR’s determination.

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 or retaliation 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. Based on OCR’s careful review and analysis of the information obtained, we have determined that, with respect to Issue 1, there is insufficient evidence to establish that the CIL violated Section 504/Title II. However, OCR has agreed to resolve Issue 2 via a Resolution Agreement with the District. The reasons for these determinations are set forth below.

Issue 1

Under Section 504, recipients of Federal financial assistance and public post-secondary education programs must provide such academic adjustments or auxiliary aids as may be necessary to ensure that their academic requirements do not discriminate or have the effect of discriminating, on the basis of disability, against any “qualified” person with a disability. To establish a violation of this requirement in this case, OCR must determine the following: (1) that the complainant is a “qualified person with a disability”; (2) that the complainant provided adequate notice to the school that the complainant believed he or she needed academic adjustments; (3) that the requested academic adjustments were necessary; and either (4) that the school did not provide the academic adjustments; or (5) that the academic adjustments provided were not of adequate quality and effectiveness. For purposes of this letter, the terms *academic adjustments* and *accommodations* are used interchangeably.

Under Section 504, a “qualified person with a disability” is a person who meets the essential eligibility (including academic and technical) requirements for admission to or participation in the recipient’s/public entity’s education program or activity, and who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. In the academic adjustments/auxiliary aids context, a “qualified person with a disability” must have an actual impairment that substantially limits one or more major life activities. 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 whether a student has provided documentation sufficient to evidence the existence of a disability requiring an academic adjustment/auxiliary aid must be decided on a case-by-case basis using a standard of reasonableness.

Findings of Fact and Analysis

The Complainant has contended that she did not receive appropriate accommodations for an exam that she was scheduled to take for a course in which she was enrolled during [redacted]-specifically, that she was unable to take the final due to [redacted], and that CIL staff refused to reschedule the exam as an accommodation.

The Student began taking classes at CIL in [redacted]; she was enrolled in the [redacted] program at CIL. CIL policy concerning academic accommodations indicates that requests for accommodations are initiated via a written request for services, addressed to the Chief Executive Officer of CIL. This request must be accompanied by written documentation of the disability in question. Students are then expected to meet with the Chief Executive Officer or their designated representative to discuss their disability and so that a determination may be made regarding what accommodations will be necessary to allow them to participate in the program. Evidence indicates that the responsibility to meet with students was designated to the Student's Counselor, and that accommodations determined necessary during that meeting were to be approved by the Director.

The CIL received a doctor's note from the Complainant's doctor, dated [redacted], which identified her as having [redacted]. The CIL concedes that the Student had disclosed this documentation and information about her disability to the Counselor during the Student's initial enrollment, in [redacted]. As of [redacted], the Student and Counselor had signed off on an Accommodations Request form which identified several accommodations responsive to the Student's identified disabilities, and the Director had approved the Accommodations Request. CIL put in place academic adjustments for the Student to apply in all Lab settings, which included [redacted]. Additionally, in [redacted], accommodations were put in place for the [redacted] course (the only class she was enrolled in during that term), which included permitting the Student to have an [redacted]. Based on the foregoing information, it appears that the Student was a qualified student with a disability, that she provided adequate notice to the school of her need for academic adjustments, and the school determined that such adjustments were necessary.

OCR next considers whether the academic adjustments and auxiliary aids were provided, and if so, whether what was provided was of adequate quality and effectiveness. The Complainant has contended that she was unable to take the final due [redacted], and that CIL staff refused to reschedule the exam. Evidence indicates that during the [redacted] term, the Student was enrolled in one class at CIL. CIL staff confirmed that the final exam for this course occurred on [redacted], and that the Student had not taken the final. The Student did approach the instructor not long after missing the exam, but evidence is inconclusive as to whether she requested an alternative exam date at that time. However, in [redacted], CIL staff met with the Student to discuss this issue and offered the Student an opportunity to take the missed exam, even though this offer was not an approved accommodation (i.e., making up missed exams). The exam was offered under conditions that [redacted], and OCR has obtained no evidence – nor has the Student alleged – that the terms of this offer did not include having [redacted]. The Complainant chose not to take the offered exam.

In short, evidence demonstrates that there was only one instance in which the Student was unable to take an exam during the relevant time period. In this instance, the CIL offered the Student an opportunity to take the exam, which was denied by the complainant. OCR has obtained insufficient evidence to conclude that the exam was offered under conditions that would not have ensured that the Student received the academic adjustments to which she was entitled. For the foregoing reasons, OCR has insufficient evidence to find CIL in non-compliance with Section 504 in Issue 1.

Issue 2

Section 504, at 34 C.F.R. § 104.4 prohibit recipients from excluding an individual from participation in, denying an individual the benefits of, or otherwise subjecting an individual to discrimination with respect to the services, activities, or privileges provided by the recipient because of the individual's disability. In considering allegations that a recipient has discriminated on the basis of disability, OCR looks for evidence of discriminatory intent. Discriminatory intent can be established either through direct evidence (i.e., statements, documents, or actions that clearly evidence a discriminatory intent), or through indirect (also known as circumstantial) evidence (i.e., a set of facts from which one may infer a discriminatory intent). Absent direct evidence that a recipient discriminated on the basis of disability, OCR applies a disparate treatment analysis under which OCR must determine whether the facts support a *prima facie* case of disability discrimination. A *prima facie* case exists if a preponderance of the evidence indicates that a recipient treated one person differently than one or more similarly situated persons without the same disability. If a *prima facie* case of different treatment is established, OCR must then determine whether the recipient had a legitimate, non-discriminatory reason for its action(s) that would rebut the *prima facie* case against it. If one or more legitimate, non-discriminatory reasons for the different treatment are identified, OCR must then determine whether the recipient's asserted reasons for its actions are pretext for disability discrimination. Ultimately, however, the weight of the evidence must support a finding that actual discrimination occurred.

Findings of Fact and Analysis

Issue 2(a): [redacted]

The complainant alleged that in [redacted] the College Director [redacted] because staff were uncomfortable with the Complainant's disability.

As noted above, in the absence of direct evidence of discriminatory intent, OCR first looks to determine whether the Student was treated differently than similarly situated students. Records confirm that the Student was in fact [redacted]. Evidence further appears to indicate that [redacted] were quite rare, and that in general only one or two students were expelled during a given school year. The Student was the only one to be [redacted] during that year or the following year for a [redacted] violation. OCR will therefore assume, for the purposes of this analysis, that the Student was treated differently than similarly situated peers.

OCR next considers whether the recipient had a legitimate, nondiscriminatory reason for treating the Student differently than similarly situated students. Evidence appears to indicate that the Student repeatedly engaged in violations of the school's [redacted] policy and that the school [redacted] the Student from the program for such violations.

CIL did have a policy against [redacted], which had existed since before the Student began her enrollment at CIL in [redacted], but enforcement only began at the end of [redacted]. Records indicate that [redacted] notices were issued to staff in [redacted], and included a prohibition on [redacted] of any kind. The [redacted] was set forth in the Student Handbook, which the Student had received and agreed to abide by in [redacted]. Students were permitted to [redacted] to be in compliance with the policy.

During the [redacted], the Student’s instructors asked the Student to [redacted] on a number of occasions, with little success. On [redacted], the Student was disciplined for refusing to [redacted]. The record of this incident indicates that the complainant “has received numerous warnings but has yet to adhere.” On [redacted], the Student received a 3-day suspension which began on [redacted]. Documentation concerning the suspension indicates that it was issued because the Student “had been approached for several months to discuss a [redacted] infraction. She chooses to [redacted] which is explicitly against school [redacted]. Student became angry and disrespectful when confronted and went on to become confrontational. When asked to leave, she refused” and was subsequently escorted off campus by security. For the actions occurring that day, Student was disciplined for three code of conduct infractions, one of which concerned the [redacted] violation.

OCR’s review of the Student Handbook’s Code of Conduct section confirmed that each of the infractions assessed against the Student is a basis for discipline under the school’s procedures. The [redacted], disciplinary record also indicated that any further refusal to follow the [redacted] would result in [redacted]. Records indicate that on [redacted], the Student [redacted] when asked by CIL staff; she was therefore [redacted] that day. OCR determined that CIL proffered a legitimate, nondiscriminatory reason for the [redacted].

OCR next considers whether the proffered legitimate, nondiscriminatory reason for the [redacted] was pretext for discriminatory intent. OCR notes that ten other students were in fact disciplined for [redacted] violations after the school began enforcing the policy in [redacted]. Evidence does not demonstrate that any other student besides the Student was a repeat-offender of the policy during the [redacted] school years, nor that other students who violated the policy during the relevant period went unpunished.

The Student Handbook sets forth a schedule of disciplinary actions for [redacted] as follows: [redacted]. The record of disciplinary actions experienced by the Student as described above conform to this process of escalation. OCR also notes that the Complainant herself provided video evidence of the encounter leading to her [redacted] which substantially corroborates the recipient’s documentation describing this incident, and confirmed in communication with OCR that she [redacted].

In its analysis, OCR applies a preponderance of evidence standard in order to determine whether or not a violation has occurred: that is, for OCR to find a violation, OCR must determine that there is more evidence that supports a finding of a violation than evidence that holds against such a finding. OCR notes that evidence demonstrates that the Student engaged in the behavior for which she was disciplined, that the CIL followed all relevant policies and procedures governing disciplinary action, and that there appear to have been no other repeat-offenders of the [redacted] policy to whom disciplinary measures were not similarly applied. For these reasons, OCR has insufficient evidence to find that the legitimate, nondiscriminatory reason preferred by the CIL for the Student’s [redacted] was pretextual, and OCR therefore cannot find a violation of Section 504 on this basis.

Issue 2(b): Internship Program

The complainant alleged that she wanted to participate in a practicum located abroad during [redacted], and that she inquired about this with the CIL. The Student contends that, with the assistance of a staff member who facilitated practicum programs, she applied to a practicum location in [redacted] and was accepted. The Student alleged that the CIL made her [redacted], which she did, and then nevertheless told her that she could not represent the school at this program. In order to graduate the program, all students must participate in a practicum which refers to a 10 week “practicum” program in which students work in restaurants either domestically or abroad.

Regarding whether the investigation revealed any evidence to establish a discriminatory intent or different treatment relative to this allegation, the information revealed that Student alleged that she wanted to participate in a practicum located abroad during [redacted], and that she inquired about this with the CIL. Evidence showed the CIL did participate in study abroad practicum programs during the [redacted]. OCR’s investigation revealed that the applications for these practicums required that participants “[b]e in good Physical and Mental health at the time of departure.” Other than this statement on the application, there is no other reference to the process regarding how one’s health is assessed and/or determined to satisfy this requirement of the program. The investigation also showed that CIL staff indicated that the Student had inquired about a study abroad practicum, and that a staff member responsible for reviewing practicum applications did consider the Student unsuitable for participation in a practicum abroad because of [redacted] associated with her disability.

OCR has concerns that CIL may have maintained a written, blanket policy that could dissuade or exclude students with disabilities (i.e., students who were not in “good physical and mental health”) from participation in its study abroad/foreign practicum programs. Moreover, the evidence collected also raised concerns that the Student at issue in this complaint was not afforded an opportunity to participate in the program because of her disability [redacted].

Prior to the conclusion of OCR’s investigation, CIL expressed an interest in resolving this matter through OCR’s voluntary resolution process, pursuant to OCR’s Case Processing Manual (CPM) Section 302. On July 19, 2019, CIL entered into the attached agreement, which adequately addresses this matter. OCR has determined the provisions of the Agreement are aligned with the complaint allegations and appropriately resolves them based on the results of investigation to date. Further, OCR accepts the Agreement as an assurance that the Recipient will fulfill its obligations under Section 504 with respect to this complaint. The dates for implementation and specific actions are detailed in the enclosed Agreement. Accordingly, as of the date of this letter, OCR will cease all investigative actions regarding this complaint. However, OCR will actively monitor the Recipient’s implementation of the Agreement. Please be advised that if the Recipient fails to adhere to the actions outlined in the Agreement, OCR will immediately resume its compliance efforts.

Conclusion

This concludes OCR’s investigation of the complaint and should not be interpreted to address the CIL’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 also note that 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 a recipient 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 request, it 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.

If you have any questions, you may contact the lead investigating attorney, Kulsoom Naqvi, at 214-661-9640 or by email at kulsoom.naqvi@ed.gov, or me at 214-661-9600 or by email at melissa.malonson@ed.gov.

Sincerely,

Melissa Malonson
Supervisory Attorney/Team Leader
Office for Civil Rights
Dallas Office

CC: [redacted], *Counsel to CIL*, via fax at [redacted]