



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

1999 BRYAN ST., SUITE 1620  
DALLAS, TX 75201-6810

REGION VI  
ARKANSAS  
LOUISIANA  
MISSISSIPPI  
TEXAS

October 16, 2019

Re: OCR Docket #06192219

Betty A. McCrohan, President  
Wharton County Junior College  
911 Boling Highway  
Wharton, Texas 77488

Via first class mail and e-mail (bettym@wcjc.edu)

Dear President McCrohan,

The U.S. Department of Education, Office for Civil Rights (OCR), Dallas Office, has completed its investigation of the above-referenced complaint filed against the Wharton County Junior College (WCJC or Recipient), in Wharton, Texas. The Complainant alleged that the WCJC discriminated against him (Complainant) on the bases of disability and race.

OCR is responsible for determining whether entities that receive or benefit from Federal financial assistance from the Department (recipients), 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. § 704 (amended 1992), and its implementing regulations at 34 C.F.R. § Part 104, which prohibit discrimination on the basis of disability. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12132, and its implementing regulations at 28 C.F.R. Part 35. Under Title II, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against public entities. OCR also enforces Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §§ 2000d *et seq.*, and its implementing regulations at 34 C.F.R. Part 100, which prohibit discrimination by recipients on the basis of race, color, or national origin. The WCJC is a recipient and public entity. Therefore, OCR has jurisdiction to process this complaint for resolution under Section 504, Title II, and Title VI.

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 a particular proposition is more likely than not). 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.

In reaching our compliance determination, OCR reviewed documents provided by the WCJC and information obtained during OCR's interviews with WCJC Staff. In addition, OCR interviewed the Complainant and reviewed documents provided by you. Based on our review and analysis of *The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*

the information obtained during this investigation, OCR determined there is insufficient evidence to support a conclusion of noncompliance with Section 504 and Title II with respect to the issues investigated. The basis for OCR's determination is explained below.

**Issue 1:**

Whether the WCJC 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/or auxiliary aids during Spring 2019 (i.e., XX--phrase redacted--XX instructor failing to provide accommodations for medical related absences and extra time to submit assignments), in violation of Section 504 and Title II, and their implementing regulations at 34 C.F.R. § 104.44 and 28 C.F.R. § 35.130, respectively.

OCR reviewed information provided by the Complainant and the WCJC. OCR also conducted an interview with the Complainant, and WCJC Staff. OCR's preliminary review of the information provided indicates the Complainant identified himself as disabled and requested accommodations. OCR's review indicates the WCJC's Americans with Disabilities Act coordinator (ADA Coordinator) processed the Complainant's request and found him to be a qualified person with a disability XX--redacted to end of sentence--XX. OCR's review indicates the ADA Coordinator approved the Complainant to receive the following accommodations: double time for testing, breaks as needed, extended time for assignments up to 24 hours, food and/or sports drink available during class, and leniency of absences for medical reasons. OCR's review of the data indicates, WCJC Staff did not communicate the Complainant's approved accommodations to all of the Complainant's instructors of record due to a database issue. OCR's preliminary review of the above information raises a concern that the Complainant's instructors were not properly notified of his approved accommodations during the Spring 2019 semester.

Prior to the conclusion of OCR's investigation, the WCJC informed OCR that it was interested in resolving Issue 1. Section 302 of OCR's Case Processing Manual (CPM) provides that an allegation may be resolved at any time when, prior to the conclusion of an investigation, the recipient expresses an interest in resolving the allegation. The provisions of the resulting resolution agreement will be aligned with the complaint allegations or the information obtained during the investigation and will be consistent with applicable regulations. OCR approved the WCJC's request to resolve Issue 1 prior to the conclusion of the investigation.

**Issue 2:**

Whether the WCJC treated the Complainant differently on the basis of race in the context of an educational program or activity (i.e., barring the Complainant from participating in XX--phrase redacted--XX) without a legitimate, non-discriminatory reason, and thereby, interfered with or limited the ability of the Complainant to participate in or benefit from the services, activities or privileges provided by the WCJC during the Spring 2019 semester, in violation of Title VI, and its implementing regulation at 34 C.F.R. § 100.3.

**Legal Standard:**

The Title VI implementing regulations, at 34 C.F.R. § 100.3(b)(1), 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 race. In considering allegations that a recipient has discriminated on the basis of race, 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 race, OCR applies a disparate treatment analysis under which OCR must determine whether the facts support a *prima facie* case of racial 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 of another race. 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 racial discrimination. Ultimately, however, the weight of the evidence must support a finding that actual discrimination occurred.

**Findings of Fact:**

The Complainant alleges WCJC Staff discriminated against him on the basis of race by barring him from XX---phrase redacted---XX and barring him from traveling with XX---redacted to end of sentence---XX. Evidence obtained by OCR indicates the Complainant was a part of the XX---phrase redacted---XX along with five other students during the Spring 2019 semester. During the relevant time period, the evidence indicates the Complainant was enrolled in XX---phrase redacted---XX (Course 1) through the Adult Education and Literacy and/or Continuing Education Department. According to the syllabus for Course 1, "College credit will be awarded for successfully completing Continuing Education (CE) mirror courses upon the student's meeting the college admissions requirements and acceptance of admission to the college. The student must complete a petition for credit form to receive course credits for CE mirror courses." Evidence obtained by OCR indicates the Complainant was also enrolled in the XX---phrase redacted---XX (Course 2) through the WCJC's college program from XX---redacted to end of sentence---XX. Course 2 is listed as a 3-credit hour course.

Correspondence provided to OCR indicates XX---phrase redacted---XX, the Complainant e-mailed the Advisor stating "I was wondering, has there been an update on the actual date they we [sic] are leaving for 2<sup>nd</sup> [sic] trip to Austin?" On XX---phrase redacted---XX, the XX---phrase redacted---XX (Advisor) responded, "Please come see me about this. The short of it is that [the Vice President of Student Affairs (VPSA)] has told me that you cannot travel with us until he figures out your status. I am keeping my fingers crossed that you can go with us XX---redacted to end of sentence---XX." Later that day, the Complainant responded asking if the Advisor was "aware of my situation?" The Complainant went on to reference an issue he had with a course. On

XX---phrase redacted---XX, the Advisor stated she was “not sure what you are referencing. Right now we have not registered any of the students for the XX---phrase redacted---XX conference XX---redacted to end of sentence---XX. The deadline for early registration is next week. If we get this settled before then we will early register you. . . State is in April so we have some time.” On XX---phrase redacted---XX, the Complainant responded “Thank you for verifying. There were some technical issues I was having with professor on blackboard for weeks that admin has failed to properly fix that led to further issues. But anyway I am just going to resign XX---phrase redacted---XX due to multiple issues I have seen and experienced. I appreciate the opportunity that you gave me and wish the best for the rest of everyone else in it.”

The XX---phrase redacted---XX Bylaws (Bylaws) indicate officers are required to meet the following requirements: “maintain a 2.0 GPA and comply with the WCJC student conduct requirements. All officers must be enrolled for a minimum of 9 credit hours and the President and Vice-President must be registered for a minimum of 12 credit hours at the campus they will be representing.” OCR obtained transcripts for each student identified as an XX---phrase redacted---XX officer. All students, except the Complainant, met the aforementioned requirement in the Bylaws.

OCR interviewed WCJC Staff. Regarding the Complainant’s participation XX---phrase redacted---XX, the Advisor stated, “There was a vacancy in the XX---phrase redacted---XX position, and so he became XX---redacted to end of sentence---XX. The other members appointed him to that position.” The Advisor indicated the Complainant traveled with the XX---phrase redacted---XX “to Community College Day in Austin . . .”<sup>1</sup> Regarding other trips, the Advisor stated the Complainant “requested to participate in our trip to state but by the time that came he’d already expressed a plan to leave WCJC and XX---redacted to end of sentence---XX.” The Advisor indicated the Complainant resigned from XX---phrase redacted---XX around the end of XX---redacted to end of sentence---XX. Regarding questions about the Complainant’s eligibility to serve XX---phrase redacted---XX, the Advisor stated the VPSA was questioning the Complainant’s eligibility “[b]ecause the Complainant was in the Adult Education and Literacy program and taking continuing education classes . . .” The Advisor indicated the eligibility rules made applicable to the Complainant were applicable to students of all races. When asked whether any other XX---phrase redacted---XX officers had the eligibility issues the Complainant faced, the Advisor stated, “No, the other students involved in XX---phrase redacted---XX were all regular, non-continuing education, full-time academic or vocational students.”<sup>2</sup> The Advisor denied telling the Complainant he could not participate XX---phrase redacted---XX because of his race. The Advisor also denied forcing or encouraging the Complainant to resign XX---phrase redacted---XX because of his race. The Advisor stated she was unaware of any other WCJC employees engaging in such actions. Furthermore, the Advisor denied making any statements to the Complainant regarding his race. Specifically, the Advisor denied telling the Complainant he was “the first Black person in the AEF program to achieve XX---phrase redacted---XX, and that’s not something the school was use to.”

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<sup>1</sup> Data obtained by OCR indicates the Texas Community College Association held Community College Day in Austin XX---redacted to end of sentence---XX.

<sup>2</sup> OCR confirmed this based on a review of the transcripts of the XX---phrase redacted---XX officers.

OCR also interviewed an officer of the XX---phrase redacted---XX (Student). The Student, who identified as African American, indicated she joined the XX---phrase redacted---XX board, and served as Secretary. The Student stated she and others were appointed to their positions by their “advisors.” Regarding the Complainant’s participation XX---phrase redacted---XX, the Student indicated the Complainant traveled XX---phrase redacted---XX on the school-sponsored trip for “Community College Day in Austin.” Following that trip, the Student indicated the Complainant, “was going to be our vice president, but then something happened as to him being able to be in XX---redacted to end of sentence---XX. The Complainant couldn’t join. I don’t know what happened and didn’t think much of it.” The Student indicated the Complainant didn’t indicate why he was unable to participate, and did not attend any other XX---phrase redacted---XX activities. The Student indicated she was not aware of the Advisor engaging in any racially motivated acts or making any statements about race.

OCR attempted to interview the VPSA. However, the VPSA was no longer employed by the WCJC and did not agree to be interviewed.

OCR contacted the Complainant to provide him the opportunity to respond to the information above provided by the WCJC. Regarding Issue 2, the Complainant reiterated his allegation, and stated “[y]ou don’t apologize if you [sic] not accepting responsibility for screwing me over. . . I was the first [B]lack vp [sic] with a ged [sic] to get elected which wasn’t against college policy but they told me they couldn’t let me be president because it would cause a conflict because of me having a ged [sic] and my race.” The Complainant further reported that the VPSA was at fault and accused the College of trying to “cover the campus from him being investigated in this matter . . .” During the investigation, the Complainant provided OCR screenshots of Blackboard, partial copy of a syllabus, correspondence with an instructor from Blackboard, and correspondence with the Advisor. The correspondence with the Advisor was consistent with the correspondence provided by the WCJC. In the e-mails the Advisor stated the VPSA told her the Complainant “cannot travel with us until he figures out your status.” While the Complainant responded to the Advisor’s e-mail stating he was “feeling somewhat discriminated, since I was unaware of what [the VPSA] didn’t want me in the XX---phrase redacted---XX because of the type of federal funding I receive or my race. . .”, the e-mail chain did not contain any statements by WCJC Staff referencing the Complainant’s race. As stated above, during OCR’s interview with the Advisor she indicated the VPSA was referencing the Complainant’s status as a student at the WCJC. Specifically, whether the Complainant was eligible to participate in XX---redacted to end of sentence---XX.

### **Analysis:**

OCR found no direct evidence of discriminatory intent. As noted above, there was no evidence indicating the WCJC considered the Complainant’s race when deciding whether the Complainant was eligible to serve as XX---phrase redacted---XX vice president or travel XX---redacted to end of sentence---XX. Next, OCR considered whether the evidence gathered supported a *prima facie* case of discrimination based on race. OCR found a significant conflict in the evidence. While the Complainant reported WCJC Staff barred him from serving as vice president XX---phrase redacted---XX and traveling XX---phrase redacted---XX because of his race, WCJC Staff denied engaging in such activity indicating the questions about the Complainant’s eligibility to serve and

participate were based on his status as a student—not his race. OCR was unable to resolve this conflict. Further, the evidence indicates WCJC Staff did not deviate from the Bylaws which required the vice president and president to be enrolled in “a minimum of 12 credit hours at the campus they will be representing.” The evidence obtained by OCR indicates during the relevant time, the Complainant was enrolled in only 6 credit hours at most before dropping a three-credit hour course on February 26, 2019. Additionally, the evidence indicates the other XX--phrase redacted--XX officers, who were identified as Caucasian, African American, and Hispanic, were in compliance with the eligibility requirements contained in the Bylaws while the Complainant was not. Therefore, a preponderance of the evidence does not indicate that the WCJC treated the Complainant differently than similarly-situated, individuals of a different race. Because a *prima facie* case of different treatment based on race was not established, OCR found insufficient evidence of a violation of Title VI with respect to Issue 2.

### **Conclusion:**

Regarding Issue 1, the WCJC voluntarily signed the enclosed resolution agreement (Agreement) on October 7, 2019. OCR determined the Agreement resolves Issue 1, upon implementation. Thus, OCR is closing the investigation of this complaint as of the date of this letter. OCR will monitor the SUAM’s implementation of the Agreement to ensure all commitments are satisfied.

Regarding Issue 2, 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. A complainant may have a right to file a private suit in federal court whether or not OCR finds a violation.

Regarding Issue 2, the complainant has a right to appeal OCR’s determination within 60 calendar days of the date indicated on this letter. In the appeal, the complainant must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal. If the complainant appeals OCR’s determination, OCR will forward a copy of the appeal form or written statement to the recipient. The recipient has the option to submit to OCR a response to the appeal. The recipient must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

Please be advised that the recipient may not harass, coerce, intimidate, discriminate or otherwise retaliate against any individual because he or she asserted a right or privilege under a law enforced by OCR or filed a complaint, testified, or participated in the complaint resolution process. If this happens, the individual may file a complaint with OCR.

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 about this letter, please contact Najwa-Monique Sharpe, the attorney assigned to investigate your complaint, at (214) 661-9642, or by e-mail at [najwa-monique.sharpe@ed.gov](mailto:najwa-monique.sharpe@ed.gov). You may also contact me at 214-661-9648 or by e-mail at [timothy.caum@ed.gov](mailto:timothy.caum@ed.gov).

Sincerely,

Timothy D. Caum  
Supervisory Attorney/Team Leader  
OCR, Dallas Office

CC: Melissa Mihalick, Counsel for the WCJC Via e-mail only ([mmihalick@thompsonhorton.com](mailto:mmihalick@thompsonhorton.com))