

January 24, 2014

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Re: OCR Docket # 07132231

Dear Mr. XXXXXX:

On May 15, 2013, the U.S. Department of Education, Office for Civil Rights (OCR), received a complaint filed against the Lex La-Ray Technical Center (Center), Lexington, Missouri, alleging discrimination on the basis of age. For the reasons set out below, we have determined there is insufficient evidence to conclude that the Center discriminated against the complainant on the basis of age as alleged in this complaint.

Specifically, the complainant alleged the Center discriminated against her by denying her acceptance into the Center's practical nursing program due to her age.

OCR is responsible for enforcing the Age Discrimination Act of 1975, 42 United States Code (U.S.C.) § 6101 (Age Act), and its implementing regulation at 34 Code of Federal Regulations (C.F.R.) Part 110. The Age Act prohibits discrimination on the basis of age by recipients of Federal financial assistance.

As a recipient of Federal financial assistance, the College is subject to the Age Act. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

In the remainder of this letter, the complainant is referred to as "the Complainant." To protect individuals' privacy, the names of employees, students, and other parties also were not used in this letter.

OCR applies a preponderance-of-the-evidence standard to determine whether evidence is sufficient to support a particular conclusion. Specifically, OCR examines the evidence in support of and against a particular conclusion to determine whether the greater weight of the evidence supports the conclusion or whether the evidence is insufficient to support the conclusion.

OCR considered information the Complainant and the Center submitted, including, the application file, the Center's admission requirements, and the application credentials of other students admitted to the program. OCR also interviewed the Complainant and the members of the Center's Admissions Committee, including the Center's Director. The legal and factual bases for OCR's determination are set forth below.

Legal Standards

The regulation implementing the Age Act at 34 C.F.R. § 110.10(a) provides that no person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. The regulation implementing the Age Act at 34 C.F.R. § 110.10(b) provides that a recipient may not use age distinctions or take any other actions that have the effect, on the basis of age, of excluding individuals from, denying them the benefits of, or subjecting them to discrimination in the recipient's programs or activities, or of denying or limiting individuals in their opportunity to participate in the recipient's programs or activities.

OCR used a different treatment approach to determine whether the Center discriminated against the Complainant on the basis of her age. First, OCR determined whether the Complainant was treated differently than similarly situated applicants of a younger age when she was denied admission to the Center. If OCR concluded the Complainant was treated less favorably than younger similarly situated applicants, OCR considered whether the Center had a legitimate nondiscriminatory reason for the difference in treatment, and whether the Center's proffered legitimate nondiscriminatory reason was a pretext, or excuse, for discrimination.

Background

The Center's practical nursing program (LPN program) accepts 29 applicants per year and also maintains a waiting list of alternates if one of the 29 positions becomes available. There were 41 applicants for the LPN program for the 2013-14 school year. These candidates ranged from XX to XX years in age.

Applicants are required to pay a \$50.00 Test of Essential Academic Skills (TEAS) testing and application fee and are required to pass the TEAS on their first attempt and complete the Center's LPN program application. Applicants are required to provide the following items: high school graduation transcript or a 12th grade general education certificate, transcripts from all post-secondary schools they attended, birth certificate, social security card, copy of driver's license or state approved photo

identification, four reference letters (two professional [teachers or employers] and two personal [friends or coworkers]), complete the Free Application for Federal Student Aid (FAFSA), and students from a non-English speaking country must take and pass the Test of English as a Foreign Language (TOEFL) and Test of Spoken English (TSE) Exams.

The Center process begins with a review of each application to determine if it includes all of the required documentation. The Center's Admissions Committee then reviews the applicants' test scores, educational background, references and essay responses. An Applicant's references are reviewed for rating purposes and to determine the length of the relationship with the person providing the reference. The Admissions Committee then ranks the applicants and the top 29 applicants are offered positions in the program. The Center's director indicated the State Board of Nursing only allows the Center to admit 29 applicants each year.

Findings of Facts

- The Complainant applied for admission to the Center's LPN program for the 2013-14 school year on March 15, 2013; on that date the Complainant was XX years old.
- The Center requires all applicants to provide a birth certificate to verify that applicants will be at least 18 years of age when they begin the program.
- Forty-one individuals applied to the Center's LPN program for the 2103-2014 school year; six of the applicants were XXXXXX years of age.
- The members of the Center's Admissions Committee were the director, the adult education coordinator, the practical nursing coordinator, and two practical nursing instructors.
- The Admissions Committee met on April 26, 2013, and ranked all of the applicants. The top 29 applicants were offered seats in the 2013-14 class; the next nine applicants were placed on an alternate list; the Complainant and two other applicants were not put on the alternate list.
- OCR interviewed three members of the Admissions Committee. The director, adult education coordinator, and practical nursing instructor all told OCR the Complainant's age was not discussed when her application was

reviewed and that the Admissions Committee never discusses the age of any of the applicants.

- The director stated the birth certificate is only requested as part of the application packet so the Center can make sure that all of the applicants are old enough to work at clinical rotation sites.
- The adult education coordinator told OCR the Center also requires students to provide birth certificates because all students must be 18 years of age to take National Council Licensing Examination (NCLEX).
- The practical nursing instructor stated the Complainant's birth certificate was not in the file that was reviewed by the Admissions Committee. She stated birth certificates are not included in the file that is sent to the committee.
- On May 2, 2013, the Complainant received a letter from the practical nursing coordinator stating she was not admitted to the Center's LPN program.
- Five of the top 29 applicants for the 2013-14 class were older than the Complainant; their ages ranged from XX to XX years of age. The Complainant was the only applicant over 40 years of age that was not admitted to the LPN program.
- The Complainant and two other applicants (Prospective Student 1 and Prospective Student 2) were not placed on the alternate list and were not admitted to the Center.
- OCR was unable to receive the completed application for Prospective Student 1 because the Center destroyed the student's application materials prior to providing a response to this complaint. The Center stated the documents were destroyed pursuant to its normal practice prior to receipt of notice of this complaint. The Center stated this information is destroyed in order to protect personally identifiable information.
- Prospective Student 2 was XX years old. OCR was unable to receive the entire completed application for this student because the Center destroyed the student's application materials prior to providing a response to this complaint. However, the Center was able to provide Prospective Student 2's date of birth, college Grade Point Average (GPA), and TEAS scores.

- The following chart compares Prospective Student 2, the Complainant, and the average of the 29 admitted students.

	<i>Prospective Student 2</i>	<i>Complainant</i>	<i>Admitted Student Average</i>
<i>Age</i>	XX	XX	28.9
<i>College GPA</i>	3.56	3.57	2.84
<i>Total TEAS</i>	66.7	53.3	61.4

- Overall, 17% of the students admitted to the 2013 LPN program were older than the Complainant.

Legal Analysis and Conclusions

As noted above, the regulation implementing the Age Act of 34 C.F.R. § 11.10(a) provides that no person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. Further, the regulation implementing the Age Act at 34 C.F.R. § 110.10(b) provides that the Center may not use age distinctions or take any other actions that have the effect, on the basis of age, excluding individuals from, denying them the benefits of or subjecting them to discrimination in the Center’s programs or activities, or of denying or limiting individuals the opportunity to participate in the Center’s programs or activities.

OCR used a different treatment approach to determine whether the Center discriminated against the complainant on the basis of age. To find if different treatment based on age has occurred, OCR must determine the following: 1) the Complainant’s age; 2) whether the Complainant was treated differently than similarly situated applicants of a younger age with respect to admission to the LPN program; 3) whether the Center had a legitimate nondiscriminatory reason for this difference in treatment; and 4) whether the Center’s legitimate nondiscriminatory reason was a pretext for discrimination.

To analyze the Complainant’s allegation that the Center discriminated against her on the basis of age when it denied her admission to the LPN program, OCR examined whether a *prima facie* case of age discrimination exists. To do so, OCR examined whether the Center treated the Complainant differently than similarly situated younger students when it denied her admission to the program.

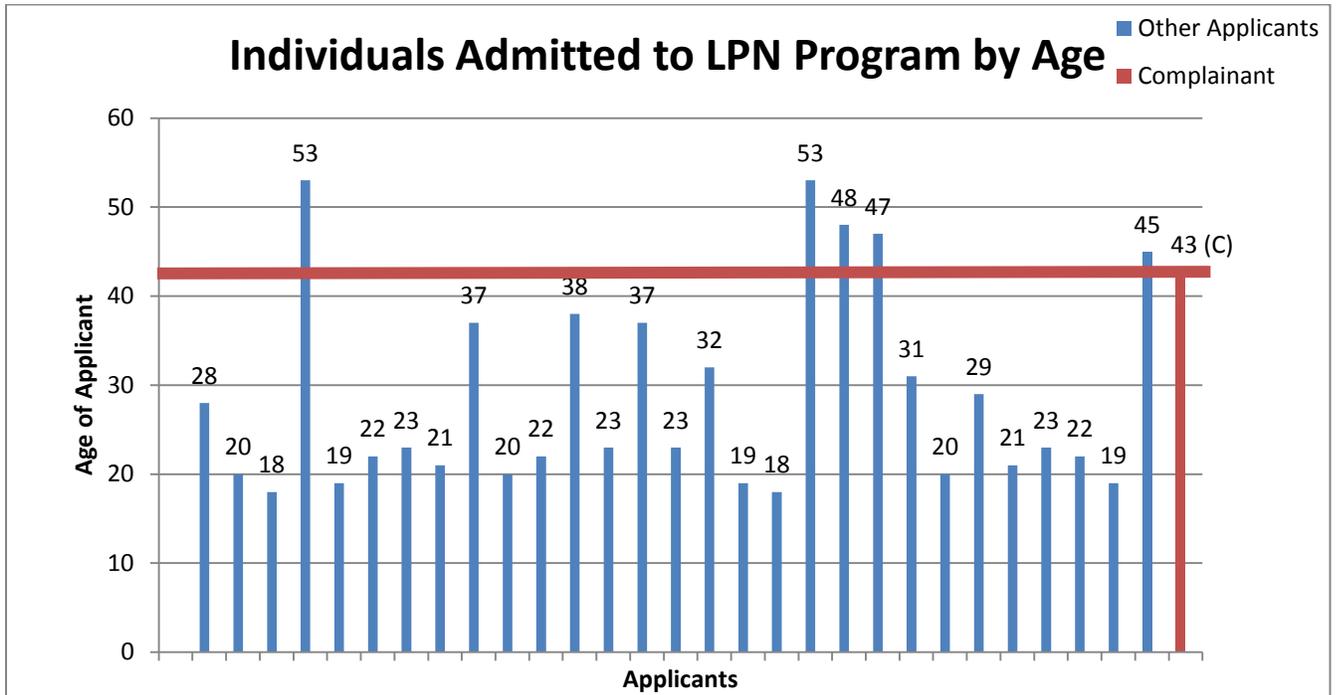
First, OCR looked at whether the Center was aware of the Complainant’s age. OCR established that all times relevant to the complaint the Center knew the Complainant was

over 40 years of age, specifically, XX years old. The Center received a copy of the Complainant's birth certificate, and although they stated members of the Admissions Committee did not discuss the ages of applicants, for purposes of analysis we assumed the members of the Admissions Committee were aware of the Complainant's age.

OCR next examined whether the Complainant was treated differently than other similarly situated younger applicants.

Twenty-nine of the 41 students that applied to the Center's LPN program were admitted. An additional nine applicants were placed on the alternate list; the Complainant and two other applicants were not placed on the alternate list and were not admitted to the program. The three students that were not admitted or placed on the alternate list were similarly situated to the Complainant. One of those students, Prospective Student 2, was XX years old. The Center stated that prior to receipt of notice of this complaint, it destroyed the application materials for Prospective Students 1 and 2, pursuant to its normal practice. However, the Center was able to provide OCR with the age, GPA, and TEAS score for Prospective Student 2, who was also denied admission to the LPN program. Prospective Student 2 had a college GPA of 3.56 and a TEAS score of 66.7. The Complainant had a college GPA of 3.57 and a TEAS score of 53.3.

OCR analyzed the application data provided by the Center. The chart below compares the Complainant's age with the ages of the applicants who were admitted to the LPN program.



The above chart shows there were six students over XX years of age that applied to the LPN program. Of these six applicants, the Complainant was the only applicant that was not admitted to the program. Seventeen percent of the students admitted to the LPN program were over XX years of age.

During OCR’s investigation of this complaint, OCR did not find any direct evidence of discriminatory bias by the Center staff based on the Complainant’s age. Instead, the Center representatives OCR interviewed stated they did not consider the Complainant’s age during the admissions process and the age of the applicants was not discussed by the admissions committee during its decision making process. Additionally, a similarly situated younger student, Prospective Student 2, was also not accepted into the program.

OCR has concluded that the preponderance of the evidence does not establish that the Complainant was denied admission to the Center’s LPN program on the basis of her age. Five applicants who were older than the Complainant were admitted into the LPN program and a similarly situated younger student was also denied admission to the program. The Center’s actions were not consistent with intent to discriminate against the Complainant on the basis of her age.

OCR has determined there is insufficient evidence to conclude that the Center violated the Age Act and its regulations by denying the Complainant admission to the LPN program. Accordingly, OCR is closing this allegation of this complaint as of the date of this letter.

V. Conclusion

During OCR's review of the Center's data, OCR identified some areas of concern with regard to the Center's request for disability status on the Application for Admission and the Center's disability accommodation procedures. OCR has addressed these concerns through an exchange of letters with the Center (copy enclosed).

In your letter dated January 21, 2014, you acknowledged the need to address deficiencies in the Center's application and accommodations policy and described the corrective actions it was going to undertake to ensure that both policies are in compliance with Section 504 and Title II. Your letter committed to having the deficiencies corrected by February 10, 2014. Thus, OCR considers the complaint resolved as of the date of this letter. OCR will confirm the Center's implementation of the actions identified in the letter dated January 21, 2014; when OCR concludes the Center has completed those actions and demonstrated its compliance with Section 504 and Title II the complaint will be closed.

For the reasons set forth in the paragraphs above, OCR has determined, based on a preponderance of the evidence obtained during OCR's investigation, that there is insufficient evidence to conclude the Center discriminated against the Complainant on the basis of age.

During the investigation, the Center advised OCR it destroys the applications of individuals not selected for the LPN program. Although OCR was able to complete this investigation in spite of the lack of data, OCR reminds the Center, as a matter of technical assistance, that it has an ongoing responsibility to preserve records to demonstrate its compliance with the laws enforced by OCR. The Title VI regulation at 34 C.F.R. § 100.6(b) states, "each recipient shall keep such records and submit to the responsible Department official or his designee timely, complete and accurate compliance reports at such times, and in such format and containing such information, as the responsible Department official or his designee may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part."

The Title VI record keeping requirement is incorporated into the regulations enforcing the Age Discrimination Act of 1975, 42 U.S.C. § 6101, and its implementing regulation at 34 C.F.R. Part 110; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104; Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131, and its implementing regulation 28 C.F.R. Part 35; and Title

IX of the Education Amendments of 1972, 20 U.S.C. § 1681, and its implementing regulation at 34 C.F.R. Part 106.

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

The complainant has the right, pursuant to the regulation at 34 C.F.R. § 110.39 implementing the Age Act, to file a civil action for injunctive relief in federal court following the exhaustion of administrative remedies. Administrative remedies are exhausted if: (1) 180 days have elapsed since the complainant filed the complaint with OCR, and OCR has made no finding, or (2) OCR issues any finding in favor of the recipient. A civil action can be brought only in a United States district court for the district in which the recipient is found or transacts business. A complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but these costs must be demanded in the complaint filed with the court. Before commencing the action, the complainant shall give 30 days notice by registered mail to the Secretary of the Department of Education, the Secretary of the Department of Health and Human Resources, the Attorney General of the United States, and the recipient. The notice shall state the violation of the Age Act, the relief requested, the court in which the action will be brought, and whether or not attorney's fees are demanded in the event the complainant prevails. The complainant may not bring an action if the same alleged violation of the Age Act by the same recipient is the subject of a pending action in any court of the United States.

Please be advised the Center 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, 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.

OCR is committed to a high quality resolution of every case. If you have any questions, please contact XXXXX XXXXX. XXXXX, Attorney, at XXXXX (voice) or (877) 521-2172 (telecommunications device for the deaf), or by email at XXXXX.XXXXX@ed.gov.

Sincerely,

Maria L. North
Supervisory Attorney

Enclosures