



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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April 12, 2017

XXXXX XXXXX, Esq.
XXXXX, XXXXX & XXXXX
XXX X XXXXX, XXXXX XXX
XXXXX, Oklahoma XXXXX

Re: Docket # 07172005

Dear XXXXX XXXXX:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint which the Complainant filed on October 12, 2016, against your client the Metro Technology Centers (Centers), Oklahoma City, Oklahoma. The Complainant alleged discrimination on the basis of disability. Specifically, the Complainant alleged that the Centers failed to adequately investigate and address her complaint of disability harassment by an instructor in the XXXXX XXXXX Program.¹ For the reasons set out below, we have determined there is insufficient evidence to conclude that the Centers discriminated against the Complainant on the basis of disability as alleged in the complaint.

OCR investigated the complaint pursuant to Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibits discrimination on the basis of disability by recipients of Federal financial assistance (FFA); and, Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131, and its implementing regulation, 28 C.F.R. Part 35, which prohibits discrimination on the basis of disability by public entities. As a recipient of FFA from the Department and a public entity, the Centers is subject to Section 504 and Title II.

To protect individuals' privacy, the names of employees and other parties also were not used in the letter.

In reaching a determination regarding the complaint allegations, OCR obtained and reviewed documentation the Complainant and the Centers provided. OCR interviewed the Complainant and the Compliance Officer for Section 504 (Compliance Officer), who conducted the investigation into Complainant's complaint of disability harassment by an instructor at the

¹ The Complainant alleged that she was subjected to harassment and retaliation by an instructor in the XXXXX XXXXX Program and that she filed a complaint with the Centers regarding the discrimination. Accordingly, since the Centers considered this allegation through its internal grievance procedures and the Complainant filed the complaint with OCR within 60 days of receiving the Centers' determination, OCR did not conduct its own investigation of the disability harassment allegation. Instead, OCR reviewed the results of the Centers' internal grievance determination to determine whether the process used to investigate the complaint and any remedy obtained (as applicable) were the same as the remedy that would be obtained if OCR were to find a violation.

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

Centers. In reaching a determination, OCR reviews evidence under the “preponderance of the evidence” standard. Under a preponderance of the evidence standard, OCR evaluates the evidence obtained during an investigation to determine whether the greater weight of the evidence is sufficient to support a conclusion that the Centers failed to comply with Section 504 and Title II as it relates to the complaint issues.

After a thorough review of all available evidence, OCR has determined by a preponderance of the evidence that there is insufficient evidence to find the Centers failed to comply with Section 504 with respect to the Complainant’s allegation. However, OCR identified compliance concerns related to the Centers’ written grievance policies and procedures. Prior to OCR reaching a determination as to the sufficiency of the Centers’ written grievance policies and procedures and the implementation of such, the Centers agreed to revise their written Section 504 policies and procedures and conduct training related to the OCR approved revisions pursuant to the enclosed Resolution Agreement (Agreement). Below is a summary of OCR’s legal standards, findings, and a summary of the Agreement.

Legal Standard

The Section 504 implementing regulation, at 34 C.F.R. § 104.4(a), provides 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 standards adopted by Title II were designed not to restrict the rights or remedies available under Section 504. OCR has determined that the Title II regulations applicable to the issues raised in this complaint do not provide greater protection than the applicable Section 504 regulations and has, therefore, applied the relevant Section 504 standards in its analysis of this complaint.

Harassment Generally

Harassment based on disability is a form of discrimination prohibited by Section 504 and Title II. Harassing conduct may take many forms, including verbal acts and name calling, as well as nonverbal behavior, such as graphic and written statements, or conduct that is physically threatening, harmful, or humiliating. Harassment does not have to include intent to harm, be directed at a specific target, or involve repeated incidents. OCR considers the conduct in question from both an objective perspective and the subjective perspective of the individual allegedly subjected to harassment.

Disability harassment may constitute a hostile environment based on race/national origin, sex and/or disability. OCR determines whether conduct constitutes a hostile environment by examining the totality of the circumstances. These circumstances include the context, nature, scope, frequency, duration, and location of the harassment incidents, as well as the identity, number, and relationships of the persons involved.

Whether the conduct in question is described as “bullying,” “hazing,” or “teasing,” such labels do not determine how a recipient is obligated to respond. Rather, the nature of the conduct itself must be assessed for civil rights implications. Thus, when misconduct that falls under a

recipient's anti-bullying policy is on the basis of disability, the recipient is obligated to respond in accordance with the applicable federal civil rights statutes and regulations enforced by OCR. In the event that a recipient limits its response to a specific application of its anti-bullying disciplinary policy, the recipient may fail to properly consider whether the misconduct also results in discriminatory harassment.

A recipient is responsible for addressing harassment incidents about which it has notice. Generally, a recipient has "notice" of harassment if a responsible employee actually knew or, in the exercise of reasonable care, should have known about the harassment. In some situations harassment may be in plain sight, widespread, or well-known to students and staff, such as harassment occurring in hallways, during academic or physical education classes, during extra-curricular activities, or through graffiti in public areas. In these cases, the obvious signs of the harassment are sufficient to put the recipient on notice. In some situations, if the recipient knows of incidents of harassment, the exercise of reasonable care should trigger an investigation that would lead to a discovery of additional incidents.

Disability harassment under Section 504 and Title II is intimidation or abusive behavior toward an individual based on disability that creates a hostile environment by interfering with or denying an individual's participation in or receipt of benefits, services, or opportunities in the recipient's programs.

To establish a violation of Section 504 or Title II under a hostile environment approach, the evidence must establish, based on the totality of the circumstances, that: (1) a hostile environment existed, *i.e.*, harassing conduct on the basis of disability or sex occurred that was sufficiently serious so as to interfere with or limit the ability of an individual to participate in or benefit from the services, activities or privileges provided by a recipient; (2) the recipient had actual or constructive notice of the hostile environment; and (3) the recipient failed to respond adequately to address the hostile environment.

Once a recipient knows or reasonably should know of possible disability based harassment, it must take immediate and appropriate action to investigate or otherwise determine what occurred. The specific steps in a recipient's investigation will vary depending upon the nature of the allegations, the source of the complaint, the age of the individual(s) involved, the size and administrative structure of the recipient, and other factors. In all cases, however, the inquiry should be prompt, thorough, and impartial. At the conclusion of a recipient's investigation, both parties must be notified, in writing, about the outcome of the complaint, *i.e.*, whether harassment was found to have occurred.

If a recipient delays responding to allegations of harassment or responds inappropriately, the recipient's own inaction may subject the student to a hostile environment. If it does, the recipient will be required to remedy the effects of both the initial harassment and the effects of the recipient's failure to respond promptly and appropriately.

If an investigation reveals that harassment created a hostile environment based on disability, then the recipient is required to take immediate and appropriate action reasonably calculated to end the harassment, eliminate any hostile environment that has been created, prevent its recurrence

and, where appropriate, remedy the effects of the harassment on the individual(s) subjected to the harassment. The corrective action taken by the recipient should be tailored to the specific situation. A series of escalating responses, including escalating consequences for the harasser, may be necessary if the initial steps are ineffective in stopping harassment. With respect to disability harassment, these duties are a recipient's responsibility regardless of whether a student has complained, asked the recipient to take action, or identified the harassment as a form of discrimination.

When taking steps to separate an alleged target of harassment from the alleged perpetrator during and subsequent to an investigation, a recipient should minimize the burden on the alleged victim, and thus should not, as a matter of course, remove the alleged victim from his or her classes while allowing the alleged perpetrator to remain. A recipient may also be required to provide other services to the student who was harassed if necessary to address the effects of the harassment on that student. In addition to counseling and taking disciplinary action against the harasser(s), effective corrective action may require changes to the recipient's overall services or policies.

A recipient may need to provide training for the larger school community to ensure that students, parents, and teachers can recognize harassment if it recurs and know how to respond depending on how widespread the harassment was and whether there have been any prior incidents. The recipient should take steps to stop further harassment and prevent any retaliation against the person who made the complaint (or was the subject of the harassment) or against those who provided information as witnesses. At a minimum, the recipient's responsibilities include making sure that the harassed students and their families, if the students are minors, know how to report any subsequent problems, conducting follow-up inquiries to see if there have been any new incidents or any instances of retaliation, and responding promptly and appropriately to address continuing or new problems.

Designated Section 504 Coordinator

The regulation implementing Section 504, at 34 C.F.R. §104.7(a), states that a recipient that employs fifteen or more persons shall designate at least one person to coordinate its efforts to comply with the requirements of Section 504 and its implementing regulation. The regulation implementing Title II, at 28 C.F.R. §35.107(a), contains a similar provision for public entities that employ fifty or more persons.

Notice of Nondiscrimination

The regulation implementing Section 504, at 34 C.F.R. § 104.8(a), requires that recipients notify participants, beneficiaries, applicants and employees that it does not discriminate on the basis of disability.² The notification is to state, where appropriate, that the recipient does not discriminate

² In addition, the regulations implementing Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and the Boy Scouts of America Equal Access Act of 2001 contain similar requirements for recipients to notify beneficiaries and others of its obligations under the respective regulation that it does not discriminate on the basis of race, color, national origin, sex, age, and certain patriotic youth groups covered by Title 36. (See 34 C.F.R. §§ 100.6(d), 106.9, 110.25, and 108.9, respectively.)

in admission or access to, or treatment or employment in, its programs and activities. The regulation, at 34 C.F.R. §104.8(a), also requires each such recipient to include in the notice the identity of its designated Section 504 coordinator(s). The regulation implementing Title II at 28 C.F.R. § 35.106 contains a similar notice requirement for public entities.

Grievance Procedures

The regulation implementing Section 504, at 34 C.F.R § 104.7(b), requires a recipient employing fifteen or more persons adopt grievance procedures that incorporate appropriate due process standards that provide for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504 and its implementing regulations. Similarly, the Title II implementing regulation at 28 C.F.R. § 35.107(b) requires a public entity employing fifty or more persons to adopt and publish prompt and equitable grievance procedures. When determining whether a recipient's procedures are prompt and equitable OCR assesses whether the procedures: a) provide for notice to students and employees of procedures, including where complaints can be filed; b) apply to discrimination and harassment by employees, students, and third parties; c) provide for adequate, reliable and impartial investigation, including an opportunity to present witnesses and evidence; d) have reasonably prompt timeframes for major stages of the grievance process; e) provide for written notice to the parties of the outcome; and, f) provide assurance that the institution will take steps to prevent further harassment and to correct its effects if appropriate.

Findings of Fact

Designation of Responsible Employee and Notice of Nondiscrimination

The Centers submitted its Student Handbook for the 2016-17 school year, which lists the name, title ("Compliance Officer for Section 504"), and contact information for the Centers' designated employee following its notice of nondiscrimination. The Centers also submitted a standalone Nondiscrimination Statement, consistent with the notice of nondiscrimination found in the Student Handbook for the 2016-17 school year. The Nondiscrimination Statement lists the name, title, and contact information for the same designated employee.

The notice found in the Student Handbook for the 2016-17 school year tracks the language of the Centers' standalone Nondiscrimination Statement ("Statement"), as well as the language of Board Policy-2031 ("Equal Opportunity"). The Statement and Board Policy-2031 are also published on the Centers' website. The Statement and Board Policy-2031 provide that the Centers does not discriminate on the basis of "race, color, national origin, sex/gender, age, marital or veteran status, religion, pregnancy or genetic information, or disability" in programs and activities. The Statement and Board Policy-2031 indicate their applicability to employees, students, and "any person visiting a District campus." As previously discussed, the Statement includes the identity and contact information of the Centers' designated Section 504 Coordinator.

Grievance Procedures

In its initial data submission to OCR in December 2016, the Centers submitted Board Policy-5020 (“Harassment, Intimidation, Bullying, and/or Threatening Behavior”) and Training Procedure-0005 (“Harassment, Intimidation, Bullying, and/or Threatening Behavior Complaint Procedure for Students”). Board Policy-5020 (Board Policy), located on the Centers’ website and provided in full in the 2016-17 Student Handbook, provides examples of prohibited conduct, including discrimination or harassment on the basis of disability, and states in relevant part, “Any person who is subjected to harassment, intimidation, bullying, and/or threatening behavior should report it to the Compliance Officer.” Training Procedure-0005 states its purpose is to outline how to file a harassment, intimidation, bullying, and/or threatening behavior complaint and how to investigate an alleged violation of Board Policy-5020. Under the Training Procedure-0005, a student or witness may file a complaint using the official Complaint/Compliance Form available at the physical site or online at a link found on the Centers’ homepage. The Complaint/Compliance Form is submitted to the Campus Compliance Officer or Complaint Investigator for Students, who is charged with conducting the investigation.³

The Training Procedure-0005 states that “the complainant, respondent, and parents (if student is a minor)” are to be interviewed within two days of the Complaint Investigator for Student’s receipt of the complaint. The procedure does not specify timeframes for any other major stages of the grievance process. In an interview with OCR, the Compliance Officer confirmed that there are no set timeframes associated with the grievance process, but that it typically takes thirty days to investigate a complaint, from receipt of the complaint to notification of findings at the conclusion of the investigation. The Compliance Officer reported he will provide the complainant with an estimated timeframe for all steps in the grievance process.

The Training Procedure-0005 states that the Complaint Investigator for Students shall obtain a copy of all documents and records related to the investigation. The procedure does not explicitly provide either party the opportunity to present witnesses and evidence. The procedure states that the Complaint Investigator for Students shall notify all parties in writing of all findings and decisions and their right to appeal. Additionally, the Training Procedure-0005 states that a Disposition of Complaint-Site Level form is provided to the Site Administrator to include in the student records of the complainant and the respondent.

The Training Procedure-0005 states that for all substantiated findings of harassment, intimidation, bullying, and/or threatening behavior the Site Administrator shall monitor and provide any needed supports. The procedure does not specifically provide an assurance that the institution will take steps to prevent further harassment and to correct its effects if appropriate.

Neither the Board Policy nor the Training Procedure-0005 explicitly states their application to situations involving discrimination and harassment carried out by employees or third parties. Furthermore, the consequences for a substantiated finding of harassment, intimidation, bullying, and/or threatening behavior include “suspension in accordance to district policy on school

³ The individual who serves in this capacity for the Centers stated in an interview with OCR that the position titles “Campus Compliance Officer” and “Complaint Investigator for Students” are used interchangeably and all refer to his position as Compliance Officer for Section 504, as well.

suspension” and/or relevant training before returning to school or concurrently while attending school, suggesting that the procedure, as written, is only applicable to student-on-student harassment.

On March 15, 2017, the Centers submitted additional policies and procedures relevant to complaints of disability harassment that were in effect at the time Complainant filed her complaint, but which had not been previously submitted to OCR. One newly-submitted procedure, Training Procedure-0014 (“Civil Rights Complaint Procedure for Employees, Students and Community Citizens”), is relevant to OCR’s investigation. Training Procedure-0014 indicates its applicability to alleged violations of either Board Policy-2031 (“Equal Opportunity”) or Board Policy-5020 (“Harassment, Intimidation, Bullying, and/or Threatening Behavior”). Under the Procedure, an employee, student, or community citizen may file a complaint using the Official Complaint/Compliance Form available in the Human Resources Office. Alleged violations must be reported within fifteen working days to a counselor, Civil Rights Compliance Officer, Complaint Investigator, Campus Compliance Officer, and Compliance Officer for Students. A copy of the complaint is to be submitted to the Superintendent/CEO within five days after receipt of the written or verbal complaint. The Civil Rights Compliance Officer and/or Complaint Investigator is charged with investigating the complaint and submitting a written report to the Superintendent/CEO, who shall review the report and the Official Complaint/Compliance Form to make a decision regarding the appropriate action. Decisions are appealable to the Centers’ Board of Education.

The Training Procedure-0014 does not specify timeframes for any major stages of the grievance process. This procedure specifies that the complainant, witnesses, and respondent are to be interviewed, but does not provide either party an opportunity to present witnesses and evidence. The Training Procedure-0014 does not provide for written notice to the parties of the outcome and under the procedure, only the complainant is provided the Superintendent/CEO’s written decision regarding the outcome. The Training Procedure-0014 does not explicitly provide an assurance that the institution will take steps to prevent further harassment and to correct its effects, if appropriate.

On March 20, 2017, legal representation for the Centers wrote, in relevant part, in an email to OCR that “[The Centers] is aware of the overlap and potential confusion of these training procedures, forms, and board policies. [The Centers] has been in the process of revising these processes since August 2016. Final revisions are currently under legal review before implementation.” Additionally, legal representation for the Centers indicated that while all board policies are published on the Centers website and, thus, are publicly available to all interested parties, training procedures, including the relevant training procedures Training Procedure-0014 (“Civil Rights Complaint Procedure for Employees, Students, and Community Citizens”) and Training Procedure-0005 (“Harassment, Intimidation, Bullying and/or Threatening Behavior Complaint Procedure for Students”), are for internal use only and are used to ensure consistency of actions by employees handling complaints. Legal representation for the Centers further indicated that once the complaint process begins, the Compliance Officer is responsible for leading the student-complainant through the established process as outlined in the applicable training procedure.

Complainant's Allegation

The Complainant is a former student at the Centers. During the 2016-17 fall semester, the Complainant was enrolled in the Centers' XXXXX XXXXX XXXXX XXXXX Program.

On October 3, 2016, the Complainant emailed the Dean of Instruction regarding a dispute Complainant had with another student that resulted in the Complainant receiving a nonacademic misconduct write-up on September 27 for engaging in loud, disruptive behavior. In the email, Complainant wrote that she felt "retaliated against as well as treated like I was brought in to the office like a high school student." Complainant did not specifically alleged disability harassment or discrimination in this email.

On October 4, Complainant left a voicemail for the Dean of Instruction, which was submitted to OCR as an addendum to the Centers' initial data response. In her voicemail, Complainant indicates her displeasure with the nonacademic misconduct write-up, further stating that she had a "great concern about my education and paying for my education here on campus and the way I am being treated as a student, I feel this is a sense of retaliation." Complainant did not specifically allege disability harassment or discrimination in this voicemail. The Dean of Instruction responded the same day via email to Complainant's October 3rd email and earlier voicemail, informing her that because Complainant referenced retaliation in both her email and voicemail, her email would be forwarded to the Compliance Officer/Complaint Investigator for Students. Furthermore, the Dean of Instruction stated in her reply email that she scheduled a meeting between Complainant and the Compliance Officer for October 5. The Compliance Officer was copied on the Dean of Instruction's response to Complainant, which also included Complainant's original email to the Dean of Instruction.

At the October 5 meeting between Complainant and the Compliance Officer, the Compliance Officer interviewed the Complainant regarding her complaint. The Compliance Officer stated in an interview with OCR that Complainant declined to complete the Centers' formal "Complaint/Compliance Form" and instead chose to make a verbal complaint, information which Complainant corroborated in a November 15, 2016 phone call with OCR. During his interview with OCR, the Compliance Officer also indicated that during the October 5 meeting, Complainant spoke in general about how she had disclosed her disability in class and believed the Instructor knew of Complainant's disability prior to the conduct giving rise to her grievance. Based on the information provided by Complainant, the Compliance Officer opened Complainant's grievance as an allegation of disability harassment. The Centers submitted a note the Compliance Officer made for his working investigative file regarding Complainant's grievance. The Compliance Officer's note states that during the October 5 meeting, Complainant told him she had a diagnosis of XXXXX XXXXX, was receiving XXXXX treatment at a XXXXX XXXXX XXXXX, and had recently changed medications, which had caused her to be dismissive towards others. The Compliance Officer noted that in response to Complainant's disclosure of a disability, he offered the Complainant the Centers' "Reasonable Accommodation Decision Guide" form to complete, which Complainant did, writing "XXXXX effects [sic] ability to stay focused" and that as a result of this limitation Complainant was requesting to "take a few days off the rest of Wednesday, Thursday, Friday, and return on Monday" in order to

“regain focus to be successful.”⁴ The Compliance Officer provided Complainant the Centers’ “Request for Accommodations” form to be completed in the event Complainant wanted to submit a request for long-term accommodations. The Compliance Officer reported to OCR that Complainant did not return a completed “Request for Accommodations” form. The Complainant corroborated this information in the November 15 telephone call with OCR, stating that the Compliance Officer offered her accommodations during this meeting. Complainant further reported that because she “felt like it was just a way for them to keep me out of class” and that “it is embarrassing to have to tell others about my disability,” Complainant did not complete the form or submit any documentation regarding her disability following this meeting or at any time during her enrollment at the Centers.

The Centers also provided OCR with a copy of a second memo created by the Compliance Officer from his working investigative file regarding Complainant’s grievance. The second memo notes the Compliance Officer called Complainant on October 6. The Compliance Officer documented that he had discussed “the interview process and the importance of bringing forth documentation” during this call. Additionally, the Compliance Officer documented he had asked Complainant “if there was anyone in the class or relative to the situation that she would like me to interview or speak with on her behalf and she said no, that she does not speak with anyone.” Following this call, the Compliance Officer conducted interviews with two students who were in the [Program] with Complainant, as well as with the Instructor against whom Complainant filed her grievance. In an interview with OCR, the Compliance Officer stated that one student was randomly chosen from all students with exemplary attendance records and the other student was chosen because she had a positive relationship with the Complainant. One student reported that the Complainant and the Instructor “had a great relationship initially that just recently became toxic and that [the Complainant] makes quite a few classmates uncomfortable.” The other student reported that the Complainant and the Instructor’s “relationship was very good until lately and that the change occurred because [the Instructor] was mispronouncing [the Complainant’s] name.” Both students told the Compliance Officer that the Complainant had disclosed her disability status during a student-led group session that the Instructor did not attend.

On October 11, the Compliance Officer issued a written notice of the outcome of Complainant’s complaint. Complainant was provided the written notice of the outcome via certified mail, which she signed acknowledging receipt on October 19. The Compliance Officer told OCR that a copy of the written notice of the outcome was also provided to the Dean of Instruction, the Instructor, the Site Director, the Chief Officer for Human Resources, and the Associate Superintendent of Instruction. In the notice, the Compliance Officer wrote that he conducted interviews with multiple students and staff, and that, “As for the complaint of discrimination by your teacher, I have found that no evidence shows that she retaliated against you based on your health status. The Counselor and Teacher have been notified that you have requested accommodations and once you return the documentation, we will work towards successful completion.” Complainant was informed of her right to appeal and was provided the necessary forms if she chose to appeal the findings.

⁴ Following the October 5 meeting with the Complainant, the Compliance Officer spoke with the Site Director and the Centers’ Financial Aid Office to formally excuse Complainant’s attendance on the requested days.

On October 25, Complainant and the Compliance Officer had an in-person meeting to discuss the findings outlined in the October 11 letter. During this meeting, Complainant indicated her decision to not appeal the Compliance Officer's findings. Complainant corroborated this fact in a telephone call with OCR, stating, "I did not appeal the outcome, because I did not think it would do any good."

On October 26, the Compliance Officer had a formal discussion with the Instructor named in Complainant's internal grievance. The Site Director, who is the Instructor's Supervisor, and the Assistant Director were also present at this meeting. The purpose of the discussion was to provide the Instructor more information on the need to "document student complaints or complaints in a written format." The Centers' submitted to OCR a completed Human Resource Form-0041 ("Documentation of Discussion with Employee"), which was signed by both the Instructor and the Site Director. The Centers reported that the Site Director consistently visited Complainant's class to monitor classroom climate the remainder of the semester. The Compliance Coordinator reported no further issues when interviewed by OCR following the conclusion of the first semester.

OCR attempted to reach the Complainant on multiple occasions to obtain additional information related to her concerns and to confirm the steps taken by the Centers in regard to investigating her disability discrimination complaint; however, OCR was not able to make contact with the Complainant.

Legal Analysis and Conclusion

OCR determined that the Centers is in compliance with the regulation implementing Section 504 at 34 C.F.R. §104.7(a) and the regulation implementing Title II at 28 C.F.R. §35.107(a). The Centers has designated an individual responsible for coordinating compliance under Section 504 and Title II. Additionally, OCR determined that the Centers' notice of nondiscrimination is published and complies with the regulation implementing Section 504, at 34 C.F.R. § 104.8(a), and the regulation implementing Title II, at 28 C.F.R. § 35.106, and accurately identifies the coordinator and provides contact information for this individual.

OCR determined that at the time the Complainant filed her complaint with the Centers, the Centers had at least two written disability discrimination grievance processes in place (Training Procedure-0005: "Harassment, Intimidation, Bullying, and/or Threatening Behavior Complaint Procedure for Students" and Training Procedure-0014: "Civil Rights Complaint Procedure for Employees, Students and Community Citizens"). Although both procedures were applicable to students, according to the Centers' legal counsel, training procedures are not available to the public and instead are for use by staff responsible for implementing the related policies. OCR reviewed the two relevant training procedures and determined the procedures differed in terms of the timeframes identified for major steps of the investigative process and identified different individuals (the Superintendent or the Compliance Officer) as the individual responsible for making a final determination. The procedures were internally inconsistent and neither written procedure included all the elements necessary to ensure a prompt and equitable response to disability discrimination in compliance with the regulation implementing Section 504, at 34 C.F.R § 104.7(b) and the regulation implementing Title II, at 28 C.F.R. § 35.107(b). On March

20, 2017, the Centers advised OCR it was in the process of reviewing its internal policies and training procedures to ensure compliance with the Section 504 and Title II requirements and that the policies and procedures are not internally inconsistent or difficult to follow. The Centers agreed to voluntarily resolve these concerns pursuant to the enclosed Agreement.

Regarding the Complainant's individual allegation, OCR's investigation established that Complainant first contacted the Dean of Instruction on October 3, 2016, via an email in which she indicated displeasure regarding a nonacademic disciplinary write-up she received on September 27. Complainant left a voice mail message for the Dean of Instruction on October 4 with concerns similar to those communicated in the October 3 email. Complainant used the word "retaliation" in both communications, but did not specifically reference disability discrimination. Nonetheless, the Dean of Instruction responded by forwarding the email to the Compliance Officer on October 4 and scheduling a meeting between Complainant and the Compliance Officer for the following day, October 5. The Compliance Officer met with Complainant on October 5, at which time Complainant disclosed her disabilities to Centers staff for the first time during her enrollment at the Centers and made a verbal complaint. Complainant spoke in general about how she had disclosed her disability in class and believed the Instructor knew of her disability prior to the conduct giving rise to the grievance. Based on the information the Complainant provided, the Compliance Officer opened Complainant's grievance as an allegation of disability harassment.

The Centers submitted two typed notes the Compliance Officer made from his working investigative file regarding Complainant's grievance. The first note memorialized the October 5 in-person meeting and interview with Complainant.⁵ The second note memorialized an October 6 phone call with Complainant, at which time the Compliance Officer offered Complainant the opportunity to submit documentary evidence and to identify potential witnesses to be questioned to support her grievance. Complainant did not provide any documentary evidence, nor did Complainant identify any potential witnesses during the course of the Centers' investigation.

The Compliance Officer conducted interviews with two students who were in the XXXXX XXXXX XXXXX Program with Complainant, as well as with the Instructor against whom Complainant filed her grievance. The Centers provided OCR the typed interview summaries from these three interviews, as well as the handwritten notes taken by the Compliance Officer during these interviews which were used to create the typed interview summaries.

OCR's investigation established that Complainant was advised of the outcome of her complaint in writing. On October 11, approximately 6 days after Complainant first met with the Compliance Officer to verbalize her complaint, the Compliance Officer issued a written notice of the outcome. Complainant was provided the written notice of the outcome via certified mail, which Complainant signed acknowledging receipt on October 19. A copy of the written notice of the outcome was also provided to the Dean of Instruction, the Instructor, the Site Director, the Chief Officer for Human Resources, and the Associate Superintendent of Instruction.

⁵ The Centers also submitted to OCR the Compliance Officer's handwritten notes regarding the October 5 in-person meeting and interview with Complainant. The typed note made for the working investigative file largely tracks the Compliance Officer's handwritten notes.

Complainant was informed of her right to appeal when the Centers issued its outcome letter; at this same time, Complainant was provided the necessary forms if Complainant chose to appeal. Complainant was also advised of her right to appeal during an October 25 in-person meeting with the Compliance Officer. Complainant did not appeal the results of the investigation.

On October 26, the Compliance Officer had a formal discussion with the Instructor named in Complainant's internal grievance. Also present at this meeting was the Site Director, who is the Instructor's Supervisor, and the Assistant Director. The purpose of the discussion was to provide the Instructor more information on the need to "document student complaints or complaints in a written format." The Centers reported that the Site Director consistently visited Complainant's class to monitor classroom climate the remainder of the semester.

Based on the totality of the information gathered by OCR during its investigation in regard to the Complainant's individual allegation, OCR is unable to conclude that the Centers failed to provide an adequate, reliable, and impartial investigation in response to Complainant's October 2016 complaint of disability harassment in violation of Section 504 and Title II. Although the written grievance procedures in place at the time the Complainant filed include differences, the Centers promptly forwarded the complaint to the Compliance Officer for investigation and response. OCR determined the Centers conducted a prompt and equitable investigation. Therefore, OCR found there is insufficient evidence to support the Complainant's disability discrimination allegation. Accordingly, as of the date of this letter, OCR is closing the Complainant's allegation of disability discrimination.

Resolution

This concludes OCR's investigation of Complainant's allegation. Regarding the compliance concerns OCR identified with regard to the Centers' Section 504/Title II policies and training procedures, on April 11, 2017, the Centers signed the attached Resolution Agreement (Agreement), which once implemented, will fully address the issue in accordance with the requirements of Section 504 and Title II. Under the proposed Agreement, the Centers agrees to conduct a comprehensive review of all policies and procedures relating to grievance procedures for addressing disability discrimination and harassment to ensure that the policies and procedures contain all necessary elements and do not contain conflicting or contradictory information. OCR will review and approve the Centers' revised policies and procedures to ensure compliance with the Section 504 and Title II regulations. Centers' staff will receive training on the procedures as appropriate.

OCR considers the individual complaint allegation resolved effective the date of this letter and will monitor the Centers' implementation of the Agreement. When OCR concludes the Centers has fully implemented the terms of the Agreement, OCR will close the complaint. If the Centers fails to carry out the Agreement, OCR may resume its investigation.

Please be advised that the Centers 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 occurs, 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.

This letter sets forth OCR's determination in an individual OCR complaint. 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.

If you have any questions, please contact XXXXX X. XXXXX, Attorney, at (816) 268-XXXX (voice) or (877) 521-2172 (telecommunications device for the deaf), or by email at XXXXX.XXXXX@ed.gov.

Sincerely,

Kelli Douglas
Supervisory Attorney

Enclosure