



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

1244 SPEER BLVD, SUITE 310
DENVER, CO 80204-3582

REGION VIII
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June 17, 2016

President George Burnett
Northcentral University
10000 University Drive
Prescott, Arizona 86314

Re: **Northcentral University**
OCR Case Number: 08-16-2076

Dear Dr. Burnett:

We are writing to inform you of the resolution of the above-referenced complaint filed on December 21, 2015, against Northcentral University (University), alleging discrimination on the basis of disability. The Complainant alleged the University retaliated against her by giving her a written reprimand after she advocated for individuals with disabilities.

We initiated an investigation under the authority of Section 504 of the Rehabilitation Act of 1973 and its implementing regulation, which prohibit discrimination on the basis of disability in programs and activities funded by the U.S. Department of Education (Department). Individuals filing a complaint, participating in an investigation, or asserting a right under Section 504 are protected from intimidation or retaliation by 34 C.F.R. § 104.61, which incorporates 34 C.F.R. § 100.7(e). The University is subject to this law and regulation because it is a recipient of Federal financial assistance from the Department.

In the investigation, we carefully considered information the Complainant provided, data submitted by the University, the University's response to the complaint, the University's non-discrimination policy as posted on its website, and an interview with the Complainant's supervisor. During the course of OCR's processing of this complaint, the University expressed an interest in resolving the Complainant's allegation. Pursuant to Section 302 of our *Case Processing Manual*, we determined that it was appropriate to enter into an agreement without completing a full investigation of the allegation. Additionally, during the course of our investigation, we reviewed the University's posted non-discrimination policy and found that it did not comply with the regulation implementing Section 504. This letter summarizes what we learned during our investigation and explains our additional noncompliance finding.

Under the implementing regulation, recipients are prohibited from retaliating against any individual for the purpose of interfering with any right or privilege protected by Section 504. In analyzing a retaliation claim, we determine whether: the individual engaged in an activity protected by Section 504 of which the recipient had knowledge; the recipient took adverse action against the individual; a causal connection existed between the protected activity and the adverse action; and, the recipient has a legitimate, non-discriminatory reason for its action that is not a pretext for retaliation. An adverse action is generally one that causes serious, lasting, and

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tangible harm to a person's work, education, or well-being; merely unpleasant or transient incidents usually are not considered adverse.

We first considered whether the Complainant engaged in a protected activity of which the University was aware, and determined that she did. On September 16, 2015, the Complainant sent an email to the University's human resources department stating that the University had failed to provide a coworker with an accommodation for a disability.

We next considered whether the University subjected the Complainant to an adverse action, and determined that it did. The University issued the Complainant a written reprimand on December 10, 2015, citing various incidents involving the Complainant, including the September 16, 2015 email to human resources. In the reprimand, the supervisor stated that the email was "outside of the scope of [the Complainant's] role." OCR interviewed the Complainant's supervisor, who said that once she makes a report, she should "let the appropriate people handle it." OCR has concerns that the language in the reprimand could be interpreted to imply that the University is placing limits on when the Complainant can engage in protected activities under Section 504.

Because the University subjected the Complainant to an adverse action soon after the Complainant engaged in a protected activity of which the University was aware, we determined that a causal connection could be inferred. Prior to the completion of our analysis to determine whether the University had proffered a legitimate, non-discriminatory reason for its action that is not a pretext for retaliation, however, the University expressed an interest in resolving the allegation. Pursuant to Section 302 of our *Case Processing Manual*, we determined that it was appropriate to enter into an agreement without completing a full investigation of the allegation.

On June 17, 2016, we received the University's signed Resolution Agreement (copy enclosed). Specifically, items 1 through 5 of the Resolution Agreement resolve the allegation of retaliation. The Resolution Agreement provides in part for the University to rescind a letter of reprimand sent to the Complainant. We wish to ensure that both parties to this complaint understand that we do not intend for this provision to inhibit the University from reprimanding any employee, including the Complainant, for inappropriate conduct or behavior. Such reprimands should not, however, suggest that an employee desist from advocacy for individuals protected by Federal civil rights laws.

Additionally, OCR finds sufficient evidence that the University violated 34 C.F.R. § 104.8(a) X – sentence redacted-X. Accordingly, we find that the University failed to comply with the notice requirement at 34 C.F.R. § 104.8(a) by not providing notice to participants, beneficiaries, applicants, and employees of the responsible employee designated pursuant to § 104.7(a) X – sentence redacted-X. The University agreed to voluntarily resolve the violation, as addressed at items 6 and 7 of the Resolution Agreement.

When the Resolution Agreement is fully implemented, the allegation and additional issue will be resolved consistent with the requirements of Section 504 and its implementing regulation. OCR will monitor implementation of the Resolution Agreement through periodic reports demonstrating the terms of the Resolution Agreement have been fulfilled. We will promptly provide written notice of any deficiencies with respect to the implementation of the terms of the Resolution Agreement and will promptly require actions to address such deficiencies. If the

University fails to implement the Resolution Agreement, we will take appropriate action, which may include enforcement actions.

This concludes OCR's investigation of the complaint and should not be interpreted to address the University's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. We are closing the investigation of this complaint effective the date of this letter.

Please note a complainant may have the right to file a private suit in federal court whether or not OCR finds a violation. The University is prohibited from intimidating or harassing anyone who files a complaint with our office or who takes part in an investigation.

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 be advised that the University 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 individual 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, personal information, which, if released, could constitute an unwarranted invasion of privacy.

If you have any questions or concerns about our findings, you may call me at (303) 844-4506. You may also contact XXXXXX, the investigator assigned to this complaint, with any questions at XXXXXX.

Sincerely,

/s/

Thomas E. Ciapusci
Supervisory Team Leader

Attachment: Resolution Agreement

cc: L. Eric Dowell
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.