



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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June 22, 2017

Mr. Joe Schaffer
President
Laramie County Community College
1400 E. College Drive, Room 138
Cheyenne, Wyoming 82007

Re: Laramie County Community College
OCR Case Number: 08-16-2239

Dear President Schaffer:

On May 23, 2016, we received a complaint alleging Laramie County Community College (College) discriminated against the complainant on the basis of his disabilities (Traumatic Brain Injury and Hearing Impairment) by not providing academic adjustments in English courses. On September 6, 2016, we advised you that we had the authority to investigate this allegation, and that a portion of this complaint was referred to Federal Mediation and Conciliation Service (FMCS) for mediation. On January 17, 2017, we notified you that FMCS was unable to mediate the matter and it was returned to OCR for additional processing. Upon its return, OCR determined that we would also investigate the complainant's allegation of retaliation. Specifically, the complainant alleged that the College retaliated against him for participating and defending himself in two sexual harassment investigations conducted by the College.

We are responsible for enforcing Section 504 of the Rehabilitation Act of 1973, and its implementing regulation at 34 Code of Federal Regulations Part 104, which prohibit discrimination on the basis of disability in programs or activities that receive Federal financial assistance from the U.S. Department of Education; and Title II of the Americans with Disabilities Act of 1990, and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability in programs or activities of a public entity. We also enforce Title IX of the Education Amendments of 1972, and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in education programs and activities that receive Federal financial assistance from the Department. Individuals filing a complaint, participating in an investigation, or asserting a right under Title IX are protected from intimidation or retaliation by 34 C.F.R. § 106.71, which incorporates 34 C.F.R. § 100.7(e). The College as a recipient and public entity is subject to these laws and regulations.

Legal Standard

A *recipient* shall 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 applicant or student with a disability. Academic requirements that the recipient can demonstrate are essential to the instruction being pursued by

such student or to any directly related licensing requirement will not be regarded as discriminatory. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted.

A *public entity* shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity. The public entity is also required to provide auxiliary aids and services where necessary to ensure an equal opportunity to participate in, and enjoy the benefits of a service, program, or activity of the public entity.

Under the implementing regulation, recipients are prohibited from retaliating against any individual for the purpose of interfering with any right or privilege protected by Title IX. In analyzing a retaliation claim, we determine whether: the individual experienced an adverse action caused by the recipient; the recipient knew the individual engaged in an activity protected by Title IX or believed the individual might engage in an activity protected by Title IX in the future; and a causal connection existed between the adverse action and the protected activity. If OCR determines that a causal link exists between any adverse action and any protected activity, we next determine whether the recipient has a legitimate, non-retaliatory, reason for its action; and whether such reason is a pretext for retaliation.

Background Information:

The complainant indicates that he has a XXXXXXXXXXXXXXXX, and various complicating medical conditions. Information provided by the College reflects that it has policies and procedures in place for students with disabilities to request academic adjustments, and that the complainant requested and was approved to receive academic adjustments relating to his hearing impairment. The complainant's College-approved academic adjustments were a note taker, use of a tape recorder, and extended test time. The complainant, however, asserts that there was a gap in academic adjustments provided in his English classes (ENG 0910 and ENG 1010). When the complainant subsequently complained to the College about a lack of academic adjustments, the matter was reviewed by the Dean of Arts and Humanities. The day after this meeting, the complainant withdrew from the College for health reasons, and to date has not returned to the College. At this point in OCR's investigation, it is unclear what remedial actions, if any, were taken by the College to address the complainant's concerns about lack of academic adjustments subsequent to his withdrawal from the College. Further investigation would be necessary prior to making a compliance determination regarding the complainant's allegation that the College failed to provide academic adjustments.

The complainant also alleges that the College retaliated against him for participating and defending himself in two sexual harassment investigations conducted by the College. The College did not find that in either instance the complainant had engaged in sexual harassment. The complainant also asserts that an outside service agency (Experience Works) had arranged for him to work at the College (at no cost to the College) for a training period that if successfully completed, would qualify the complainant for ongoing employment. According to the

complainant, the College retaliated when it refused to pursue the employment/training opportunity on his behalf. The complainant reports that an identified person at Experience Works was told by the College that the College could not take the complainant on as a trainee/employee, because he was accused of sexual harassment. Additionally, on July 6, 2016, the College told the complainant in writing that he was not eligible to enroll in classes due to a pending sexual harassment investigation. The complainant and the College provided OCR a copy of the July 6th letter. After reviewing the College's data, we do not have an indication that after the conclusion of the investigations, the College ever notified the complainant he was free to re-enroll, or that Experience Works was advised the sexual harassment matters were complete and there was no finding of harassment by the complainant in either of the two complaint investigations. Also, the College claims that it did not have an open position for the complainant, but documentation from the College appears to show that a person for that position was hired during the relevant time. The College, however, asserts that the complainant never "applied" for any positions with the College. Further information regarding this allegation is necessary to complete OCR's investigation.

Resolution:

While discussing the next steps in OCR's ongoing investigation, the College expressed an interest in taking voluntary action to resolve the complaint. Pursuant to Section 302 of OCR's *Case Processing Manual (CPM)*, allegations and issues under investigation may be resolved at any time when, prior to the conclusion of the investigation, the recipient expresses an interest in resolving the allegations and issues and OCR determines that it is appropriate to resolve them with an agreement during the course of an investigation.

To date, OCR has investigated this complaint by reviewing preliminary information provided by the complainant and reviewing information the College provided in response to our data requests. To complete our investigation of the complainant's allegations and prior to making a compliance determination, OCR requires further information from both the College and the complainant, in the form of additional witness interviews, and additional documents and records. The College has indicated an interest in resolving the matter voluntarily, which will appropriately address the issues and allegations raised by the complaint, and will expedite the complainant's ability to enroll in classes with appropriate academic adjustments. We have, therefore, determined that the matter is appropriate for resolution pursuant to Section 302 of the *CPM*.

Conclusion:

We have received the College's signed Agreement, a copy of which is enclosed. When the Agreement is fully implemented, the allegations and issues identified in the processing of this case will be resolved consistent with the requirements of Section 504, Title II, Title IX¹ and their implementing regulations. This concludes OCR's investigation of the complaint, which is now

¹ The complainant alleged retaliation pursuant to Title IX of the Education Amendments of 1972. This Agreement addresses an individual remedy resolving this allegation without any comment on the College's Title IX grievance procedures. Specifically, this Agreement does not address the appropriateness or adequacy of the College's required Title IX procedures, which are specifically at issue and currently subject to review in OCR case number 08-16-2031.

in monitoring. OCR will monitor implementation of the Agreement through periodic reports from the College demonstrating the terms of the Agreement have been fulfilled.

We will promptly provide written notice of any deficiencies with respect to the implementation of the terms of the Agreement and will promptly require actions to address such deficiencies. If the College fails to implement the Agreement, we will take appropriate action, which may include enforcement actions.

This letter should not be interpreted to address the College's compliance with any law or regulatory provision, or to address any issues other than those addressed in this letter. We look forward to the College's initial monitoring report on July 15, 2017.

This letter sets forth OCR's determination in an individual 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 note that a complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

As discussed above, the College 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, you may contact Sandra Sanchez, Civil Rights Attorney, at (303) 844-6096. You may also contact me at (303) 844-6083.

Sincerely,

/s/

Angela Martinez-Gonzalez
Supervisory General Attorney

Enc.: Agreement

cc: Tara B. Nethercott, Esq.
Woodhouse, Roden, Nethercott, LLC