



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VIII
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UTAH
WYOMING

August 23, 2017

Meredith Warner
Interim Vice President of Student Affairs
1202 W Thomas Road
Phoenix, AZ 85013

Re: Phoenix College
OCR Case Number: 08-17-2112

Dear Ms. Warner:

On February 12, 2017, the U.S. Department of Education, Office for Civil Rights (OCR) received a complaint of discrimination against Phoenix College (College). The Complainant alleged that the College discriminated against him based on age by not selecting him for the Medical Laboratory Technician Program at the College and failed to respond to a complaint of age discrimination.

Pursuant to our *Case Processing Manual* (CPM), we referred the complaint to the Federal Mediation and Conciliation Service (FMCS) on May 8, 2017. On May 19, 2017, FMCS informed OCR that the College declined the opportunity to mediate this case with FMCS.

On June 7, 2017, we initiated an investigation under the Age Discrimination Act of 1975, and its implementing regulation at 34 Code of Federal Regulations (C.F.R.) Part 110, which prohibit discrimination based on age in programs or activities that receive federal financial assistance. As a recipient of Federal financial assistance from the Department, the College is subject to this law and regulation. Additional information about the laws OCR enforces is available on our website at www.ed.gov/ocr.

During the investigation, we carefully reviewed documentation provided by the College and the Complainant, and interviewed College administrators.

Alleged Discrimination on the Basis of Age

The Complainant is 37 years old. He applied for admission to the College's Medical Lab Technology (MLT) program for the 2016-2017 school year. In October 2016, his application was rejected. The Complainant alleges that he was denied admission to the program because of his age.

The Age Discrimination Act of 1975, and its implementing regulation at 34 C.F.R. Part 110, prohibit discrimination based on age in programs or activities that receive federal financial assistance. A recipient may not, in any program or activity receiving Federal financial assistance, 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 or denying or limiting individuals in their opportunity to participate in any program or activity.

In evaluating an allegation of different treatment, we determine what action the recipient took against the alleged injured party, whether it followed its policies and procedures for taking such action and whether similarly situated individuals were treated differently. If the alleged injured party was treated differently, we determine whether the recipient has a legitimate, non-discriminatory reason for the different treatment and, if so, whether the stated reason is a pretext for age discrimination.

The College described its admissions policy to the MLT program as follows. Applicants to the College's MLT program are assessed by faculty and staff and then ranked using a 30-point scale. 12 of the 30 points are made up of one's GPA (an applicant's GPA is multiplied by 4), while the remainder of the 30 points are made up of essays (12 points) and required certifications and references (6 points). Since most applicants to the program receive full points on their essays and required certifications and references, GPA tends to be the most important factor in the admissions process. Based on available spots for the 2016-2017 school year, the College could accept 16 of the 37 applicants to the program.

The Complainant scored 27.39 out of a possible 30 points on his application, ranking him 17th of the 37 applicants, and just outside the College's admissions cutoff. The Complainant scored perfect points on his essays, certifications, and references, but his GPA of 3.13 was lower than any of the applicants who were accepted. The College also provided information that among the applicants who were accepted, one was older than the Complainant at 41 years old, while another was close to the Complainant's age at 35 years old. Based on our review of the information the College provided, it appears that GPA, not age, was the determining factor resulting in the Complainant's denial from the program.

Accordingly, there is insufficient evidence that the College discriminated against the Complainant on the basis of age. This allegation is closed effective the date of this letter.

Alleged Failure to Respond to a Complaint of Age Discrimination

Following the Complainant's rejection from the MLT program, he sent a letter to the College alleging that his application was denied because of his age. The College's policies prohibit discrimination on the basis of age. They further go on to describe complaint procedures for students who believe they have been discriminated against; these procedures include either an informal resolution of the complaint or a formal resolution through a written response within 15 calendar days of the complaint.

The Age Discrimination Act of 1975, and its implementing regulation at 34 C.F.R. Sec. 110.25 states that a recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints and alleging any action that would be prohibited by the Act.

In this case, the College put together a committee composed of various administrators to investigate the Complainant's allegation and found that it was his GPA and not his age that led to

his denial. The College reached out to the Complainant twice via phone but reached voicemail both times. The College contends that because the Complainant was not a student it did not have to follow its aforementioned policies. However, these policies should apply not only to current students, but to prospective students and current applicants. Furthermore, the College never informally resolved the Complainant's complaint with him, nor formally resolved the complaint via a response. To date, aside from the two attempted phone calls, the College has never shared its investigation findings with the Complainant.

Accordingly, OCR finds that the College failed to respond to a complaint of age discrimination as alleged.

Conclusion

We are pleased that the College voluntarily entered into the enclosed Resolution Agreement to address the compliance determination that OCR made during this investigation. This concludes our investigation of this complaint. OCR will monitor the College's implementation of the Resolution Agreement until it is determined to be fully implemented. OCR has notified the Complainant that the College has entered into this Agreement, and we provided the Complainant a copy of the Agreement. We will also keep the Complainant apprised of monitoring activities related to this case.

This letter addresses only the issues raised in this complaint and should not be interpreted as a determination of the College's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. The Complainant may have the right to file a private suit in federal court regardless of whether OCR finds a violation.

Please be advised that 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, personally identifiable information, which if released could reasonably be expected to constitute an unwarranted invasion of personal privacy.

We thank the College for its cooperation in this matter. If you have any questions, please contact Mr. Jason Sinocruz at XXXX.

Sincerely,

/s/

Angela Martinez-Gonzalez
Supervisory General Attorney

Enclosure

cc: Ms. Christina Haines, Interim President, Phoenix College