



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

50 BEALE ST., SUITE 7200
SAN FRANCISCO, CA 94105

REGION IX
CALIFORNIA

August 15, 2014

Patricia Cochran
President
North Adrian's Beauty College
124 Floyd Avenue
Modesto, California 95350-2341

(In reply, please refer to case no. 09-14-2205.)

Dear President Cochran:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against North Adrian's Beauty College (College). The complaint alleged that the College discriminated against the Complainant¹ on the basis of her age. OCR investigated whether the College responded adequately to the Complainant's internal complaint of age discrimination.

OCR investigated the complaint under the authority of the Age Discrimination Act of 1975 (AgeDA) and its implementing regulations. The AgeDA prohibits discrimination on the basis of age in programs and activities operated by recipients of Federal financial assistance. The College receives funds from the Department and is subject to the AgeDA and the regulations.

OCR gathered evidence through interviews with the Complainant, and College administrators and former College students, and OCR also reviewed documents submitted by the College and the Complainant. Based on the information collected, OCR found that there is sufficient evidence to support a conclusion of noncompliance with the AgeDA with respect to the College's response to the Complainant's complaint of age discrimination, which the College agreed to address through a Resolution Agreement. The applicable legal standards, the facts gathered during the investigation, and the reasons for our determinations are summarized below.

The Department regulations implementing the AgeDA at 34 C.F.R. §110.10(a) state that no person 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 of a

¹OCR notified the College of the identity of the Complainant when the investigation began, and we are withholding her name from this letter to protect personal privacy.

recipient of Department funds. Under §110.10(b) a recipient may not treat individuals differently on the basis of age with regard to any aspect of the services, benefits, activities, or opportunities it provides. Subsequent sections set forth exceptions to the rules against age discrimination.

Colleges and universities are responsible under the AgeDA and the regulations for providing students with a nondiscriminatory educational environment. Harassment of a student based on age can result in the denial or limitation of the student's ability to participate in or receive education benefits, services, or opportunities.

Under the AgeDA, once a college has notice of possible age-based harassment between students, it is responsible for determining what occurred and responding appropriately. The college is not responsible for the actions of a harassing student, but rather for its own discrimination in failing to respond adequately. A college may violate the AgeDA and the regulations if: (1) the harassing conduct is sufficiently serious to deny or limit the student's ability to participate in or benefit from the educational program; (2) the college knew or reasonably should have known about the harassment; and (3) the college fails to take appropriate responsive action. These steps are the college's responsibility whether or not the student who was harassed makes a complaint or otherwise asks the school to take action.

OCR evaluates the appropriateness of the responsive action by assessing whether it was prompt, thorough, and effective. What constitutes a reasonable response to harassment will differ depending upon the circumstances. However, in all cases the college must promptly conduct an impartial inquiry designed to reliably determine what occurred. The response must be tailored to stop the harassment, eliminate the hostile environment, and remedy the effects of the harassment on the student who was harassed. The college must also take steps to prevent the harassment from recurring, including disciplining the harasser where appropriate.

OCR's investigation showed the following:

- The Complainant, who was 59 years old when she enrolled in the College's Cosmetology Course on January 17, 2012, was withdrawn from the program on April 6, 2012. She alleged to OCR that after she filed complaints of age discrimination against the College, she received no response.²
- The Complainant filed complaints with the College that raised her concerns about age discrimination on February 26, and March 1, 2012, in which she described, often as "bullying," age-related comments other students allegedly repeatedly made to her, and possibly related claims that the same students stole her book

² The Complainant filed a complaint in which she raised an allegation of age discrimination on April 17, 2012 with California's Bureau for Private Postsecondary Education, which did not refer the complaint to OCR until January 21, 2014, and had not, as of the date of this letter, conducted its own investigation.

and keys, and once struck her with their car door in the College parking lot. Examples of the comments the Complainant included in her complaints were, "...I was starting to get challenged about the comments that older women think they know everything;" and "...[same students] were starting to bully me;" and "...[one of the same students] made a comment about an older women [sic] getting roughed up by a male and stating twice 'she deserved it';" and "These students harassed me, physically attacked me, verbally and mocked me, made fun of my age..." and "...these [same students] that bullied, harassed me, stole from me..." and "...who would be in their right mind to assault an elderly women [sic], mock, and verbally abuse;" and "[these other students are young]...and hungry for attention so they decide to make someone miserable. I felt so miserable, regretful, so emotional."

- The College's Associate Director responded March 3, 2012 by letter to the Complainant without mentioning age discrimination, but acknowledged the receipt of her "letters," and informed the Complainant an investigation was underway.
- The College stated to OCR that while it did not consider the Complainant's complaints to raise issues of age discrimination, it did conduct an investigation. The College's investigation included gathering from some students written interview statements that included general questions about intimidation in the classroom or elsewhere at the College. The complaint interview forms asked no questions about the specific age-related comments the Complainant alleged in her two written complaints, and the College's investigation did not otherwise address either the alleged comments, or the other incidents raised by the Complainant, as potential examples of age discrimination.
- The College's sole written response to the Complainant's February 26, and March 1, 2012 complaints was its March 20, 2012 letter to the Complainant that concluded all of the students wanted to put the matter behind them and move on, except for the Complainant. The College's letter did not report any investigation of the age-based comments raised by the Complainant, or provide any finding or outcome related to the issue of alleged age discrimination.

The College has a responsibility under the AgeDA and its regulations to respond to complaints of age discrimination, including allegations of age harassment by other students, by determining what occurred and responding appropriately. As noted above, OCR evaluates the appropriateness of the responsive action or process by assessing whether it was prompt, thorough, and effective. The College must ensure that each allegation of harassment is actually addressed through that process. In addition, the College must notify the complainant of the outcome of the complaint.

The preponderance of the evidence gathered during the OCR investigation supports a conclusion that the Complainant raised an allegation of age discrimination regarding the comments she claimed other students made to her about her age, and

that the College failed to determine what occurred and to respond appropriately. When the Complainant filed complaints on February 26, and March 1, 2012, she included sufficient detail about the age-related comments and who was allegedly making them that the College had notice of possible age-based harassment between students, and it was responsible for determining what occurred and responding appropriately. OCR found that the College's effort to investigate, however, did not include any action to examine, address, or resolve the Complainant's age discrimination allegation regarding her classmates' comments. The Complainant never received notice from the College of the outcome of an investigation of alleged age discrimination because the College never conducted such an investigation.

In summary, OCR concluded that the College failed to respond adequately to the Complainant's internal complaint alleging age discrimination because its investigation did not address her allegation of age harassment by classmates, and because the College did not notify her of the outcome of that process. Ordinarily, under these circumstances, OCR could request the College to conduct its own investigation of the Complainant's age discrimination allegation in order to address this compliance concern. However, OCR attempted to contact the 26 students who attended classes over two years ago with the Complainant—none of whom are still attending the College—and only six responded to requests for interviews. None of the six told OCR that they either heard the alleged comments or saw any of the alleged incidents. Based on its own investigation of the underlying age discrimination allegations, including the attempts to contact the relevant witnesses and the responses it received, OCR was unable to establish by a preponderance of the evidence that age discrimination took place. Therefore, OCR is not asking the College to re-investigate the age discrimination allegations.

In addition to the requirements above, the AgeDA regulations also establish procedural requirements that are important for the prevention and correction of age discrimination, including harassment. These requirements include issuance of notice that age discrimination is prohibited (34 C.F.R. §110.25(b)) and adoption and publication of grievance procedures providing for the prompt and equitable resolution of complaints of age discrimination (34 C.F.R. §110.25(c)). The regulations also require that colleges designate at least one employee to coordinate compliance with the regulations, including coordination of investigations of complaints alleging noncompliance (34 C.F.R. §110.25(a)). The notification required by 34 C.F.R. §110.25(b) must also identify the responsible employee by name or title, address, and telephone number.

OCR examines a number of factors in evaluating whether a college's grievance procedures are prompt and equitable, including whether the procedures provide for the following: notice to students and employees of the procedures, including where complaints may be filed (and then again, one notice within the procedures themselves that say where to file a complaint), that is easily understood, easily located, and widely distributed; application of the procedures to complaints alleging

discrimination or harassment carried out by employees, other students, and third parties; adequate, reliable, and impartial investigation, including an equal opportunity to present witnesses and relevant evidence; designated and reasonably prompt timeframes for major stages of the grievance process, as well as the process for extending timelines; written notice to the parties of the outcome of the complaint; and an assurance that the college will take steps to prevent recurrence of harassment and to correct its discriminatory effects on the complainant and others, if appropriate.

OCR's investigation showed the following:

- The College's statement of nondiscrimination in its *Catalog and Consumer Guide* states that the College does not discriminate on the basis of age (and other bases). The statement does not contain the responsible employee's name or title, address, and telephone number.
- The College stated to OCR that in March, 2010, it designated two Student Affairs Representatives as its employees responsible for coordinating its efforts to comply with and carry out its responsibilities under the AgeDA.
- The College's example of notice it provided to OCR regarding its responsible employees was a slide from a student orientation PowerPoint presentation. The slide contains the responsible employees' names and titles, and telephone numbers, but not their address.
- The College's grievance procedures, *Grievance Procedure/Internal Complaint Procedure*, refer to students who may "have a problem with an individual," but do not provide students notice that the procedures are to be used for complaints of discrimination. The *Grievance/Internal Complaint Procedure* does not include information about where complaints may be filed.
- The *Grievance/Internal Complaint Procedure* asks students, as an initial step, to discuss "problems" with the individuals involved to try to resolve concerns, and includes an additional step that involves contact with the College's Student Affairs Representatives prior the concerns being considered a "serious grievance." This step omits an explanation that it is voluntary, and the terms problems and serious grievance are not defined in the Procedure.
- At the stage described in the Procedure as the "serious grievance" stage, the *Grievance/Internal Complaint Procedure* provide that a written grievance will be evaluated by the Student Affairs Representative, but this evaluation does not explicitly describe any steps that might provide an adequate, reliable, and impartial investigation, including an equal opportunity to present witnesses and relevant evidence. No other step in the *Grievance/Internal Complaint Procedure* provides for any investigation.

- Regarding timeframes for major stages of the grievance process, the *Grievance/Internal Complaint Procedure* contains no process for extending timelines, and provides as a time period for filing a grievance five business days from the date of the incident.
- The *Grievance/Internal Complaint Procedure* provides that a grievant will receive a written response, without a prior investigation, from the Student Affairs Representative.
- Between January 1, 2010 and May 8, 2014, the College received two complaints of discrimination on the basis of age, sex, race, color, national origin, and/or disability. The College's Procedure refers students with remaining unsatisfactorily answered questions after using its *Grievance/Internal Complaint Procedure* to the Department of Consumer Affairs in Sacramento, or to the Bureau for Private Postsecondary Education in Sacramento.

OCR found that the College's notice of nondiscrimination statement is inadequate because all of the required information about the College's responsible employees is not included, and therefore no notice by the College has been adequately provided. Also, OCR found that even if students routinely receive a copy of the orientation PowerPoint slide, there was no other evidence that the College had provided students the notice required by the regulations at 34 C.F.R. §110.25(b), in a continuing manner.

While the College's *Grievance/Internal Complaint Procedure* includes a step that requires the College to provide a grievant with written notice of the outcome of a grievance, OCR found that that the Procedure does not contain the other required elements of a prompt and equitable grievance procedures, and thus OCR concluded the College's procedure fails to meet the standards for prompt and equitable grievance procedures in the AgeDA regulations.

The College agreed to address these areas of non-compliance through signing a Resolution Agreement, a copy of which is attached, that is limited to issues arising under the AgeDA. The Resolution Agreement requires the College to update its nondiscrimination statement with the information required by the AgeDA regulation, and to provide OCR evidence it has provided its beneficiaries notice in a continuing manner of its nondiscrimination statement. OCR has also provided to the College a technical assistance fact sheet developed by OCR that was designed to assist education institutions in establishing a notice of nondiscrimination that meets the requirements of all of the applicable regulations. The College agreed to revise its grievance procedures, that OCR only reviewed for compliance pursuant to the AgeDA, to ensure that they provide for the prompt and equitable resolution of complaints of age discrimination, including age harassment, and to publish and distribute the updated grievance procedure to its employees and students. The

College also agreed to provide training to all administrators, faculty, and other staff who are involved in the resolution of complaints of age discrimination.

Based on the commitments made in the attached Resolution Agreement, OCR is closing the investigation of this complaint as of the date of this letter. OCR will monitor the College's implementation of the Resolution Agreement. This concludes OCR's investigation of the complaint and should not be interpreted to address the College's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. OCR is informing the Complainant of the complaint resolution by concurrent letter.

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 Services, 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.

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 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 a complaint with OCR 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 appreciates the courtesy and cooperation extended by you and your staff during the complaint resolution process. If you have any questions, please contact David Christensen at (415) 486-5554, or David.Christensen@ed.gov, or me at (415) 486-5555.

Sincerely,

/s/

Mary Beth McLeod
Team Leader

Enclosure

CC: XXXXXXXX XXXXXXXX (*via email only*)
XXXXXXX XXX (*via email only*)