



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION IX
CALIFORNIA

May 18, 2016

Ms. Sandra Mayo, Ed.D.
President
Moreno Valley College
16130 Lasselle Street
Moreno Valley, California 92551

(In reply, please refer to # 09-15-2341.)

Dear President Mayo:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against Moreno Valley College (College). OCR investigated whether the College failed to respond adequately to the complainant's¹ internal complaints filed in 2014 alleging that she was subjected to discrimination based on disability and retaliation for filing discrimination complaints.²

OCR investigated the complaint under the authority of Section 504 of the Rehabilitation Act of 1973, and its implementing regulation. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance. OCR also has jurisdiction as a designated agency under Title II of the Americans with Disabilities Act of 1990, as amended, and its implementing regulation over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The College receives Department funds, is a public college, and is subject to the requirements of Section 504, Title II, and the regulations.

OCR gathered evidence through an interview with the complainant and a review of documents and correspondence related to the College's internal investigation into the complainant's multiple discrimination complaints including the College's investigative report, the determination and findings provided to the complainant, and communications between the complainant and the College.

¹ OCR notified the College of the identity of the complainant when the investigation began. We are withholding her name from this letter to protect her privacy.

² OCR initially notified the complainant and College that it was opening for investigation two additional allegations: an allegation of disability-based discrimination and of retaliation. After opening the investigation, OCR determined that these two allegations were already investigated by the College. The extent to which these issues were appropriately addressed or remedied is the focus of the remaining allegation that OCR investigated in this case.

OCR concluded that the evidence established a violation of Section 504, Title II and their implementing regulations with respect to the issue investigated. The facts gathered during the investigation, the applicable legal standards, and the reasons for our determination are summarized below.

Findings of Fact

Background

- The Physician Assistant Program (PAP) that is the subject of this investigation will no longer exist at the College as of the fall of 2016.
- The complainant was first enrolled in the College's PAP in fall 2012. In November 2012, the complainant and several other first year students were dismissed from PAP. After appealing her dismissal, the complainant was offered readmission into the PAP by the College. The PAP Director, however, denied the complainant entry into the Program, asserting that the complainant failed to submit a request on time. The complainant sought assistance from the Dean of Instruction and the Vice President, and as a result, the complainant was readmitted back into PAP commencing in August 2013.
- On January XX, 2013, the complainant filed an internal discrimination complaint against PAP alleging multiple areas of discrimination on her own behalf and on behalf of other students. On April XX, 2013, the Director of Diversity, Equity and Compliance (Diversity Director) completed her investigation of the discrimination complaint.³ Her report found that the allegations by the complainant were "not sustained."
- The complainant was registered as an individual with a disability with the College's Disabled Student Services office (DSS) for the 2013-14 school year. For her winter 2014 classes, DSS approved test taking accommodations, tape recorded lectures, and note taking as accommodations for the complainant.

2014 Complaints and Response

- On February X, 2014, the complainant filed a discrimination complaint against the PAP Director with the Riverside Community College District (RCCD) Diversity and Human Resources Office. She alleged that the PAP Director retaliated against her for filing the previous complaints in 2013.
- On February XX, 2014, the College notified the complainant that she was being dismissed from PAP for not maintaining satisfactory academic progress and for three instances of unprofessional conduct. The three instances of unprofessional conduct included two alleged cheating incidents in October and December of 2013 and an allegation of being disruptive at a February 5, 2014 tutoring session. The

³ The College's investigation of the complainant's January 2013 complaint does not fall within the timeframe of OCR's investigation and is not part of this complaint.

complainant submitted several appeals of this dismissal in March and April of 2014. Her appeals were denied.

- On April X, 2014, the complainant's attorney requested an extension of time for resolution of the complainant's February X discrimination complaint and requested that RCCD obtain an independent investigator to investigate the complaint allegations. RCCD agreed to hire an outside investigator and to a 60 day extension to complete the investigation.
- On May XX, 2014, the complainant added allegations to her February X, 2014 discrimination complaint including that the PAP Director retaliated against her by accusing her of disruptive behavior during a tutoring session and recommending her for dismissal. She also alleged that the College failed to provide the approved note taking accommodation in her winter 2014 classes.
- On June X and X, 2014, the complainant again filed a discrimination complaint reiterating her previous allegations regarding the college's failure to provide the note takers and retaliation by the PAP Director.
- On December XX, 2014, the College provided the complainant with the notice of the outcome of her 2014 discrimination complaint allegations including the investigator's report used to reach the determination and the College's planned actions. The report identified that the allegations related to retaliation and discrimination, described that it used a preponderance of the evidence standard, identified the facts gathered and the determinations made, and described the rationale for the determinations. The investigator reviewed documents submitted by the complainant and College, reviewed College correspondence and policies, and conducted interviews of several witnesses including students and employees. The investigator was unable to conduct an interview with the PAP Director because she would not make herself available. The investigative report reflects the following findings regarding eleven allegations:
 - Allegation 1 (Violation): The PAP Director retaliated against the complainant when she refused to reinstate the complainant in 2013 even after it was shown that the complainant submitted her request on time.
 - Allegations 2 and 3 (No violation): The PAP Director did not retaliate against the complainant by taking actions that caused her to lose a student election or by failing to take action against the other student candidate when she was disrespectful to the complainant.
 - Allegation 4 (No violation): The PAP Director did not retaliate against the complainant when the PAP Director made pejorative remarks to the class which did not target any individual about the circulation and dissemination of old PAP exams from the fall 2012.

- Allegation 5 (Violation): The PAP Director retaliated against the complainant by not ensuring that the complainant's November 2013 suspension was handled in a proper manner in accordance with the PAP's applicable policies and procedures.
 - Allegation 6 (No Violation): The PAP Director did not retaliate against the complainant when she marked her tardy for a class.
 - Allegation 7 (Violation): The PAP Director retaliated against the complainant by subjecting her to a discipline charge for cheating on a test, when proctors had permitted the complainant and the other students to have their personal belongings in close proximity and did not raise an objection, and the other students involved were not disciplined.
 - Allegation 8 (Violation): The PAP Director retaliated against the complainant by bringing a discipline charge against her for an innocuous email the complainant sent to a professor.
 - Allegation 9 (Violation): The PAP Director retaliated against the complainant by exercising disproportionate disciplinary authority when she brought a disciplinary charge against her for behavior during a voluntary tutoring review session on February X, 2014.
 - Allegation 10 (Violation): The College discriminated against the complainant based on disability when the College failed to provide her with note taking services in the winter 2014 term and to some degree in fall 2013.
 - Allegation 11 (Violation): The PAP Director's actions overall were disproportionately unfair and demonstrated a pattern of retaliatory conduct towards the complainant.
- In the administrative determination provided to the complainant, the College identified that the following actions would be taken in response to the findings:
 - Interview the Program Director and add an addendum to the report that includes the information from the interview.
 - Provide training for faculty, staff, and administrators on issues of discrimination and retaliation.
 - Hire a Director for DSS. In the interim, the Vice President of Student Services would provide guidance to the DSS staff and appropriate training/review to faculty and staff.
 - Hire a note taker for the complainant for all her classes and permit the complainant to re-enroll in the winter 2015 term.

- On January X, 2015, the complainant appealed the College's administrative determination to the District Board of Trustees. The Board of Trustees did not overturn the initial determination by the College.
- The complainant then filed a second-level appeal on March X, 2015 to the California Community College Chancellor's Office (State Chancellor). As of March 2016, the complainant had not received a response to her second-level appeal.
- With regard to the actions that the College's administrative determination called for, the only action that was implemented was the hiring of the DSS director in May 2015. The individual remedies provided for the complainant were not implemented because the complainant did not accept them and was pursuing an appeal. The systemic remedies of providing training and guidance were not implemented. The College stated to OCR that it could not implement the systemic remedies due to staff turnover and that the College needed the position of Compliance Officer to be filled, which did not occur until February 2016.

Policies

- The College uses the RCCD policy and process for addressing discrimination complaints, which can be found on the College's website.
- The RCCD process provides that an individual who has personally suffered unlawful discrimination or someone who has learned of unlawful discrimination in his or her "official capacity as a faculty member or administrator" may file a complaints within 180 days of the alleged discrimination. The complaint must be filed on the State Chancellor's complaint form for it to be investigated.
- Within 90 calendar days of receiving a complaint, the investigative report will be forwarded to the State Chancellor and a copy provided to the complainant. A complainant can appeal a complaint determination to the Board of Trustees within 15 days of receiving the determination. Within 45 days, the Board of Trustees can either take action or affirm the decision made by taking no action.
- The policies only provide appeal rights for complainants, not those accused of discrimination.

Legal Standards

The Section 504 regulations, at 34 C.F.R. §104.7(b), require a recipient employing 15 or more persons to adopt grievance procedures that incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints alleging disability discrimination. The Title II regulations, at 28 C.F.R. §35.107(b), similarly require a public entity employing 50 or more persons to adopt and publish prompt and equitable grievance procedures.

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 of the procedure to students and employees, including where to file complaints; application of the procedure to complaints alleging discrimination by employees, other students, or third parties; adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence; designated and reasonably prompt timeframes for major stages of the complaint process; notice to the parties of the outcome of the complaint; and an assurance that steps will be taken to prevent recurrence of any discrimination and to correct its effects.

OCR evaluates the appropriateness of the responsive action to alleged discrimination on the basis of disability by assessing whether it was prompt, thorough, and effective. What constitutes a reasonable response to discrimination 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 discrimination, and remedy the effects of the discrimination on the student who was discriminated against. The college must also take steps to prevent the discrimination from recurring. Other actions may be necessary to repair the educational environment.

Analysis

Where, as here, the allegations filed with OCR have been investigated through a recipient's internal grievance procedures, OCR first thoroughly reviews all documentation of the recipient's investigation and resolution of the complaint to determine whether the recipient provided a resolution and remedy using legal standards and a process that meets Section 504 and Title II requirements. If OCR finds that the recipient has met these requirements, OCR generally will not conduct its own independent investigation. If OCR determines that the recipient has not met the requirements, it will determine the appropriate relief and, as necessary, conduct its own investigation.

The College's investigative report identified the evidence gathered, including a review of documents evidence and witness interviews, and described the rationale for each determination. The investigator reviewed applicable witnesses, except the PAP director who refused to cooperate, applied an appropriate standard, preponderance of the evidence, and reached determinations that reasonably appear to be supported by the evidence and are consistent with the requirements of Section 504 and Title II. OCR did not find any evidence that the investigation was biased against or for either the complainant or the College. The process followed was consistent with the process that OCR would have engaged in if it had investigated the matter. As such, OCR found that these aspects of the investigation are consistent with the requirements of Section 504 and Title II.

The College's investigation into the complainant's allegations failed to meet other requirements of Section 504 and Title II in that: 1) the College did not resolve the discrimination allegations promptly; 2) the College failed to implement the systemic remedies it identified as responsive to the discrimination findings; and 3) the College's written procedures do not comply with the requirements of Section 504 and Title II.

In this regard, the complainant's last discrimination allegation made to the College was in June of 2014. The College notified the complainant of the College's determination on December XX, 2014. Therefore, the timeframe for completion of the investigation was seven months, well beyond the requirements in the College's own policy, which calls for completion of the investigation in 90 calendar days.

Further, the College's administrative determination identified individual and systemic remedial actions that it would take to address the investigator's discrimination findings. With regard to the individual remedies called for in the administrative determination (reinstate the complainant and hire a note taker), OCR recognizes that they could not be implemented because the complainant was appealing them and she refused to re-enroll in the winter 2015.

However, the College also identified systemic remedies to address discrimination in its program which included hiring a DSS director, and training faculty, staff, and administrators on discrimination, retaliation, and DSS. The College hired a DSS Director, but did not provide the training/guidance to the PAP and DSS staff that was identified as needed in the College's December XX administrative determination. By failing to implement the systemic remedies that the College identified, the College failed to promptly address discrimination that it found to have occurred and identify ways to prevent its recurrence.

The College uses the RCCD process for addressing discrimination complaints. Notice of the procedures is provided to students through the Student handbook and is made available to the public on the website in several locations. The procedures provide for reasonably prompt timeframes for major stages of the complaint process.

However, the procedures as written fail to comply with Section 504 and Title II in several ways. Specifically, the policies require that a complaint must be filed on the State Chancellor's complaint form for it to be investigated. While not the situation in this case, the requirement that the complaint be written on a specific form could result in a circumstance in which the College has notice of discrimination but fails to investigate it because the complainant has not used the exact form required. If a complaint is brought to the attention of the College, but is not on the official complaint form, the College is still on notice of potential discrimination and must investigate. Moreover, the College's policies specify that complaints can only be filed by someone who has personally suffered unlawful discrimination or someone who has learned of unlawful discrimination in his or her "official capacity as a faculty member or administrator." The procedures do not allow for third party complainants who are not faculty members or administrators. If a third party provides the College notice of discrimination, under

Section 504 and Title II, the College is required to investigate and, if discrimination is found, take action to address it and prevent its recurrence. OCR also notes that the College's policies only provide appeal rights for complainants, not those accused of discrimination, thereby not providing an equitable response process. For these reasons, the College's policies and procedures for addressing discrimination complaints violate Section 504, Title II, and their implementing regulations.

In sum, OCR finds that the College's investigation and findings were thorough, impartial, and used the correct legal standard. However, the investigation was not prompt, far exceeding the College's timeframes, and the College failed to implement all of the systemic remedies it identified as needed to address discrimination findings and prevent its recurrence. For these reasons, OCR finds that the College violated Section 504 and Title II and the regulations with regard to the issue investigated.

Overall Conclusion

On May 17, 2016, the College submitted to OCR a signed Resolution Agreement (Agreement), which provides that the College reimburse the complainant for reasonable expenses associated with her enrollment at the college during the 2013-2014 school year, expunge her failing grade from winter 2014, create and implement note taking procedures, revise its grievance procedures to comply with Section 504 and Title II, provide guidance and training to DSS employees, and address the retaliatory conduct of the PAP Director. When fully implemented, the resolution agreement is intended to address all of OCR's compliance concerns in this investigation. OCR will monitor the implementation of the agreement until the College is in compliance with the Section 504, Title II, and their implementing regulations, which were at issue in the case.

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 closing the investigation of this complaint as of the date of this letter, and notifying the complainant concurrently. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

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 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.

If you have any questions about this letter, please call Danette Ng (Equal Opportunity Specialist) at (415) 486-5539.

Sincerely,

/s/

Anamaria Loya
Team Leader

Cc: Bradley Neufeld, Gresham Savage Nolan & Tilden, PC (via email)