



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

REGION IX
CALIFORNIA

50 UNITED NATIONS PLAZA
MAIL BOX 1200; ROOM 1545
SAN FRANCISCO, CA 94102

April 20, 2017

Dr. Laurel Jones
President
Cabrillo College
6500 Soquel Drive
Aptos, California 95003

(In reply, please refer to Docket # 09-16-2293)

Dear President Jones:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against Cabrillo College (College). The complainant alleged that the College discriminated against him on the basis of disability.¹ Specifically, OCR investigated the following issues:

1. Whether the College discriminated against the complainant when he was excluded from continuing to participate in a Kinesiology class and from taking any classes taught by the instructor of that class.
2. Whether the complainant was retaliated against for engaging in protected activity when he was permanently barred from taking any courses from the instructor and his hand-held device accommodation was revoked on March XX, 2016.²
3. Whether the College failed to engage in an interactive process to assess the complainant's needs and to determine if there was a non-discriminatory manner to allow him to participate in this class.
4. Whether the College failed to provide the complainant with the only accommodation it determined would be sufficient to allow him to participate in the education program in a nondiscriminatory manner, namely, an aide.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. §794, and its implementing regulation, at 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of federal financial assistance. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation, at 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities. As a recipient of federal financial assistance and as a public college, the College is subject to Section 504, Title II, and their implementing regulations.

¹ OCR previously identified the complainant in the initial notification letter to the College. We are withholding his name from this letter to protect his privacy.

² Based on facts that were revealed during the course of the investigation, OCR also analyzed whether or not the complainant was retaliated against for engaging in a protected activity and provided notification during the negotiations period.

To investigate this complaint, OCR conducted interviews with and reviewed documents and other information provided by the complainant and the College. After careful review of the information gathered in the investigation, OCR concluded that the College violated Section 504 and Title II and their implementing regulations with respect to issues one, two and three, but not with respect to issue four. The facts gathered by OCR, the applicable legal standards, and the reasons for OCR's conclusions are summarized below.

Factual Findings

The complainant is legally blind. He has Cerebral Palsy, legs of unequal lengths, and a learning disability. The complainant uses a cane when walking.

During the 2015-2016 academic year, the complainant enrolled in three Kinesiology classes with the College. The Kinesiology classes involve doing physical exercise, using weights and equipment, and moving from one exercise to another in rapid succession. The complainant participated in the Kinesiology classes with the assistance of an attendant provided by a non-profit organization. The College's Accessibility Support Center (ASC) approved the use of two accommodations for the Kinesiology classes, assignments in electronic format and use of his cell phone in class to keep track of his schedule and receive the order of the day's exercises in audio format.

According to the Kinesiology Instructor (Instructor), in the fall of 2015, after the complainant fell on a bench, the Instructor asked that an attendant who had been trained by the Instructor be used by the complainant. The Instructor stated that for the complainant to safely and quickly navigate the routine it was important to have someone who knew what exercises were coming up next. The Instructor stated that two of the trained attendants were sufficient to help the complainant in class.

According to the complainant and Instructor, the Instructor became concerned with the complainant's class participation during his second semester in spring 2016 because the attendants that helped the complainant navigate the classroom would sometimes fail to appear for class. When this happened, other students and the Instructor would try to perform the role of the attendant.

The Instructor explained that at the start of the 2016 semester, three different attendants who had not been trained by the Instructor showed up for different classes with the complainant. According to the Instructor, when an attendant with no training showed up, the Instructor still had to follow the complainant around the class to make sure he was safe during the 30 to 50 exercises per class period.

On January XX, 2016, during the complainant's third Kinesiology class that he took with the Instructor, she notified the complainant that he would not be permitted to participate in class without the presence of an attendant because the Instructor believed that she could not safely conduct the class if the complainant's attendant was not present. Both the Instructor and complainant stated that the complainant would not agree to this requirement.

After the Instructor issued the notification, a meeting was held between the head of the Kinesiology Department, the ASC Director, and the Instructor to develop terms for the complainant's participation in the Kinesiology class. The ASC Director informed OCR that because the complainant had already notified her that he was not interested in having limitations placed on his participation, he was not invited to attend the meeting.

On February X, 2016, the Instructor and ASC Director issued the complainant a document with six requirements for continued class participation. The document itself called the requirements “accommodations”:

- Class participation was only permitted with an aide who is trained in the course material and who can guide him through the exercises, use of equipment, and movement around the room and other students without one-on-one assistance from the Instructor.
- The complainant must be able to get himself in and out of the classroom without assistance from the Instructor or other students.
- The complainant cannot use students as volunteer guides in the class setting.
- The complainant was required to be ready for workouts that require him to be inside or outside the classroom which due to weather or change of course materials could not always be predicted ahead of time. There would also be some workouts that could not be accommodated due to the nature of the work out being fast paced with other students moving rapidly in the same space.
- The Instructor would send a general class outline to the complainant, but he would need to adjust to last minute changes.
- He could no longer expect to receive the amount of one-on-one training that he had previously received because it was not reasonable for the Instructor to provide it.

According to the complainant, a couple of days after he was provided the February X, 2016 document, he met with the ASC Director and another administrator and told them that he believed that the requirements were unfair. Despite their request that he sign his agreement to the requirements, he refused to do so.

On or about February X, 2016, the complainant complained orally about disability-based discrimination by the Instructor to the College President. In this regard, on February X, 2016, the ASC Director noted in the College’s record system for teacher and student concerns (record system) that the complainant has spoken with the College President and Vice President of Students to allege discrimination and that he might file a complaint with OCR. The ASC Director wrote in the system that she had informed the complainant that he would need his attendant to be able to attend the class and that his self-advocacy could result in him being dropped from the class entirely.

In an interview with OCR, the Instructor stated that after the complainant made his oral complaint, there was an increased level of tension between her and the complainant. The Instructor stated that the complainant’s anger made her uncomfortable, that the Dean of Student Services (Dean) offered to have the complainant barred from her class immediately, but that she thought it would be appropriate to let the complainant continue in the class.

The complainant acknowledged to OCR that after he received the requirements, he would place himself as far away from the Instructor as possible and interact with her as little as possible. The complainant explained that on one occasion, the Instructor asked him a question and he decided not to respond.

On February XX, 2016, in the record system, the Instructor wrote that:

- Due to the complainant’s inability to ambulate and do the exercises independently, she has had to work with him one-on-one at the expense of the rest of the class, she has trained his attendants, and has had to remove some of the workouts that the complainant could not safely do.

- Upon the complainant's request, she has emailed him the class formats in word documents each week.
- She also referred to the complainant's discrimination complaint against her, noting that the complainant was angry with her and his refusal to understand and accept the changes in reasonable accommodations put extreme tension on the student/teacher relationship.
- She stated that the complainant should no longer be allowed to enroll in classes that she taught, that she did not see a willingness on the complainant's part to acknowledge the accommodating measures that she has taken for him, and that his current attitude in class was making it difficult to work with him.

During her interview with OCR, when asked to describe all of the misbehaviors that the complainant exhibited, the Instructor could recall only one incident in which the Complainant was laying on the ground and would not respond to questions from the Instructor as to whether he was alright.

On March X, 2016, a meeting was scheduled with the complainant, the Dean, the ASC Director, the Kinesiology Program Chair, and the Instructor. Also in attendance were the complainant's two attendants (Attendant 1 and Attendant 2) and an advocate for the complainant. On March XX, 2016, the Dean sent the complainant a follow-up letter to the March X, 2016 meeting. The Dean reiterated that the complainant had to abide by the six requirements, and added another to the list. The last requirement removed what had been a previously approved accommodation for the complainant – use of a hand-held device in class. The Dean wrote that due to the Instructor's concerns, the Complainant would not be allowed to enroll in future classes with her.

According to the ASC Director, she was not consulted by the Dean regarding the decision to remove the accommodation of a hand-held device in the classroom. According to the complainant, he would use his hand-held device in class to keep track of the day's schedule. He would receive the order of the day's exercises in an audio format, and listen to it to help him know what he was supposed to do next in class. The complainant stated that he kept the volume low enough so that he could hear other students, his attendant, and the Instructor. The Instructor told OCR that she had never seen the complainant use the cell phone during class. The complainant recalled one time when the Instructor expressed concern that his cell phone use was preventing him from hearing instruction.

With regard to the complainant's oral complaint of disability discrimination, according to the College, there was no written response provided to the complainant because the College considered the issue to have been addressed in the March X, 2016 meeting with the Dean. The complainant ultimately abided by the requirements imposed on him on February X, March X, and March XX, 2016 and successfully completed the class.

The College's Student Conduct Code prohibits conduct, such as theft, violating academic integrity, physical abuse, and engaging in disruptive behavior. Students can be held accountable in multiple ways, including through removal from a class or class period(s). Students have the right to appeal such a determination; however, the complainant was not provided with notice of the right to appeal.

In an interview with OCR, the Dean stated that although the complainant may not have violated the Student Conduct Code, the complainant had been somewhat difficult in the meeting on March X, 2016, specifically he had stated that he wanted to toss the six requirements in the trash. In response to OCR's request for a non-disabled student who was treated similarly by the

College with respect to the punishment issued, the College provided one example of a student who had been disrespectful and disruptive to instruction during class on multiple occasions. However, the records reviewed reflect that the student had not been barred from taking future classes with her instructor. Rather, she had been warned that she would be disciplined, if she continued to behave the same way in class. The Dean asserted despite there being no record of it, this student had been asked to stop attending this class.

Issue 1: Whether the College discriminated against the complainant when he was excluded from continuing to participate in a Kinesiology class and from taking any classes taught by the instructor of that class.

Legal Standard

Under the Section 504 regulations, at 34 C.F.R. §104.4(a) and (b), no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance. The Title II regulations, at 28 C.F.R. §35.130(a) and (b), create the same prohibition against disability-based discrimination by public entities. Under 34 C.F.R. §104.4(b)(1) and 28 C.F.R. §35.130(b)(1) a recipient college may not, directly or through contractual, licensing, or other arrangements, on the basis of disability, deny a qualified disabled individual the opportunity to participate in or benefit from an aid, benefit, or service.

To determine whether an individual has been discriminated against on the basis of disability under Section 504 and Title II, OCR looks at whether there is evidence that the individual was treated differently than non-disabled individuals under similar circumstances, and whether the treatment has resulted in the denial or limitation of services, benefits, or opportunities. If there is such evidence, OCR examines whether the college provided a nondiscriminatory reason for its actions and whether there is evidence that the stated reason is a pretext for discrimination. For OCR to find a violation, the preponderance of the evidence must establish that the college's actions were based on the individual's disability

Analysis

During the course of the investigation, the complainant and College both acknowledged that the complainant was not excluded from and, in fact, successfully completed the spring 2016 Kinesiology class. OCR, therefore, focused on whether the complainant was discriminated against on the basis of disability when he was prohibited from taking future classes taught by the Instructor.

OCR found that, on March XX, 2016, the Dean informed the complainant that due to the Instructor's concerns, the complainant would not be allowed to enroll in any future classes taught by the Instructor. To determine whether this constituted different treatment than similarly situated students without disabilities, OCR examined whether students without disabilities were similarly barred from taking a class from an instructor under similar circumstances.

The College acknowledged that the complainant did not violate the Student Conduct Code. When asked for evidence of a similarly situated student without a disability, i.e. one who had not violated the Student Conduct Code but who was nevertheless permanently barred from taking classes with a College instructor, the College provided information regarding one non-disabled student in the fall of 2014 that it considered to be similarly situated to the complainant. The College stated that this other student was asked orally to drop the class after the being warned

that disciplinary action may be taken. However, the College was unable to provide documentation showing that the other student was similarly permanently restricted from enrolling in courses taught by her instructor. In addition, the student's behaviors were more severe than those of the complainant in that the student had disrupted classes on several occasions. Therefore, OCR found sufficient evidence of a prima facie case of different treatment.

OCR then examined whether the College provided a nondiscriminatory reason for barring the complainant from taking future classes with the Instructor. In an interview with OCR, the Dean stated that the complainant's behavior, including during the March 3, 2016 meeting, and the safety concerns due to his disability were the reasons why the complainant was barred from future classes with the Instructor. However, the Dean did not articulate the safety concern to the complainant in her March XX letter. The Dean's letter stated that the rationale for barring the complainant from future classes with the Instructor was a "result of the frustration and concern expressed by the Instructor." Nonetheless, OCR examined both reasons proffered by the College.

Behavioral Concerns

The evidence shows and the Instructor informed the complainant that due to the complainant's disability, he could not attend class without the presence of a trained attendant. Because the complainant disagreed with this requirement and believed it was discriminatory, the complainant made an oral complaint of disability discrimination to the College administration soon thereafter. According to the Instructor, as a result of this complaint and the complainant's anger about the requirements issued, there was increased tension between her and the complainant and she felt uncomfortable having the complainant in her class.

As stated above, neither the Instructor nor the Dean could identify any behavior exhibited by the complainant that would have abrogated the College's Student Conduct Code. The complainant acknowledges that he was upset with the Instructor for having issued the requirements for class participation. The complainant acknowledges that there was one instance in which he did not respond to a question that had been repeated by the Instructor several times. In the College record system, on February XX, 2016, the Instructor noted her frustration with the complainant stemmed from the amount of effort she had put into accommodating the complainant, the complainant's discrimination complaint filed against her, and his demonstrated anger towards her by not responding to her questions on one occasion. In the same report, she asked that the complainant no longer be allowed to enroll in classes that she taught. The Dean also noted a concern with the complainant's behavior during the March X, 2016 meeting in her March XX, 2016 letter to the complainant, including that he wanted the requirements to be tossed in the trash.

OCR found that the Instructor was frustrated with the complainant in her class for several reasons, including the challenge of accommodating his disabilities, the fact that he accused her of disability discrimination, and also based on his behavior (refusing to answer her questions on one occasion and stating in the March X meeting that he would like to throw her conditions in the trash). OCR did not find any evidence that similarly situated students had been barred from further classes for this level of behavior, and the College admitted that this behavior was not sufficiently disruptive so as to violate the Student Conduct Code to have a ban on all future classes, without being given the opportunity to correct the alleged behavior or appeal. Also, the College recognizes that after the discussion, the complainant successfully completed the class. The preponderance of the evidence shows that the College put the restriction on the

complainant with regard to enrollment in the Instructor's future classes as a result of the Instructor's discomfort with him for reasons related to his disability. Discomfort with the complainant due to either the challenge of accommodating his disabilities or because he filed a discrimination complaint are not legitimate reasons for treating him differently than other students with respect to disciplinary action.

Safety Concerns

The College also cited safety concerns as to why the complainant was barred from taking future classes with the Instructor. In her February XX, 2016 record entry, the Instructor noted several safety concerns related to the complainant's participation in her class, which made it necessary for him to attend class with a trained attendant. Although it may have been appropriate to develop requirements for the complainant to ensure the safe conduct of the class, as described below in issue two, the process used to develop the requirements did not include the complainant. The evidence shows that when accompanied by a trained attendant, the complainant was able to participate in the class in a safe manner, and the College agreed that the complainant could attend with a trained attendant. The College was not able to explain to OCR why barring the complainant from the Instructor's courses, as opposed to any other instructor's Kinesiology courses addressed a safety concern posed by the complainant's disability. The investigation revealed no evidence that the College engaged in a formal process to determine whether accommodating the complainant's disability would have constituted a fundamental alteration of the program or an undue burden for the College, including providing the required written notice that it had reached such a decision. OCR does note, however, that ultimately the complainant was able to complete the course in which he was enrolled with a trained attendant, and the harm was a future one should he wish to enroll in more courses that are taught by the Instructor.

For these reasons, OCR found that the College was not in compliance with Section 504 and Title II and their implementing regulations because it treated the complainant differently based on his disability when it banned the complainant from taking any future classes with the Instructor.

Issue 2: Whether the complainant was retaliated against for engaging in protected activity when he was permanently barred from taking any courses from the Instructor and his hand-held device accommodation was revoked on March XX, 2016.

Legal Standard

The Section 504 regulations incorporate 34 C.F.R. §100.7(e) of the regulations implementing Title VI of the Civil Rights Act of 1964 and prohibit colleges from intimidating, coercing, or retaliating against individuals because they engage in activities protected by Section 504. When OCR investigates an allegation of retaliation, it examines whether the alleged victim engaged in a protected activity and was subsequently subjected to an adverse action by the college, under circumstances that suggest a connection between the protected activity and the adverse action. If a preliminary connection is found, OCR asks whether the college can provide a nondiscriminatory and non-retaliatory reason for the adverse action. OCR then determines whether the reason provided is merely a pretext and whether the preponderance of the evidence establishes that the adverse action was in fact retaliation.

Analysis

The facts show that the complainant engaged in a protected activity when he complained of disability discrimination by the Instructor sometime between February X and X, 2016. The complainant was subjected to two adverse actions on March XX, 2016: (1) barring the complainant from taking future classes with the Instructor and (2) revoking a previously approved accommodation regarding using assistive technology to follow the class routine during class. Because the complainant's protected activity occurred between February X and X, 2016, and the adverse actions occurred approximately six weeks later, OCR found a temporal causal connection between the adverse action and the protected activity, thus establishing a prima facie case of retaliation.

Barring the complainant from Taking Future Classes

As described above, the College asserts that the complainant was barred from taking future classes with the Instructor because of his behavior and safety concerns. Prior to the complainant alleging disability discrimination, the Instructor was frustrated with the amount of effort needed to accommodate the complainant, especially when he attended class without an attendant who was not trained by the Instructor. Prior to his complaint, the Instructor addressed her concerns by contacting ASC and in collaboration with ASC, communicated to the complainant that he would only be permitted to attend class with an attendant that was trained. It was not until after the complainant complained of disability discrimination to the College President that the ASC Director and the Instructor documented a student concern in the College's student record system. The Instructor acknowledged in her interview with OCR and in the College's record system that one of the reasons that she did not want the complainant as a student in the future was that she was uncomfortable having the complainant in her class after he made a discrimination complaint against her. The ASC Director wrote in the record system that the complainant's self-advocacy could result in him being dropped from the class entirely.

The behavior that the Instructor alleges to have made her uncomfortable, latent anger and one occasion of the complainant not responding to her questions after the requirements were issued, do not rise to the level of misbehavior that would invoke a disciplinary measure, according to the College. As discussed above, there is insufficient evidence that the College has permanently barred another student who had not violated the Student Conduct Code from taking classes with an instructor.

The College's failure to follow its own policy or offer the complainant an opportunity to appeal the determination taken together with the written evidence that the Instructor and ASC Director wanted to exclude the complainant because he made an oral discrimination complaint and engaged in advocacy related to that complaint, support finding that the actions taken against the complainant were retaliatory. As such, OCR finds evidence both that the College barred the complainant for reasons associated with his disability and based on retaliation for the complainant having engaged in a protected activity. Where, as here, OCR finds that a College has two impermissible motivations for its actions, one of which is retaliation, OCR will find unlawful retaliation in violation of Section 504 and Title II and their implementing regulations.

Revocation of the Use of Assistive Technology

The College engaged in an adverse action when it revoked the complainant's use of assistive technology (his hand-held device), as a result of the March X, 2016 meeting, wherein the Dean stated that one of two reasons for the meeting was to discuss the disability discrimination complaint. In the March XX, 2016 letter, the Dean's only rationale for revoking the accommodation was that it impeded the complainant's ability to hear instructions from the

Instructor. As such, OCR's investigation focused on whether the College's stated reason was a legitimate, non-retaliatory reason and whether there was evidence that the stated reason was in fact pretext for retaliation. In this regard, the complainant informed OCR that on one occasion the Instructor told him she was concerned that his use of the device prevented him from hearing instruction. A review of the records, including the concerns identified by the Instructor in the student record system, did not reveal any documented issues with the complainant's use of this accommodation. In an interview with OCR, the Instructor stated that she had never seen the complainant use his hand-held device in class. OCR found that the District failed to follow its own procedures in revoking the accommodation because it failed to involve ASC in the determination.

OCR determined that the failure of the College to follow procedures and the lack of support for the Dean's stated reason from the Instructor for revoking the accommodation provided sufficient evidence of pretext. Absent the stated reason, the Dean's other stated reason for the meeting was to discuss the complaint of discrimination, which the Dean stated was resolved, in part by revocation of the accommodation. Therefore, OCR determined by a preponderance of the evidence that a motivating reason for the revocation was retaliation for the oral complaint of discrimination and subsequent advocacy in violation of Section 504 and Title II and their implementing regulations.

Issue 3: Whether the College failed to engage in an interactive process to assess the complainant's needs and to determine if there was a non-discriminatory manner to allow him participates in this class.

Legal Standard

Under the requirements of Section 504 and Title II, a student with a disability is obligated to notify the college or university of the nature of the disability and the need for a modification, adjustment, aid or service. Once a college or university receives such notice it has an obligation to engage the student in an interactive process concerning the student's disability and related needs. As part of this process, the college or university may request that the student provide documentation, such as medical, psychological or educational assessments, of the impairment and functional limitation.

The Section 504 regulations, at 34 C.F.R. §104.44(a), require recipient colleges and universities to make modifications to their academic requirements that are necessary to ensure that such requirements do not discriminate, or have the effect of discriminating, against qualified individuals with disabilities. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific required courses, and adaptation of the manner in which courses are conducted. However, academic requirements that recipient colleges and universities can demonstrate are essential to the program of instruction being pursued or to any directly related licensing requirement will not be regarded as discriminatory.

Under the Title II regulations, at 28 C.F.R. §35.130(b)(1)(ii) and (iii), public colleges and universities may not afford a qualified individual with a disability opportunities that are not equal to those afforded others, and may not provide aids, benefits or services that are not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others. Under 28 C.F.R. §35.130(b)(7), public colleges and universities must make reasonable modifications in policies, practices or procedures when necessary to avoid discrimination on the basis of disability, unless doing so

would fundamentally alter the nature of the service, program or activity. Section 35.103(a) provides that the Title II regulations shall not be construed to permit a lesser standard than is established by the Section 504 regulations. Therefore, OCR interprets the Title II regulations to require public colleges and universities to provide necessary academic adjustments to the same extent as is required under the Section 504 regulations.

Analysis

The complainant alleged that the College imposed six requirements on class participation and removed an accommodation without his input, thereby failing to follow the interactive process. The evidence gathered in the investigation, including the testimony of College staff, show that the determinations regarding the need for the complainant to have his attendant with him during class and the list of six requirements, which were referred to as “accommodations” by the College, were developed without engaging in an interactive process with the complainant. In addition, as discussed above, the College revoked his hand-held device accommodation without the involvement of ASC. The complainant was notified that he would have to agree to abide by the “accommodations”, or would not be permitted to attend the class. The College did not discuss with the complainant if there were other accommodations or auxiliary aids that would allow him to access to the class. Accordingly, OCR determined that the failure to engage in an interactive process with the complainant regarding his needed accommodations for participation in the Kinesiology class was a violation of Section 504 and Title II and their implementing regulations.

Issue 4: Whether the College failed to provide the complainant with the only accommodation it determined would be sufficient to allow him to participate in the education program in a nondiscriminatory manner, namely, an aide.

Legal Standard

The Section 504 regulations at 34 C.F.R. §104.44(d)(2) provide that auxiliary aids may include taped texts, interpreters or other effective methods of making orally delivered materials available to students with hearing impairments, readers in libraries for students with visual impairments, classroom equipment adapted for use by students with manual impairments, and other similar services and actions. Recipients need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

Analysis

The complainant did not request that the College provide him with an attendant. The College did not approve an attendant as an accommodation for the Complainant. Because Section 504 regulations do not require that the College provide a personal attendant to the complainant, and, OCR determined during the investigation that the complainant was not asserting that he was denied a personal attendant from the College, OCR finds insufficient evidence of noncompliance with Section 504 and Title II and their implementing regulations with respect to this issue.

Conclusion

To address the identified areas of noncompliance, the College entered into the enclosed Resolution Agreement which is aligned with the complaint allegations, the findings made, and the evidence obtained by OCR during its investigation.

Based on the commitments made in the Resolution Agreement, OCR is closing the investigation of this complaint as of the date of this letter, and notifying the complainant concurrently. 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 Resolution Agreement until the College is in compliance with the statutes and regulations at issue in the case with respect to the issues investigated.

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, retaliate, 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.

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact Investigator Robert Danese at (415) 486-5512.

Sincerely,

/s/

Sara Berman
Team Leader

Enclosure