



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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

July 12, 2018

VIA ELECTRONIC MAIL

Dr. Willard Clark Lewallen, Ph.D.  
Superintendent/President  
Hartnell Community College District  
411 Central Avenue  
Salinas, California 93901

(In reply, please refer to case no. 09-17-2578.)

Dear Dr. Lewallen:

This letter is to inform you that the U.S. Department of Education (the Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the Hartnell Community College District (District). On October 23, 2017, OCR notified the District that it was opening for investigation a complaint alleging discrimination on the basis of disability. Specifically, OCR opened for investigation the following issues:

1. Whether the District subjected the Complainant<sup>1</sup> to different treatment on the basis of disability by removing him from the nursing program for behavior without notifying the Complainant of the specific behavior at issue and without following the District's procedures for removing students from the nursing program; and
2. Whether the District failed to respond adequately to the Complainant's complaint alleging disability-based discrimination.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulations, at 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability in programs and activities operated 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 regulations, 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 education entity, the District is subject to Section 504, Title II, and their implementing regulations.

To investigate this complaint, OCR interviewed the Complainant, his Instructors for the spring 2017 semester, the Dean of Nursing (Dean), the Superintendent/President of the District (President), and the Director of the College's Department of Supportive Programs and Services. OCR also obtained and reviewed documentation from the Complainant and the District relevant to the allegations, including emails, notes, transcripts, college policies and procedures, and other information.

---

<sup>1</sup> OCR notified the District of the Complainant's identity in its October 23, 2017 notification letter. The Complainant's name is withheld here in order to protect his privacy.

With respect to Issue 1, prior to OCR concluding its investigation, the District expressed an interest in pursuing an agreement pursuant to Section 302 of OCR's *Case Processing Manual*<sup>2</sup> (CPM), and OCR agreed that it was appropriate to do so. OCR found sufficient evidence to support a finding of noncompliance on Issue 2. The enclosed Resolution Agreement addresses concerns regarding Issue 1 and the finding of noncompliance on Issue 2. The findings of fact, legal standards, and analysis for each issue follow.

**Issue 1: Whether the District subjected the Complainant to different treatment on the basis of disability by removing him from the nursing program for behavior without notifying the Complainant of the specific behavior at issue and without following the District's procedures for removing students from the nursing program.**

Findings of fact

Hartnell Community College District is a public community college district. The District offers an Associate Degree in Registered Nursing (RN Program).

The Complainant has been diagnosed with a mental impairment which does, when active and/or not ameliorated by mitigating measures, substantially limit one or more of his major life activities.<sup>3</sup> (The Complainant's mental impairment will hereinafter be referred to as his disability.)

In spring 2017, the Complainant was enrolled in his second semester of the RN Program. The applicable requirements for the RN Program are provided in several documents, including but not limited to the RN Program *Student Handbook*, and the RN Program *Policy and Procedure Manual*.

The *Student Handbook* and *Policy and Procedure Manual* include information related to safe practice in the clinical setting by students in the RN Program. The 2016-2017 *Student Handbook* defined "unsafe clinical practice" as "behavior that threatens or violates the physical, biological, or emotional safety of the client, family, students, faculty, staff, or self." The *Student Handbook* provided that, "If a student is inadequately prepared or considered unsafe, the student may be dismissed from the clinical environment, resulting in an absence, or, in extreme cases, academic failure." In addition, it stated that "The student will receive a 'Performance Improvement Plan (PIP)' if inadequate performance or client care in the clinical setting is demonstrated" and that the student may not return to the clinical setting until the PIP is successfully completed. Further, it stated that "a student demonstrating a suspected or actual substance abuse problem, mental illness behaviors that are a possible risk to the student or others, or conditions that impair functioning will be removed from the clinical setting immediately." This section concluded by stating "unsafe or unprofessional clinical practice may result in the following: Performance Improvement Plan; an evaluation conference; immediate removal from the clinical site; academic failure."

---

<sup>2</sup> The CPM is available at <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.

<sup>3</sup> The term "mitigating measures" refers to but is not limited to reasonable modifications or auxiliary aids or services, learned behavioral or adaptive neurological modifications, psychotherapy, behavioral therapy, or other measures. See 28 C.F.R. § 35.108 (d)(4).

The *Policy and Procedure Manual* provided additional relevant information. Policy #8 on Student Impairment applied to students “impaired by alcoholism, drug abuse, and emotional illness.” Provision F of Policy #8 stated that “The clinical instructor has the responsibility to remove the student from the clinical site if the student is behaving in an unsafe or impaired manner.” Policy #8 did not refer to a PIP or evaluation conference, which had been referenced in the *Student Handbook*.

In summary, with respect to unsafe clinical practice by a student in the RN Program, the *Student Handbook* and the *Policy and Procedure Manual*, when read together, provided that if a student is deemed unsafe in clinical, the student will be removed from the clinical setting, and subsequently this may result in a PIP, an evaluation conference, or academic failure. The documents did not provide specific criteria or procedures for any of the possible outcomes listed, or which District faculty or other employees would make such determinations.

In addition to these relevant documents, the District has an agreement with a local healthcare system (Health System) to furnish clinical experience and facilities for students in the RN Program. The agreement provides that, among other things, neither the District nor the Health System will discriminate against any person on the basis of disability. It also provides that the Health System “may request that the [District] withdraw from the Program any Student whom [the Health System] determines, in its sole and absolute discretion, is not performing satisfactorily, refuses to follow [the Health System]’s administrative policies, procedures, rules and regulations or violates any local, federal, or state laws. Such requests must be in writing and must include a statement as to the reasons why [the Health System] desires the Student withdrawn.”

In the 2016-2017 academic year, the Complainant was registered with the College’s Department of Supportive Programs and Services (DSP&S). Documentation from DSP&S stated that the Complainant’s disability may impact his ability to pay attention and attend classes. The Complainant completed the fall 2016 semester satisfactorily. In January 2017, DSP&S qualified the Complainant for a reduced distraction testing environment in several of his courses.

OCR’s interviews with District employees established that several affirmatively knew about the nature of the Complainant’s disability before March 2017, and several suspected that he had a disability although they were uncertain of the nature. The Dean and one of the nursing instructors knew the nature of the Complainant’s disability because he had told them, and had been aware of it for more than a year. Two instructors told OCR that they did not recall how they knew about his disability, but they were told or overheard it at some point prior to March 2017, and both correctly identified the diagnosis to OCR. The Clinical Instructor and one remaining instructor both suspected that the Complainant had a disability based on some of his behavior, but did not know the nature of it.

On March XX, 2017, the Complainant reported to the Health System site for his last day of a clinical course. The only individuals present when he reported to the clinical setting were the Complainant, Nurse 1, and Nurse 2. The first activity was to listen to Nurse 2’s report on her just-completed night shift. The Complainant reported to OCR that he understood his role as listening to and observing Nurse 2’s report, and that he had quietly looked up relevant resource material on his phone during her report and also tried to find a patient care plan in his papers.

According to the Clinical Instructor's later summary of events, Nurse 1 reported to the Clinical Instructor that during the 15 minutes it took for Nurse 2 to provide a report on her completed shift, the Complainant was distracted and agitated, on his phone, and shuffling papers. Nurse 1 told the Clinical Instructor that she told the Complainant to put his phone away, which he did, but then he took it out again and had to be asked again to put it away. Nurse 1 reported that the Complainant's frenetic behavior made it difficult for her to concentrate on Nurse 2's report, and she didn't feel like he was interested in being at clinical. She was also concerned for her safety and for the safety of the patients in her care. Nurse 1 told the Clinical Instructor that she had worked on the unit for 30 years and had never before felt a student was unfit for safe clinical practice. The Clinical Instructor stated in her summary that when she met with the Complainant, she noted his agitated state, and discussed her concerns about his behavior and him being unfit to remain at clinical. She called the Dean with the Complainant to discuss the Complainant's over-activity and unfitness to remain at the clinical site. They made plans for the Complainant to meet with the Dean after leaving the facility.

In her interview with OCR, the Clinical Instructor stated that Nurse 1 believed that the Complainant was not listening to the details from her report so that he would perform safely with patients, and that his behavior was distracting to Nurse 1, therefore inhibiting her ability to take notes and ensure that she captured important details. The Clinical Instructor explained to OCR that based on the agreement with the Health System, the site's request that a student leave is final, and if they ask the clinical students to be dismissed, they leave.

The Dean told OCR that when she met with the Complainant on March XX, 2017, she felt that the Complainant knew his behavior was not acceptable, and it was a sad situation. From the Dean's perspective, the Complainant's erratic behavior sounded unsafe, as Nurse 1 felt that the Complainant was not able to attend safely to patients. The Dean told OCR that she did not know why Nurse 1 herself felt unsafe around the Complainant.

In the late evening of March XX, 2017, the Complainant emailed the Dean and other nursing faculty and suggested that he could attend the clinical at a different site used by the District in order to avoid missing more clinical days. The Dean instructed him that he would not be allowed to attend the clinical class at the other site and that if he attempted to, he would be escorted off the site. The Complainant was marked absent for March XX, 2017. The attendance policy for the District in the *Student Catalog* stated that missing more than two class weeks consecutively or cumulatively may result in being dropped from the course by a professor. Since the clinical course was a twice weekly class, more than four absences constituted missing two class weeks. Prior to March XX, 2017, the District's records showed that the Complainant had been absent twice from the clinical course. The Complainant did not attend his clinical course, as he had been instructed by the District, on March XX, XX, or XX, 2017. His absence on March XX, 2017 technically meant that he had missed more than two class weeks (i.e., five absences).

On March XX, 2017, the Dean wrote a statement that the Complainant was dismissed from his clinical class for behavior described by the hospital staff as erratic, distracted, agitated and frenetic. She wrote that as a result, the Complainant exceeded the number of absences allowed per course and did not meet clinical objectives necessary to pass the clinical course.

When OCR asked the President whether the Health System had requested withdrawal of the Complainant in writing pursuant to the agreement between the District and the Health System, he responded that there was no request in writing because there was no request from the Health System that the student be removed completely from the clinical site.

### Legal standards

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 public 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 (34 C.F.R. § 104.4(b)(1)(i)) or afford a qualified disabled individual an opportunity to participate in or benefit from an aid, benefit, or service that is not equal to that afforded others. (34 C.F.R. § 104.4(b)(1)(ii)).

To determine whether an individual has been discriminated against on the basis of disability under Section 504 and Title II, OCR first examines whether there is direct evidence of discriminatory treatment on the basis of disability. Absent that, 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 and conclusion

In this matter, the District made crucial decisions regarding the Complainant at two junctures: first, in determining that he was unsafe in the professional judgment of the Clinical Instructor and the Dean; and second, in dismissing the Complainant for absences and his failure to meet clinical and RN Program objectives, including unsafe clinical behavior.

With respect to the first decision, there was some inconsistency in how District staff members understood the process for determining the Complainant was unsafe. The Clinical Instructor's removal of the Complainant from the clinical setting was consistent with the policies and procedures in place; that is, that a student who was believed to be unsafe would be removed immediately from the clinical setting. The Clinical Instructor agreed with Nurse 1's assessment that the Complainant's behavior sounded unsafe, but she was not present and did not have any additional insight into how erratic, frenetic, or distracting the Complainant was during Nurse 2's report. She believed that the Health System site's decision to have the Complainant removed was final. The District does not have a written procedure in place for what happens after a student is removed for unsafe behavior, but based on what happened in this case, it seems that the next step was for the Complainant to meet with the Dean. Like the Clinical Instructor, the Dean was not present at the incident. She agreed that it sounded unsafe, but

was not able to provide any additional insight or details into how the vaguely described behaviors were unsafe, and there is no evidence that she spoke with anyone – other than the Complainant – with direct knowledge of what had occurred. It is, therefore, not clear how the District reached its determination other than agreeing with Nurse 1 that it sounded unsafe. Furthermore, the agreement between the District and the Health System required that the Health System provide its request that a student be removed from a site for unsafe behavior in writing. The Health System did not request, in writing, that the Complainant be removed, which could suggest that the Health System, whose employees had direct knowledge of his behavior, did not believe that the Complainant needed to be removed. Without more information, it is not clear whether the District reached its determination based on the specific incident at issue, or simply because of its knowledge of the Complainant’s disability.

Secondly, the District repeatedly explained to OCR that it was academic factors which lead to the Complainant’s dismissal, including excessive absences and a failure to meet clinical and RN Program objectives. While the purely academic decisions of the District deserve deference from OCR, extending this deference to the Complainant’s claim that he was discriminated against on the basis of disability in his removal from clinical and subsequent dismissal would unjustifiably insulate even actions taken for discriminatory reasons. The RN Program’s policies and procedures allowed considerable discretion in how a student’s unsatisfactory performance may be addressed, and included options such as dismissal, academic failure, a Program Improvement Plan, and an evaluation conference. Which option is appropriate under what circumstances and who makes those decisions is completely undefined in the RN Program’s policies and procedures.

Prior to concluding the investigation of Issue 1 and reaching a conclusion regarding the District’s compliance or non-compliance, the District expressed an interest in pursuing an agreement pursuant to Section 302 of the CPM, and OCR agreed it was appropriate to do so. The District has agreed in the enclosed Resolution Agreement to develop a procedure for the review of a student’s removal from clinical due to unsafe clinical practice.

**Issue 2: Whether the District failed to respond adequately to the Complainant’s complaint alleging disability-based discrimination.**

*Findings of fact*

The District identified to OCR three policies and procedures as applicable to disability discrimination complaints: Board Policy/Administrative Procedure 5530 (BP 5530 and AP 5530) and Administrative Procedure 3435 (AP 3435).

BP 5530, entitled “Student Rights, Grievances, and Complaints,” stated that it applied to student grievances or complaints regarding: discrimination on the basis of sex, race, color, ancestry, ethnic group, religion, national origin, sexual orientation, or disability; arbitrary imposition of sanctions without proper regard for individual civil rights and due process; prejudiced or capricious decision in the academic evaluation of a student’s performance; or other complaint(s) as determined in the legislation and policies referenced in the policy. AP 5530 stated that the purpose of the procedure was to provide a prompt and equitable means of resolving student grievances. The procedure described in AP 5530 started with informal resolution, and if unsuccessful, the student could request a grievance hearing. The hearing panel then would decide, without holding a hearing at that point, whether there were sufficient

grounds for a hearing. The grievance was required to meet five requirements at that stage in order to establish grounds for a hearing: (a) the statement contains facts which, if true, would constitute a grievance under these procedures; (b) the grievant was a student; (c) the grievant was personally and directly affected by the alleged grievance; (d) the grievance was filed in a timely manner; and (e) the grievance is not clearly frivolous, clearly without foundation, or clearly filed for purposes of harassment. If the grievance did not meet all of those requirements, the Hearing Panel chair would notify the student in writing of its rejection, including the specific reasons for the rejection and the procedures for appeal within 10 days of the Hearing Panel's decision. If the request for a hearing satisfied the requirements, the Director of Student Affairs would schedule a grievance hearing to occur within 10 days of the decision to grant a grievance hearing. The parties would be given no less than 5 days of notice of the date, time, and place for the hearing. AP 5530 sets out additional requirements for the process of a grievance hearing, including timelines and the content of decisions, among other things. The final decisions on the grievance – both the decision about whether to hold a hearing and the outcome of a hearing, if granted – is made by the President.

AP 3435, "Discrimination and Harassment Investigation," designated the Chief Human Resources Officer as the responsible officer for receiving complaints and coordinating their investigation. AP 3435 frequently references sexual harassment and sexual violence, suggesting that it may be interpreted as a sexual harassment policy rather than a general discrimination and harassment investigation procedure. There was no hearing procedure under AP 3435; rather, it provided for a single investigator model. The process provided for 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; and an assurance that steps will be taken to prevent recurrence of any discrimination and to correct its effects. AP 3435 does not, however, specify how or if the parties will be notified of the final decision, though it is implied in several areas.

The President told OCR that BP/AP 5530 is the typical entry point for a student with a complaint, and generally the District would try to determine at that point whether or not it was a complaint of discrimination or harassment that should be processed through AP 3435. If so, the District typically hired an outside investigator. OCR asked in its interview what the standard was for determining whether or not there would be a grievance hearing. The President responded that there was no rubric, and that unless he sees an egregious error, he will uphold the hearing panel's decision.

On March XX, 2017, the Complainant filed a grievance with the District pursuant to BP/AP 5530. The Complainant wrote on the grievance form that he had been unjustly expelled from the Health System site, and that he wanted the grievance resolved by being able to complete his second semester of the RN Program. On April XX, 2017, the Complainant emailed a complaint addendum to the Director of Student Affairs, who was responsible for processing the grievance form. The two page addendum describes the facts—as the Complainant alleged them—surrounding his dismissal from the clinical site on March XX, 2017. While the addendum did not directly identify the Complainant as a person with a disability, it stated, *inter alia*, that he believed his dismissal was evidence of the District's "unlawful stigmatization of a class of people who have received legal protection," "prejudice toward a protected class," and "an institutional bias against mental illness."

On June X, 2017, the Director of Student Affairs notified the Complainant by letter that his informal grievance was denied based on the following: (a) his March XX, 2017 behavior was not acceptable in

the clinical course; (b) his removal from the Health System site resulted in more absences than was allowed by policy; and (c) he did not meet clinical objectives due to removal from clinical site. The letter advised the Complainant of his right to appeal the informal resolution pursuant to AP 5530. The Complainant filed for a grievance hearing on June XX, 2017, and the Grievance Hearing Panel met on June XX, 2017. On July X, 2017, the Hearing Panel Chair sent a letter to the Complainant notifying him that his request for a grievance hearing was denied because his claims contained facts that did not constitute a grievance under AP 5530. Specifically, the Hearing Panel Chair wrote that termination of student enrollment due to excessive absences is not covered under AP 5530.

The Complainant appealed the Grievance Hearing Panel's decision on July XX, 2017 to the President, who acknowledged receipt on the same date. The Complainant emailed the President on July XX, 2017, and stated that his grievance was in regard to illegal discrimination, not absences, and that neither the RN Program nor the hearing panel had addressed that claim. On July XX, 2017, the President notified the Complainant that he supported the determination of the hearing panel, and that his decision was final and not subject to further appeal pursuant to BP/AP 5530. The President provided information to the Complainant in the cover email about how to file a discrimination complaint pursuant to AP 3435. The Complainant did not file a complaint pursuant to AP 3435.

In its narrative response to OCR's data request, the District explained that it was not clear that the Complainant was making a complaint of disability discrimination until the District received notice of the OCR investigation. The District further stated that the Complainant's written addenda did not clearly put the college on notice that the complainant's grievance was a discrimination complaint against the District based on his disability.

### 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 recipient/public entity's grievance procedures are prompt and equitable, such as 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.

### Analysis and conclusion

BP/AP 5530 meets many of the requirements for a grievance procedure pursuant to Section 504/Title II if a hearing is granted. It provides notice of the procedure to students, 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; and an assurance that steps will be taken to prevent recurrence of any discrimination and to correct its effects. It is not clear on the face of BP/AP 5530 how or if the parties would be notified of the outcome, although this is implied. However, if the threshold determination by the Hearing Panel for whether or not there will be a hearing is not met, then BP/AP 5530 does not meet the requirements of Section 504/Title II. Specifically, without meeting the threshold requirement to proceed with a hearing, BP/AP 5530 does not provide for an adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence or designated and reasonably prompt timeframes for major stages of the complaint process.

AP 3435 provided for a single investigator model, without use of a hearing panel. It provided notice of the procedure to students, including where to file complaints and application of the procedure to complaints alleging discrimination by employees, other students, or third parties, but the periodic references specifically to sexual harassment and sexual violence are confusing, suggesting that the procedure does not apply uniformly to other types of discrimination. AP 3435 provides for 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; consideration of interim remedies, a prohibition against retaliation, and an assurance that steps will be taken to prevent recurrence of any discrimination and to correct its effects. It is not clear on its face that AP 3435 requires that parties would be notified of the outcome, although it is implied.

Therefore, OCR concluded that, as written, BP/AP 5530 and AP 3435 do not provide effective notice of which policy should apply to a complaint of discrimination based on disability, BP/AP 5530 does not comply with Section 504 and Title II unless a hearing is granted, and neither clearly states how or if the parties would be notified of the outcome under the policies and procedures. The enclosed Resolution Agreement requires the District to revise BP/AP 5530 and AP 3435 to address these compliance issues.

With respect to the District's response to the Complainant's grievance, the District's assertion that it was unaware that he was alleging discriminatory treatment until he filed a complaint with OCR is not reasonable. A knowledgeable District administrator reading the addenda to the Complainant's grievance form and hearing panel appeal would have asked the Complainant to clarify the nature of his complaint after reading in the addenda that, *inter alia*, he believed there as institutional bias against individuals with mental illness. Instead, the Hearing Panel and the President ignored such evidence of a complaint of discrimination, and focused on academic qualifications in isolation. Further, when the Complainant explicitly stated in an email that his complaint was in regard to discrimination, the President advised him to file a complaint under AP 3435, but took no steps to investigate it under the correct standards. Although OCR concurs that the Complainant's addenda was not explicit about the nature of his grievance, it was unreasonable for the District to ignore the Complainant's references – at several different levels of review – and make no effort to clarify and ensure that it was meeting its legal obligations pursuant to Section 504 and Title II. OCR concluded that the District failed to apply the correct investigative process to the Complainant's grievance, and did not initiate the correct procedure even when it was specifically notified by the Complainant that he was making a discrimination complaint. The enclosed Resolution Agreement requires the District to revise BP/AP 5530 and AP 3435 to clarify their application, and requires training by OCR for District staff involved in the investigation of complaints.

## **Conclusion**

The District agreed to resolve this investigation through the enclosed Resolution Agreement. In summary, the District agreed to: revise BP/AR 5530 and AP 3435 and develop a memorandum for staff explaining those changes; develop procedures for the review of nursing student dismissals based on unsafe behavior in clinical settings; training by OCR for staff involved in the grievance process; and individual remedies for the Complainant. Based on the commitments made in the enclosed 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 the complaint allegations. OCR will monitor the implementation of the Resolution Agreement until the District is in compliance with the terms of the Resolution Agreement. Upon completion of the obligations under the Resolution Agreement, OCR will close the case.

This concludes OCR's investigation of the complaint and should not be interpreted to address the District'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 District 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 Civil Rights Attorney Laura Welp at (415) 486-XXXX or [laura.welp@ed.gov](mailto:laura.welp@ed.gov).

Sincerely,

/s/

Naghmeh Ordikhani  
Acting Team Leader