



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

May 2, 2018

Via Electronic Mail

Ms. Cinta Gibbons  
President  
Cinta Aveda Institute  
305 Kearny Street  
San Francisco, California 94108

(In reply, please refer to # 09-18-2119.)

Dear President Gibbons:

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 Cinta Aveda Institute (Institute). OCR investigated whether the Institute provided a prompt and equitable resolution of the Complainant's December X, 2107 complaint of student-to-student sexual harassment, disability harassment by an employee, and the Institute's failure to provide the Complainant with necessary academic adjustments or auxiliary aids.<sup>1</sup>

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), as amended, 20 U.S.C. §1681 *et seq.*, and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in education programs and activities receiving financial assistance from the Department. OCR is also 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. The Institute is a recipient of financial assistance from the Department. Therefore, OCR had jurisdiction to investigate this matter.

The legal standards, facts gathered, and the reasons for OCR's determinations in this matter are summarized below.

LEGAL STANDARDS

*Sexually Hostile Environment and Duty to Respond Promptly and Equitably*

The regulation implementing Title IX, at 34 C.F.R. § 106.31, provides that “. . . no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected

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<sup>1</sup> OCR identified the Complainant in its notification letter to the Institute and is withholding his name from this letter to protect his privacy.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

to discrimination under any . . . education program or activity” operated by recipients of Federal financial assistance. Sexual harassment that creates a hostile environment is a form of sex discrimination prohibited by Title IX. Sexual harassment is unwelcome conduct of a sexual nature. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, including acts of sexual violence.

When a student sexually harasses another student, the harassing conduct creates a hostile environment if it is so severe, persistent, or pervasive that it denies or limits a student’s ability to participate in or benefit from the recipient’s program or activities. If a recipient knows or reasonably should know about student-on-student harassment, Title IX requires the recipient to respond in a prompt and equitable manner by taking immediate action to eliminate the harassment, prevent its recurrence, and address its effects.

When responding to alleged sexual harassment, a recipient must take immediate and appropriate action to investigate or otherwise determine what occurred. The inquiry must be prompt, reliable, and impartial. Pending the outcome of a response to a report or an investigation of a complaint, Title IX requires a recipient to take steps to protect the complainant from further harassment as necessary, including taking interim measures. The recipient also should take steps to prevent any retaliation against the student who made the complaint and/or those who provided information. A recipient must consider the effects of off-campus misconduct when evaluating whether there is a hostile environment on campus or in an off-campus education program or activity.

Title IX and its implementing regulations are intended to protect students from discrimination on the basis of sex, not to regulate the content of speech. In cases of alleged sexual harassment, OCR considers the protections of the First Amendment of the U.S. Constitution where issues of speech or expression by students or employees are concerned.

#### *Disability Harassment by Employee*

34 C.F.R. §104.4(a) and (b) prohibit discrimination based on disability by recipients of Federal financial assistance. Schools are responsible under Section 504 for providing students with a nondiscriminatory educational environment.

Harassment of a student based on disability can result in the denial or limitation of the student’s ability to participate in or receive education benefits, services, or opportunities. Schools provide program benefits, services, and opportunities to students through the responsibilities given to employees. If an employee who is acting, or reasonably appears to be acting, in the context of carrying out these responsibilities engages in disability-based harassment that is sufficiently serious to deny or limit a student’s ability to participate in or benefit from the program, the institution is responsible for the discriminatory conduct whether or not it has notice.

To determine whether an individual has been discriminated against on the basis of disability under Section 504, 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 School 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 School's actions were based on the individual's disability.

OCR evaluates the appropriateness of the responsive action to alleged discrimination or harassment 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 institution 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 School must also take steps reasonably calculated to prevent the discrimination from recurring.

### *Academic Adjustments*

The Section 504 regulations, at 34 C.F.R. §104.43(a), also provide that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any postsecondary education program of a recipient. Section 104.44(a) requires 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.

### FACTUAL FINDINGS

The following facts are relevant to all three complaint allegations:

The Complainant is a veteran who attended the Institute as X XXXXXXXXXXXXXXX student from May X, 2016 until October XX, 2017. According to the Institute, throughout his time of enrollment, the Complainant displayed multiple violent and aggressive outbursts that ultimately led to his termination.

According to the Institute, the Complainant did not request accommodations until July XX, 2017 when he requested accommodations as a result of his post-traumatic stress disorder (PTSD) and excessive anxiety. There was an incident in class in June of 2017, during which the Institute documented that he screamed and yelled in a classroom area, threatening other students and staff. As a result, the Complainant received a one week suspension. Upon his return, there was a second outburst in class in June 2017, in which the Complainant allegedly screamed loudly about his frustrations with the Institute. At that time, the Complainant mentioned his PTSD and

requested accommodations. According to documentation, on July XX, 2017, the Complainant requested the following accommodations: occasional use of the elevator, use of headphones while working in the clinic, and being permitted to start class later in the day, and take breaks as needed. On the same day, the Institute agreed to allow the Complainant to use one earphone of his headphones while in the clinical area, to take extra breaks as needed, and to arrive 30 minutes later at the start of the day. When an administrator met with the Complainant on or around July XX, 2017, in a follow-up meeting, he was warned that a third incident may result in his termination from the program. This warning was documented by the administrator on a form titled, "Student Record of Conversation."

On or around October XX, 2017, the Complainant engaged in a third outburst in class, in which he allegedly yelled progressively louder and louder about his frustration about the answer to a question on the state board exam. Based on this incident, the Institute initiated termination procedures. The Institute Director had a meeting with the Complainant in October 2017, after the incident on October XX, 2017, and notified him that he was being terminated from the program.

On December X, 2017, the Complainant e-mailed the Institute Director and made several allegations of mistreatment while he was at the Institute, as follows: 1) another student touched him at an extracurricular event, and asked him to go to a sex store to purchase merchandise; 2) he was denied accommodations, such as the opportunity to cover his eyes or head when he had severe migraines, which were sometimes triggered because he had to stand for three hours; and 3) an instructor called him a "gimp." In this email, the Complainant also told the Institute Director that even though she knew that he had issues with his back, she never offered to give him a place to sit or offer him a XXXXXXX XXXXXXX XXXX. In this email, the Complainant also acknowledged that the Institute let him use the elevator as an accommodation. This was the first time that the Complainant requested the aforementioned accommodations.

The Institute Director issued the Complainant with a formal termination notice form, dated December XX, 2017. On this form, the Institute noted that the Complainant was dismissed by the school for poor conduct, including "multiple occasions of aggressive behavior."

The Institute Director told OCR that she attempted to follow up with the Complainant to obtain clarification and additional information about his complaint allegations raised on December X, 2017 but he was not cooperative. She said that the December X, 2017 e-mail was the first time the Institute was notified about the alleged sexual harassment and disability harassment. She further stated that the accommodations contained in the December X, 2017 e-mail that were allegedly denied were not raised with the Institute at any time prior to that date..

On January X, 2018, the Institute Director sent the Complainant an email offering to meet with him to discuss his concerns. On the same day, the Complainant responded and demanded that the Institute investigate his allegations. However, the Complainant did not respond to her request for a meeting. The Institute Director responded the next day requesting a meeting to collect more information about his complaints but stated that she understood if he did not want to meet. On the same day, the Complainant stated that he was filing a complaint with OCR (which he filed on January X, 2018).

The Institute Director told OCR that the Institute did not conduct an investigation of the December X, 2018 allegations because 1) the Complainant has not been responsive in providing more information, and 2) the Institute was waiting for direction from OCR. In conversation with OCR, the Institute indicated it was willing to conduct an investigation of the allegations the Complainant raised in his December X, 2017 email to the Institute.

#### Analysis and Conclusion

With respect to the Institute's actions to respond to notice by the Complainant, OCR is concerned that the Institute did not conduct a prompt and equitable investigation based on the Complainant's December X, 2017 e-mail. The fact that the Complainant did not appear initially responsive is generally not sufficient to relieve the Institute's obligation to determine if there is an adequate basis for the Complainant's articulated concerns of discrimination based on sex and disability, and if an investigation was warranted. Prior to OCR completing its investigation, which would have included interviews with additional Institute staff, the Institute expressed an interest in a voluntary resolution of the complaint, and OCR agreed it was appropriate to do so.

#### Overall Conclusion

The Institute has entered into the enclosed Agreement which requires it to conduct an investigation of the allegations of sexual harassment, disability harassment and denial of accommodations and provide notice of the outcome to the Complainant, after review by OCR.

Based on the commitment made in the enclosed Agreement, OCR is closing the investigation of this complaint as of the date of this letter, and is notifying the Complainant. When fully implemented, the Agreement is intended to address the compliance concern identified in this investigation. OCR will monitor the implementation of the Agreement until the Institute is in compliance with its terms. OCR's determination in this matter should not be interpreted to address the Institute's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

This letter sets forth OCR's determination in this 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 Institute 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, any individual may file a complaint with OCR alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by the law, personal information that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please call OCR San Francisco at (415) 486-5555.

Sincerely,

/s/

Sewali Patel  
Civil Rights Attorney

Enclosure: Resolution Agreement

cc: Mariela Onisko, Institute Director