



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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

REGION IX  
CALIFORNIA

August 24, 2018

**VIA ELECTRONIC MAIL**

Roanna V. Bennie  
Interim President  
Las Positas College  
3000 Campus Hill Drive  
Livermore, CA 94551

Re: OCR Docket No. 09-18-2131

Dear Interim President Bennie:

This letter is to advise you of the disposition of the above-referenced complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Las Positas College (College). The Complainant<sup>1</sup> alleged that the College discriminated against him on the basis of disability. OCR began an investigation to determine:

1. Whether the Complainant was subjected to discrimination on the basis of disability when the College failed to provide him with the auxiliary aides and accommodations that were approved for him by the Disabled Students Programs & Services (DSPS).
2. Whether a College instructor retaliated against the Complainant after he wrote a negative review about the instructor on the class evaluation survey form. Specifically, whether the instructor made disparaging remarks about the Complainant in class, threatened to give the Complainant a failing grade in the class, and required the Complainant to use the instructor's personal laptop during the midterm and final exams.
3. Whether a College instructor treated the Complainant differently based on his disability when the instructor required the complainant to use the instructor's personal laptop during the midterm and final exams.

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 in programs and activities operated by recipients of federal financial assistance. OCR is also responsible for enforcing Title II of the Americans with

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<sup>1</sup> OCR previously provided the College with the identity of the Complainant and Student. We are withholding their names from this letter to protect their privacy.

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.

During its investigation, OCR reviewed information provided by the Complainant and the College and interviewed the Complainant.

Prior to OCR making a final determination, the College expressed an interest in voluntarily resolving the allegation(s) pursuant to section 302 of OCR's Case Processing Manual<sup>2</sup>, and OCR agreed it was appropriate to do so. On August 17, 2018, without admitting to any violation of law, the College signed the enclosed Resolution Agreement, which, when fully implemented, is intended to address the allegation(s) in the complaint. 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. OCR will monitor the implementation of the resolution agreement until the College is in compliance with its terms. 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 College's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. 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.

The Complainant may have a right to file a private suit in federal court whether or not OCR finds a violation.

OCR thanks William Garcia, VP of Student Services, and general counsels Laura Schulkind and Kelsey Cropper for the courtesy and cooperation extended to OCR during its investigation. If

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<sup>2</sup> <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>

you have any questions, please contact Danette Ng, OCR Investigator at (415) 486-XXXX or by email at Danette.Ng@ed.gov.

Sincerely,

/s/

Zachary Pelchat  
Team Leader

Enclosure

cc: William Garcia, VP of Student Services  
Laura Schulkind, General Counsel  
Kelsey Cropper, General Counsel