



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVENUE, SW
WASHINGTON, DC 20202-1475

REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, DC

August 12, 2015

Dr. Wayne A.I. Frederick
President
Howard University
2225 Georgia Avenue NW
Suite 603
Washington, DC 20059

Re: OCR Complaint No. 11-15-2040
Letter of Findings

Dear Dr. Frederick:

This is to notify you of the resolution of the above-referenced complaint filed with the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) on December 22, 2014, against Howard University (the University). The Complainant filed the complaint against the College of Medicine (the School). The Complainant alleged that the University discriminated against him on the basis of national origin and disability, and retaliated against him. Specifically, the Complainant alleged that:

Allegation 1: The University discriminated against him on the basis of disability when staff at the School failed to provide the Complainant with academic adjustments and auxiliary aids (“accommodations”) that he was entitled to receive (i.e., double time to complete tests and examinations in a quiet room, free from distractions¹).

Allegation 2: The University discriminated against him on the basis of national origin (Columbian) when:

- (i) Staff in the School’s Office of the Dean for Special Student Services yelled at the Complainant and told him to leave during a visit to the office, but were responsive to African-American students who were in the office at the time; and
- (ii) An administrator wrote a letter to the Complainant suggesting that the Complainant was not the right national origin to be in the School because it is a predominantly black institution.

¹ In OCR’s January 23, 2015 notification letter, OCR referred to the Complainant’s private study room accommodation as the accommodation the School failed to provide to the Complainant. The Complainant later clarified that it was the testing accommodation that was an issue during the 2014-2015 school year and that the private study room accommodation was only an issue during the 2013-2014 school year. Therefore, OCR investigated whether the Complainant was provided testing modifications and considered information regarding the study room issue only as context for that allegation.

Allegation 3: The University retaliated after the Complainant complained to School staff about the University's failure to provide his accommodations by:

- (i) Issuing the Complainant a letter of reprimand;
- (ii) Prohibiting the Complainant from working informally with a professor to reschedule an exam to a more convenient time; and
- (iii) Summoning the Complainant to a hearing before the School's Honor Council.

OCR enforces Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin in any program or activity receiving Federal financial assistance from the Department. OCR also enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation, at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department. The laws enforced by OCR also prohibit retaliation against any individual who asserts rights or privileges under these laws or who files a complaint, testifies, or participates in an OCR proceeding. Because the University receives Federal financial assistance from the Department, OCR has jurisdiction over it pursuant to Title VI and Section 504.

In reaching a determination on the above allegations, OCR reviewed documents provided by the Complainant and by the University. OCR also interviewed the Complainant and University staff. Prior to the completion of OCR's investigation, the University voluntarily agreed to the enclosed Resolution Agreement to address the implementation of approved accommodations for an Introduction to Medicine course midterm exam. After carefully considering all of the information obtained during the investigation, OCR did not find sufficient evidence to support a finding of discrimination or retaliation as alleged in Allegations 1 (with the exception of the Introduction to Medicine course midterm exam), 2, and 3.

OCR's findings and conclusions are discussed below.

Background

The Complainant enrolled at the University's College of Medicine in the fall 2013 semester. Prior to the start of that semester, the Complainant registered with the University's Office of the Dean for Special Student Services (Student Services) as a student with a disability XXXX. The University agreed to provide the Complainant with certain academic adjustments, including a private study room, free from distractions, and double time to complete tests and examinations in a quiet room, free from distractions.

The Complainant and the University provided documentation of disputes during the 2013-2014 academic year over the Complainant's study room accommodation. OCR considered documentation of the 2013-2014 disputes as context for its investigation into the University's provision of accommodations during the 2014-2015 school year. In 2013-2014, the Complainant and Student Services staff worked together to find a location that could serve as a private study room for the Complainant. During the course of the process, an altercation occurred in the library between the Complainant and University library staff. Both the Complainant and the Dean of Special Student Services described a heated exchange in the library when the

Complainant was asked to move from a private study room in one section of the library to a study room in another section. The Complainant indicated that he was mistreated by library staff as well as on-duty security and called the Dean for Special Student Services because he felt threatened. On the other hand, the Dean for Special Student Services told OCR that the Complainant was loudly threatening on-duty security staff because they asked him to move to an area of the library that would remain open. Eventually, the University offered a study space to the Complainant, and the Complainant did not raise any issues with the University as to his private study room accommodation during the 2014-2015 school year.

The Complainant visited Student Services on a few occasions. The Dean of Special Student Services told OCR that, after the altercation in the library, she escorted the Complainant to Student Services in an effort to calm him down. Student Services staff told OCR that, when the Complainant entered their office, he was screaming and someone on the phone with the Complainant was also yelling at staff. Student Services staff further described the Complainant curling up into a fetal position on the floor of the office. When the Complainant went to his car, the Dean for Special Student Services asked if he would like to return to the office because she was concerned for his safety. The Complainant opted not to return. On a second occasion, the Complainant visited Student Services to complain about his testing location. Student Services staff indicated that he was asked to go to another area of the office as a result of being too loud in the presence of other students, warned that he would be asked to leave if he continued to be excessively loud, and ultimately asked to leave because of his disruptive behavior. Student Services staff explained to OCR that they asked the Complainant to leave because other students were witnessing his behavior and staff sought to maintain professional decorum in the office.

The Complainant first raised concerns about his testing accommodation in the fall 2014 semester when he was no longer taking his exams in a professor's office, as he had done during the 2013-2014 school year. Based on documentation reviewed by OCR, beginning in August 2014 and continuing on until the end of the fall 2014 semester, the Complainant expressed his concerns as to the noise levels outside of some of the rooms in which he was assigned to test. The University took various measures to address the Complainant's concerns. Generally, Student Services worked with College of Medicine administrators to identify locations where it would be less likely that any outside noise would reach the room, and College of Medicine administrators took steps to ensure that professors were aware of their obligations to provide the Complainant a distraction-free environment and that students were cognizant of keeping quiet during exam times. Towards the end of the fall 2014 semester, Student Services staff worked with the Complainant to schedule his exams at his preferred locations and revised the locations for at least two exams to avoid testing locations where the Complainant had previously experienced noisy conditions.

In fall 2014, the Complainant took an Introduction to Clinical Medicine (ICM) course. Throughout the semester the Complainant worked with Student Services staff to schedule the times and locations for his exams. After learning of an upcoming midterm exam in ICM, the Complainant contacted a Student Services staff member to schedule the test and provide the name and contact information for the ICM professor. The staff member, when interviewed by OCR, was not able to confirm that she had finalized the time and place for the ICM midterm exam, but it appears from the correspondence provided to OCR that Student Services had

scheduled the exam for 1:30 p.m. in the OME office and communicated this time and location to the Complainant and the ICM professor. Despite a subsequent attempt by the professor to change the time and location of the exam, it appears as though the Complainant ultimately took his exam at the previously scheduled time and location.

In late November, the Complainant took medical leave and sought to reschedule missed exams upon his return. After the Complainant inadvertently noted the wrong date on which he wished to take his make-up exam and did not clarify with enough time in advance of the proposed date to order and receive the necessary exam materials, the University's Vice Dean and Senior Associate Dean for Academic Affairs (Vice Dean) was forced to schedule the exam on another date. The Complainant was angered by the scheduling process, and he called the Vice Dean on December 2, 2014 to express this displeasure. According to witnesses, the Complainant yelled at the Vice Dean throughout the approximately twenty-minute call. As a result of this call, the Vice Dean wrote a reprimand letter to be placed in the Complainant's file. The Complainant refused to pick up the letter from the Vice Dean's office because he predicted that the letter contained bad news.

A few days after the letter of reprimand was sent, the Vice Dean and the Associate Dean for Academic Affairs scheduled make-up exams for the Complainant on December 16 and 17, 2014, in one of the Complainant's preferred testing rooms. The Complainant, however, sought to reschedule one of the exams directly with the Professor. The Professor, as well as the two deans, advised the Complainant that he was required to follow the schedule provided to him by the two deans. The Complainant missed these exams because he was on medical leave again. The Complainant then requested that the exams be rescheduled for December 24, 26, and 29, 2014. When the University informed the Complainant that he would not be able to take the exams on these dates since the University would be closed for winter break from December 22, 2014 to January 23, 2015, per a memo sent by the Interim Vice President and Chief Human Resources Officer to all employees of the University, the Complainant called Student Services staff and yelled about his testing schedule. According to an email from the Dean of Special Student Services, the Complainant later called the Office of the Provost and raised his voice at the receptionist answering the phone. The Honor Council scheduled a hearing in January 2015 that went forward as scheduled despite the Complainant's absence. The Complainant is currently on involuntary medical leave from the University, and the Honor Council's final determination has yet to be issued.

Analysis

Allegation 1: The University discriminated on the basis of disability when staff at the School failed to provide the Complainant with academic adjustments and auxiliary aids (“accommodations”) he was entitled to receive (i.e., double time to complete tests and examinations in a quiet room, free from distractions).

The Section 504 regulation at 34 C.F.R. § 104.43(a) provides that a qualified person with a disability may not, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any postsecondary aids, benefits, or services. The regulation at § 104.44(a) further requires that a university shall make

modifications to its academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating on the basis of disability against a qualified student with a disability. The regulation at § 104.44(d) requires a university to ensure that no qualified individual with a disability is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination because of the absence of educational auxiliary aids for students with impaired sensory, manual, or speaking skills. We interpret the Title II regulation to require universities to provide necessary academic adjustments and auxiliary aids to the same extent as required under Section 504.

Colleges are entitled to establish reasonable procedures by which students are to provide notice of their disability and need for modifications. Students are responsible for knowing and following the procedures established by the university. Once the student has provided satisfactory documentation of a disability and notified the university that he or she needs certain academic adjustments or auxiliary aids due to the disability, the university must provide the student with appropriate modifications unless that would result in a fundamental alteration of the university's program or impose an undue burden. In making a determination as to what modifications are appropriate for a student with a disability, the university should familiarize itself with the student's disability and documentation, explore potential modifications, and exercise professional judgment in deciding whether the modifications under consideration would give the student the opportunity to participate in the program without fundamentally modifying the university's standards or imposing an undue burden. If the academic adjustments provided are not meeting the student's needs, it is the student's responsibility to notify the institution as soon as possible. The student and the institution should work together to resolve the problem.

Throughout the 2014-2015 fall semester, the Complainant made a series of complaints to University officials regarding the outside noise experienced at some of the exam locations organized by Student Services. On August 20, 2014, the Complainant took an exam in a room near the office of medical education. The Complainant had taken an exam in the same room during the 2013-2014 school year and had not experienced any noise issues. The Complainant reported an unusual amount of loud noise outside of his exam room—despite the proctor asking people outside the room to be quiet and a sign at the security desk asking students to be quiet during exams. When alerted to this fact by the Complainant, Student Services staff sent an email to the course professor emphasizing that it was imperative to comply with disability laws and asking the professor to ensure a quiet room free from distraction for the Complainant's exam. In addition to Student Services' follow-up, the Vice Dean sent an email to all College of Medicine students asking them to keep quiet during exams.

Despite these actions, the noise problem arose again during the Complainant's second exam, which he took in the same location. The Complainant informed Student Services of the recurrence. The Dean for Special Student Services consulted with the Vice Dean, Associate Dean for Student Affairs, and the Assistant Dean for Medical Education about a location suitable for the Complainant's future exams. The group initially settled on a room that had to be changed because it was occupied by an academic session during the exam time. The second room selected appeared agreeable to the Complainant, but he was moved to a conference room due to high temperatures in the second room. The Complainant did not appear to report any concerns about the conference room.

On October 25, 2014, the Complainant took an exam on the fifth floor of the medical school, a location that could potentially cut down on the amount of foot traffic and resulting noise experienced by the Complainant during his first and second exams. The Complainant notified Student Services staff that he again experienced noise in his exam room, this time from an individual talking and laughing in a neighboring room. The Complainant also demanded that he take all future exams in the pathology office or a room down the hall from that office. The Dean for Special Student Services discussed this possibility with the Vice Dean and the Associate Dean for Student Affairs. While it was determined that the pathology office could not be made available for all exams, the Dean for Special Student Services authorized the Complainant to take his exam in Student Services. When the Complainant expressed concerns about this location, the exam was moved to the pathology conference room, a location about which the Complainant expressed no reservations. Again, a few weeks later on December 3, 2014, the University changed an exam location in order to meet the location preferences of the Complainant. Finally, the University scheduled the Complainant's December make-up exams in his preferred location, the pathology office.

OCR concluded that the University acted reasonably to provide testing locations that would be free from distractions and continued to engage in the interactive process with the Complainant to respond to his concerns regarding the testing locations. The University and Student Services sought to schedule the Complainant's exams in quiet rooms free from distractions per the Complainant's approved accommodations. When the Complainant raised concerns about noise levels, email documentation provided by the University reflects that University officials acted to address the issues by attempting to rectify noisy conditions during exams; notifying professors of the Complainant's concerns; asking all College of Medicine students to be quiet during exams; discussing designated locations proposed by the Complainant; and ultimately scheduling exams in the Complainant's desired locations when feasible. Based on the work of Student Services to schedule quiet locations for the Complainant's exams and the efforts of various University officials to address the Complainant's concerns as they were occurring and after the concerns were called to the attention of administrators, OCR found that the University acted reasonably to effectively implement the academic adjustment of a distraction-free testing environment, with the exception of the ICM midterm exam discussed below.

With regard to the ICM midterm exam, the Complainant worked with Student Services to establish a time (1:30 pm) and location (the OME office) for the exam. On the morning of the midterm, the ICM professor sent an email to the Complainant requesting that he report to the professor's office at noon to take the midterm exam. The professor explained in an email that he preferred not to use the originally scheduled OME office because of the potential for interruptions and the fact that it was a hassle for the Professor to set up and use. In response, the Complainant indicated that he would report at the previously scheduled time of 1:30 p.m. and that he and the Student Services staff member believed his exam would be located in OME. It appears as though the Complainant ultimately took his exam at the previously scheduled time and location. While the Complainant ultimately took his ICM midterm exam at the previously agreed-upon time and location and did not raise concerns about a lack of double time or noise during the exam, he did raise concerns about the professor's communications with him about when and where the exam would be given. Those communications, in which the professor sought to make last-minute changes to the Complainant's arrangements for taking his exam (including

by starting the exam earlier than the Complainant had arranged), could have impeded the Complainant's ability to obtain the benefits of the accommodations to which he was entitled. Prior to the conclusion of OCR's investigation, the University expressed an interest in resolving this portion of the complaint voluntarily under Section 302 of OCR's *Case Processing Manual*.

To address the communications surrounding the provision of accommodation for the ICM midterm exam, the University entered into the attached Resolution Agreement, signed on August 5, 2015. Once the Resolution Agreement is fully implemented, the University will be in compliance with Section 504 with respect to the issues addressed in this letter. OCR will monitor the University's implementation of the Resolution Agreement.

Allegation 2(i): The University discriminated on the basis of national origin (Colombian) when staff in the School's Office of Disability Services yelled at the Complainant and told him to leave during a visit to the office, but were responsive to African-American students who were in the office at the time.

When investigating an allegation of different treatment, OCR first determines whether there is sufficient evidence to establish an initial, or prima facie, case of discrimination. Specifically, OCR determines whether the university treated the Complainant less favorably than similarly situated individuals of a different national origin. If so, OCR then determines whether the university had a legitimate, nondiscriminatory reason for the different treatment. Finally, OCR determines whether the reason given by the university is a pretext, or excuse, for unlawful discrimination.

The Complainant alleged that two actions by Student Services staff – yelling at him and asking him to leave – were national origin discrimination. Student Services staff denied ever yelling at the Complainant and no evidence reviewed by OCR supports this assertion. The Complainant was not able to provide any witnesses to corroborate his allegation and there are no records from which OCR could identify possible witnesses. Therefore, OCR was unable to find that the Complainant was subjected to the adverse treatment of being yelled at by Student Services staff.

While it is disputed whether the Complainant was yelled at Student Services staff, both the Complainant and Student Services staff acknowledged that the Complainant was asked to leave Student Services on at least one occasion. In determining whether similarly situated students were treated more favorably, OCR considered the treatment of other students, not of the Complainant's national origin, who were visiting Student Services. The evidence suggests that other students were assisted by Student Services staff and permitted to stay in the office. For purposes of this analysis, OCR will assume that the Complainant was treated less favorably than similarly situated students of a different national origin, and, therefore, OCR finds that there is an initial case of discrimination.

Because there is an initial case of discrimination, OCR considered whether the University had a legitimate, nondiscriminatory reason for requiring the Complainant to leave Student Services. University officials offered concerns about the disruption caused by the volume of the Complainant's voice as a legitimate nondiscriminatory reason for requiring him to leave. Student Services staff explained that the Complainant's high volume affected the staff's ability to work

with other students and threatened the professional environment Student Services seeks to maintain in its office.

Because OCR found that the University's decision to ask the Complainant to leave Student Services was based on legitimate reasons, OCR then considered whether the University's nondiscriminatory reason was pretextual. To determine whether the University's reason was pretext, or an excuse, for unlawful retaliation, OCR examined the University's treatment of other students who exhibited similar behavior in Student Services and the basis for the University's decision.

OCR reviewed whether other student visitors of Student Services have been asked to leave after exhibiting the same type of disruptive behavior as the Complainant. A Student Services staff member recalled that two African-American students who were yelling at each other were asked to leave the office. A second Student Services staff member estimated that there were approximately six other occasions when other students had become disruptive in the office. On each occasion, these students were asked to leave. Student Services staff believed the majority of these students to be African-American, with two multiracial students and one Asian student among the six. While OCR acknowledges the difficulty in ascribing race or national origin to an individual based on appearance, OCR gave this equal treatment of students of apparently differing national origin some weight as supportive of a finding that the legitimate reason offered by the University was not pretextual.

Similarly, the earlier treatment of the Complainant by Student Services staff when he became agitated and loud in the office suggests that the nondiscriminatory reason offered by the University was not pretext. Student Services staff described an earlier incident during which the Complainant yelled at a staff member and engaged in other inappropriate behavior in Student Services. In contrast to the occasion on which he was asked to leave, the previous incident occurred after the office was closed for the day, with no other student present. The Dean for Special Student Services told OCR that, on the earlier occasion, the Complainant was not asked to leave Student Services – in fact, the Complainant was encouraged to return to Student Services after retreating to his car. Although concerns for the safety of the Complainant appeared to play a role in Student Services staff's approach in the earlier incident, Student Services staff noted that, since this incident occurred after-hours, the incident did not have the same disruptive effect. This treatment of the Complainant as a whole tends to confirm that Student Services followed its general approach to avoiding disruptions in the office with the Complainant.

OCR also examined the University's reasoning for the request to leave. Student Services staff offered two reasons for the removal: interruption of Student Services operations and the importance of maintaining a professional decorum. In interviews, staff emphasized the disruption of its operations that would be caused by allowing students to yell in the office. Typically, Student Services will first attempt to address the disruption by isolating the student who is emotional in an office and attempting to address the issue in private, but if this approach fails to calm the student, Student Services will ask the student to leave. The Dean for Special Student Services indicated that they followed these procedures the day the Complainant was asked to leave. A Student Services staff member asked the Complainant to retreat to a separate room with her to discuss his issues. After the Complainant continued to yell, the staff member warned him that he would be asked to leave if he did not lower his voice; when the Complainant

failed to lower his voice, he was asked to leave and complied with the request. The Complainant does not dispute that he was upset and raised his voice during this visit to Student Services. Student Services staff explained that this approach is necessary to maintain a professional decorum in the office and that maintaining a level of decorum is particularly important since students visiting the office are often very emotional. The fact Student Services has developed a procedure for handling disruptive students that is consistent with the two reasons offered for removal, and the fact that this procedure was applied consistently in the case of the Complainant's visits, suggests that the nondiscriminatory reason offered by the University was not pretext.

Finally, the reasoning offered by Student Services staff is supported by the policies of the University. As noted by staff, the Complainant's behavior would have qualified as disruptive behavior under the University Code of Student Conduct, which describes disruptive conduct as "[a]cting in a manner that impairs, interferes with, or obstructs the orderly . . . functions of the University. . . ." Student Services staff indicated that it opted not to file a complaint because they did not want the complaint to be included in the Complainant's record. Student Services staff had also dissuaded the library from filing a disorderly complaint against the Complainant for the same reasons.

The University's credible reasoning supported by University policy and Student Services practices, and the staff's similar treatment of students of apparently differing national origins, all suggest that the University's legitimate, nondiscriminatory reason was not pretextual. Because the University's concerns about disruption of operations is a legitimate, nondiscriminatory reason, OCR finds that there is insufficient evidence to make a finding of national origin discrimination based on Student Services staff's request to leave the office.

Allegation 2(ii): The University discriminated against the Complainant on the basis of national origin (Colombian) when an administrator wrote a letter to the Complainant suggesting that the Complainant was not the right national origin to be in the University because it is a predominantly black institution.

As outlined above, OCR first determines whether the University treated the Complainant less favorably than similarly situated individuals of a different national origin.

The Complainant alleged that he was treated less favorably when a University dean "subtly suggested" in a letter that he was not of the right national origin to be attending the University.

Specifically, the Complainant identified a July 30, 2014 letter from the Vice Dean in which the Vice Dean wrote that "no other student" had the same problems as the Complainant. The Complainant asserts that this language subtly suggested that the Complainant was not the right national origin to attend the University. The Vice Dean's July 30, 2014 letter does not contain the language cited by the Complainant. At one point, the letter does refer to the size of the student body, but at no point did the Vice Dean compare the Complainant to other students enrolled in the University in terms of ability or fit, and the language of the letter, on its face, cannot reasonably be read to suggest that the Complainant's national origin played any role in the University's treatment of the Complainant. The language of the letter does not support a finding that the Vice Dean was hinting that the Complainant was not a proper fit at the University because of his national origin.

The Vice Dean wrote a second letter to the Complainant on December 8, 2014. The purpose of the letter was to inform the Complainant that his behavior on a call with the Vice Dean was a violation of the University Code of Student Conduct and the College of Medicine's policy on professionalism. In the letter, the Vice Dean detailed the Complainant's behavior on the December 2 call, characterized the Complainant's behavior as unprofessional, warned him that continued conduct of this nature would result in appropriate action by the University, and advised the Complainant of the letter's inclusion in his file. The Vice Dean told OCR that the Complainant was constantly interrupting him during the call and shouting very loudly. The letter did not reference, directly or indirectly, the Complainant's national origin.

When OCR interviewed the Vice Dean, he denied writing any letter that implied in any way that the Complainant was not the proper national origin to attend the University. The Vice Dean stated that "[he] never wrote any such letter" and "[he] never implied that even to the smallest extent." OCR found the Vice Dean's response on this point to be credible.

The overall evidence reviewed by OCR does not suggest that the University treated the Complainant less favorably than similarly situated students because of his national origin. As such, the Complainant has not made out an initial case of discrimination, and OCR concludes that there is insufficient evidence to conclude that the Complainant was subjected to national origin discrimination on the basis of the Vice Dean's letters.

Allegation 3(i): The University retaliated after the Complainant complained to School staff about the University's failure to provide his accommodations by issuing him a letter of reprimand.

When analyzing a claim of retaliation, OCR will look at the following three elements to determine if the complainant has stated an initial case: 1) whether the complainant engaged in a protected activity (e.g., filed a complaint or asserted a right under a law OCR enforces); 2) whether the university took a materially adverse action against the complainant; and 3) whether there is some evidence that the university took the adverse action as a result of the complainant's protected activity. If all these elements are present, an initial, or prima facie, case of retaliation is established. OCR then determines whether the university has a legitimate, non-retaliatory reason for its action. Finally, OCR examines whether the university's reason for its action is a pretext, or excuse, for unlawful retaliation.

An individual engages in a protected activity if he opposes an act or policy that he reasonably believes is discriminatory or unlawful under one of the laws that OCR enforces, or makes a complaint, testifies, assists, or participates in any manner in an OCR investigation, proceeding, or hearing. Advocating for one's rights as a student with a disability is a protected activity. The Complainant emailed various school officials on numerous occasions to ensure provision of his private study room and testing accommodations. For instance, on July 28, 2014, the Complainant emailed University officials regarding his testing accommodations for his second year. The Complainant engaged Student Services staff and his professors about his testing accommodation throughout the fall 2014 semester. On December 2, 2014, the Complainant sent an email to Student Services staff complaining about the room selected by the Assistant Dean for his upcoming make-up exam. In addition to the communication regarding his testing accommodation, the Complainant corresponded with University officials about his private study room accommodation during the 2013-2014 school year and leading up to the fall 2014 semester.

By communicating his concerns about the receipt of his accommodations to University officials, the Complainant was advocating for his rights as a student with a disability and thus engaging in a protected activity.

Because the Complainant engaged in a protected activity, OCR next considered whether the letter of reprimand issued to the Complainant and placed in his academic file constituted an adverse action. An adverse action is something that could deter a reasonable person from engaging in further protected activity. The letter of reprimand described violations of the University's code of conduct and has the potential to curtail the Complainant's ability to benefit fully from the University's program. If faced with the prospect of a letter outlining violations of a policy on professionalism and a university's code of conduct, a reasonable person could be discouraged from engaging in further protected activity. Therefore, the letter of reprimand constitutes an adverse action.

OCR then considered whether there is some evidence that the University issued the letter of reprimand because of the Complainant's advocacy. Since protected activity, in the form of the Complainant's December 2, 2014 email, took place within a week of the December 8, 2014 letter, OCR finds an apparent causal relationship between the protected activity and adverse action.

Because the Complainant met all three elements of an initial case for retaliation, OCR probed whether the University had a legitimate, non-retaliatory motive for the reprimand letter and whether that motive was pretextual.

University officials offered the Complainant's violation of the University's Student Code of Conduct during a December 2 call as the legitimate, non-retaliatory reason for the reprimand letter. The University's Student Code of Conduct defines "disruptive conduct" as "[a]cting in a manner that impairs, interferes with, or obstructs the orderly conduct, processes or functions of the University. . . ." The Vice Dean, who was on the receiving end of the December 2 call, considered the Complainant's actions on the call to be disruptive because he was not afforded an opportunity to explain the testing schedule.

Because the University offered a legitimate, non-retaliatory reason for its decision to the reprimand the Complainant, OCR next reviewed whether the University's action was pretext for unlawful retaliation. To determine whether the University's reason was an excuse for unlawful retaliation, OCR examined the basis for the University's decision and the University's treatment of similarly situated students who had not engaged in a protected activity.

OCR examined the basis for the assertion that the Complainant had engaged in disruptive conduct on the December 2 call. During the course of the December 2 call, three University officials were called into the Vice Dean's office to act as witnesses (and the Complainant was advised of their presence). These three University officials, two in interviews with OCR and one in a statement before the University's Honor Council, confirmed the Vice Dean's description of the Complainant's behavior. The Dean for Student Affairs, who was present for approximately ten to fifteen minutes of the call, recalled the Complainant continuously screaming about something having to do with his accommodations; the Dean for Student Affairs characterized the Complainant's behavior as intimidating. Similarly, the College of Medicine's Financial Aid Manager told OCR that she heard the Complainant's voice from the hallway outside the Vice

Dean's office and confirmed that the Complainant was yelling extremely loudly for the entire time she listened to the call. Finally, the Vice Dean's assistant indicated in her statement to the Honor Council that the Complainant continued shouting for approximately ten to fifteen minutes, despite being asked to calm down by the Vice Dean. The corroborating testimony from three witnesses to the call supports the credibility of the Vice Dean's description of the Complainant's behavior on the December 2 call.

OCR next considered whether the Complainant was treated differently than other similarly situated students who had not engaged in protected activities. The Vice Dean reported that approximately three to four students have engaged in disruptive behavior similar to that of the Complainant. As he did with the Complainant, the Vice Dean sent a letter of reprimand to each of the three to four students. The Vice Dean was unaware of any advocacy under the laws enforced by OCR by any of the students, and the University indicated that none of those students had filed a complaint with OCR or otherwise advocated for their rights under one of the laws enforced by OCR. The fact that the Complainant was treated the same as these other students is some evidence that the University's explanation for its actions was not a pretext for retaliation.

The multiple accounts of the incident corroborating the Vice Dean's description of the behavior, along with the similar treatment of similarly situated students who had not engaged in protected activities, suggest that the legitimate, non-retaliatory reason offered by the University was not pretextual. Because the University's disciplinary concern is a legitimate, non-retaliatory reason, and the evidence reviewed by OCR does not reveal that this reason was pretextual, OCR finds that there is insufficient evidence to support a claim of retaliation based on the letter of reprimand.

Allegation 3(ii): The University retaliated after the Complainant complained to School staff about the University's failure to provide his accommodations by prohibiting him from working informally with a professor to reschedule an exam to a more convenient time.

As addressed above, the Complainant engaged in a protected activity by advocating for his rights as a student with a disability on multiple occasions throughout the fall 2014 semester.

OCR considered whether prohibiting the Complainant from rescheduling an exam directly with a professor would constitute an adverse action. Because the inability to reschedule an exam could have a negative impact on exam performance, this prohibition against rescheduling an exam with a professor could discourage a reasonable person from engaging in further protected activity. Therefore, OCR finds that prohibiting the Complainant from rescheduling an exam would be considered an adverse action.

OCR then considered whether there is some evidence that the University prohibited the Complainant from working with a professor to reschedule his exam because of his advocacy. Because the December 13, 2014 email prohibiting the Complainant from rescheduling an exam directly with his professor was sent within two weeks of the Complainant's December 2, 2014 email advocating for his testing accommodation, OCR finds an apparent causal relationship between the protected activity and adverse action.

Since the Complainant established all three elements of the initial case for retaliation, OCR reviewed whether the University had a legitimate, non-retaliatory motive and whether that motive was pretextual.

The University cited its policies and procedures on granting and establishing accommodations exclusively through Student Services as the legitimate, non-retaliatory reason for its action. After receiving an exam schedule from the Vice Dean and Associate Dean for Academic Affairs, the Complainant sought to reschedule the exam by contacting the course professor. The Howard University College of Medicine Policy and Procedures Manual 2014-2015 outlines a process by which Student Services carries out each step in the provision of accommodations. Under the University's Policy and Procedures manual "[f]aculty members may not discuss or negotiate approved accommodations with ADA eligible students" and "[a]ll inquiries concerning ADA accommodations and related University policies and procedures must be directed to [the] Dean for Special Student Services. . . ." The University thus contends that its request to the Complainant not to change his exam schedule directly with professors was a request to comply with University policy on the provision of accommodations.

Since OCR found that the University's requirement that the Complainant avoid rescheduling exams directly with professors was based on a legitimate reason, OCR considered whether the offered reason was pretext for unlawful retaliation.

OCR was unable to establish the existence of similarly situated students to which the Complainant could be compared. The ICM professor indicated that no other students with a registered disability had asked to reschedule their exam. He only recalled that two students this past school year were accommodated by taking their exams in the morning instead of the regularly scheduled afternoon block. This scheduling, however, was done through Student Services. The Associate Dean for Academic Affairs also indicated that no student with disabilities had attempted to reschedule an exam directly with a professor.

As some evidence of pretext, the Complainant asserted that he previously rescheduled his exams directly with his pathology professor.² The pathology professor confirmed that he had formed a relationship with the Complainant and was responsive to the Complainant's requests related to testing locations during the 2013-2014 school year. Specifically, the pathology professor recalled providing a testing area in the pathology department at the Complainant's request. Importantly, the pathology professor did not recall ever rescheduling an exam for the Complainant or communicating with College of Medicine administrators or Student Services about the scheduling of the Complainant's exams. The pathology professor's responsiveness to the Complainant's informal requests for location changes outside of the Student Services' process is somewhat distinct from the Complainant's December 2014-2015 efforts to reschedule

² As context, the Complainant offered that the transition from coordinating with the pathology professor during the 2013-2014 school year to coordinating with various course directors caused his disability information to be shared with more University staff. To the extent this statement was offered as an additional allegation, OCR would dismiss this allegation because it would not state a violation of a law enforced by OCR. With limited exceptions that do not apply here, the laws enforced by OCR do not address access to student records, confidentiality of student records, or student privacy. However, another federal law called the Family Educational Rights and Privacy Act (FERPA) pertains to student records and may be relevant to your concerns. FERPA is enforced by the Department's Family Policy Compliance Office (FPCO). Additional information about FERPA and how to file a complaint with the FPCO is available at www.ed.gov/fpc.

an exam with a professor after Students Services and administration scheduled his make-up exam. Without any recollection from the pathology professor as to any administrator involvement or changes in his ability to grant the Complainant's testing location requests, the Complainant's assertion provides limited support for a finding of pretext.

Without evidence as to any direct comparators for the Complainant, OCR examined the reasonableness of the request. OCR notes that College of Medicine professors and administration were consistent in their description of the rescheduling policy. If a student misses an exam for a legitimate reason, the instructor would typically set the time for the makeup exam. Professors are not obligated to accommodate student requests for a particular time or date for a makeup exam. If a student with testing accommodations obtained an excused absence from an exam, the Associate Dean of Student Affairs would work with the professor to schedule the make-up exam. Since the Vice Dean had already worked with the Complainant to establish a schedule of which the ICM professor was aware, it was reasonable for the Professor to defer to the schedule established by the Vice Dean. This is especially true in the circumstances presented where the professor had previously experienced difficulties when attempting to schedule an exam with the Complainant. Because OCR found the professor's refusal to alter the testing schedule established by the Vice Dean to be reasonable, OCR concluded that the University's legitimate non-retaliatory reason was not pretext.

Since the University's concern of complying with policy is a legitimate, non-retaliatory reason, and the evidence reviewed by OCR does not reveal that this reason was pretextual, OCR finds that there is insufficient evidence to support a claim of retaliation based on the failure to reschedule the Complainant's exam.

Allegation 3(iii): The University retaliated after the Complainant complained to School staff about the University's failure to provide his accommodations by summoning him to a hearing before the School's Honor Council.

As discussed above, the Complainant engaged in a series of actions advocating for his rights as a student with a disability. The Vice Dean's referral to the Honor Council subjected the Complainant to discipline, up to and including expulsion from the University, if the Honor Council found that he had violated the University's Code of Student Conduct. A reasonable person would be discouraged from further protected activity if subjected to an Honor Council referral. Therefore, OCR finds that the referral to the Honor Council constituted an adverse action. Since the December 24, 2014 letter referring the Complainant to the Honor Council was sent within weeks of the Complainant's advocacy, OCR found an apparent causal relationship between the Honor Council referral and Complainant's advocacy.

The University offered the Complainant's escalating unprofessional behavior as a legitimate reason for the referral to the Honor Council. The letter referring the Complainant to the Honor Council describes the Complainant's behavior on the December 2 call with the Vice Dean, as well as his behavior on later calls with the Dean for Special Student Services and the Provost's Office. The University's Policies and Procedures Manual for 2014-2015 outlines the requirement for professional behavior expected of students in the College of Medicine. Among the attributes of professional behavior is a section on respect for others, including communicating professionally in a non-judgmental and non-defensive manner. In addition to the concern about the Complainant's lack of professionalism, the Vice Dean cited concerns over

safety and the Complainant's failure to communicate with him as reasons for the referral. OCR found that the University's concerns as to disruption and lack of professionalism were legitimate, non-retaliatory reason for the referral to the Honor Council.

Because OCR determined that the University provided a legitimate, non-retaliatory reason for its action, OCR considered whether the legitimate reason was pretext for unlawful retaliation by reviewing the University's bases for its reasons and the University's treatment of similarly situated students. The University offered similar rationale for the referral to the Honor Council as was provided for the December 8 letter of reprimand. As described above, the Vice Dean found the Complainant's behavior on the December 2 call to be disruptive because of the Complainant's escalating voice and tone throughout the call. As a result of the Complainant's shouting for the duration of the call, the Vice Dean was fearful that the Complainant may become violent. This concern was compounded by the fact that the Complainant's behavior did not improve after the letter of reprimand warning was issued to the Complainant on December 8. Even after receiving the reprimand letter, the Complainant engaged in similar behavior with the Dean for Special Student Services when he found out that he could not retake his exams on his preferred dates because the University would be closed for the winter holidays. Similarly, the Complainant yelled at a staff member who answered the telephone in the Provost's office and could not comply with the Complainant's demand to speak to the Provost because the Provost was out of the office. Although OCR was unable to interview the individual who answered the phone on December 19, 2014, OCR gave some weight to a contemporaneous email from the Dean of Special Student Services to the Vice Dean and other College of Medicine Administrators informing them that the Complainant was "demanding to speak to [the Provost]" and "raising his voice to the young lady who answers the phone." The credible basis for the concern about the Complainant's behavior and the ongoing nature of the behavior suggest that the University's stated reasons for its treatment of the Complainant were not pretextual.

OCR next probed the University's treatment of similarly situated students. The Vice Dean indicated that he has experienced the same type of escalating behavior from four students over the past two years. Each of those students was referred to the Honor Council. The Vice Dean indicated, and the University confirmed, that none of the four similarly situated students had advocated for their rights under one of the laws enforced by OCR. The University's similar treatment of students who were similarly situated to the Complainant and had not engaged in protected activity suggests that the University's concern regarding the Complainant's behavior was not pretextual.

The credible descriptions of the December 2 call outlined above and post-reprimand interactions of the Complainant with University officials, along with the similar treatment of similarly situated students who had not engaged in protected activities, suggest that the legitimate, non-retaliatory reason offered by the University was not pretextual. Because the University's concern over the Complainant's escalating behavior is a legitimate, non-retaliatory reason, and the evidence reviewed by OCR does not reveal that this reason was pretextual, OCR finds that there is insufficient evidence to support a claim of retaliation based on the referral of the Complainant to the Honor Council.

Conclusion

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the University'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. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the University must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, or participates in an OCR proceeding. If this happens, the individual may file a retaliation complaint with OCR.

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

We appreciate the University's cooperation in the resolution of this complaint. If you have any questions regarding this letter, please contact Marcelo Quiñones, the OCR attorney assigned to this complaint, at 202-453-6567 or marcelo.quinones@ed.gov.

Sincerely,

/S/

Alessandro Terenzoni
Supervisory Attorney, Team II
Office for Civil Rights
District of Columbia Office

Enclosure

Cc via email: Odessa P. Jackson, Esq.