



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 29, 2018

Jerry Falwell, Jr.
President
Liberty University
1971 University Blvd
Lynchburg, Virginia 24515

RE: OCR Complaint No. 11-18-2175
Resolution Letter

Dear Mr. Falwell:

This letter advises you of the outcome of the complaint that the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) received on March 27, 2018 against Liberty University (the University). The Complainant alleged that the University discriminated against the Student on the basis of disability. Specifically, the complaint alleged:

1. The University failed to promptly and equitably respond to the Complainant's complaints that the XXXXX team coaches were discriminating against the Student on the basis of his disability; and
2. The University retaliated against the Student by removing XXXXX from the XXXXX team after the Complainant complained about the coaches' disability discrimination.

OCR 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. Because the University receives Federal financial assistance from the Department, OCR has jurisdiction over it pursuant to Section 504.

OCR received documentation and other evidence from the Complainant, the Student, and the University and interviewed a number of witnesses. Before OCR completed its investigation, the University expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement. Following is a summary of the relevant legal standards and factual information obtained by OCR during the investigation.

Legal Standards

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

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disability. The regulation, at § 104.47(a), specifically states that universities may not discriminate on the basis of disability in providing physical education courses and athletics and similar aid, benefits or services to any of its students, and that universities that operate or sponsor intercollegiate, club or intramural athletics must provide to qualified students with disabilities an equal opportunity for participation in these activities.

The Section 504 regulation, at 34 C.F.R. § 104.7(b), also requires universities that employ 15 or more people to adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints of Section 504 violations. OCR examines a number of factors in evaluating whether a university's grievance procedures provide for prompt and equitable resolution, including whether the procedures provide for the following: notice of the procedures to students, parents, and employees, including where to file complaints; application of the procedures 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; written 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.

In addition, the Section 504 regulation, at 34 C.F.R. § 104.61, which incorporates the procedural provisions of the regulation implementing Title VI of the Civil Rights Act of 1964, prohibits retaliation against any individual who asserts rights or privileges under Section 504 or who files a complaint, testifies, assists or participates in a proceeding under Section 504. When analyzing a claim of retaliation, OCR will look at: 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 an adverse action against the complainant; and 3) whether there is a causal connection between the protected activity and the adverse action. If all these elements are present, this establishes an initial, or *prima facie*, case of retaliation. 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.

Background Information

The Student enrolled at the University in XXXXX. The University operates a XXXXX program with XXXXX teams: XXXXX being the highest level. The Student made the University's XXXXX team in XXXXX. At the end of XXXXX, after the XXXXX team coaches met with the Student, the Student no longer was a member of the XXXXX team, with the Student and the University asserting different reasons for this development.

Resolution

Pursuant to Section 302 of OCR's *Case Processing Manual*, the University signed the enclosed Resolution Agreement on August 24, 2018, which, when fully implemented, will resolve the allegations raised in this complaint. The provisions of the Agreement are aligned with the allegations and issues raised by the Complainant and the information obtained during OCR's

investigation and are consistent with applicable law and regulation. OCR will monitor the University's implementation of the Agreement until the University has fulfilled the terms of the Agreement. Failure to implement the Agreement could result in OCR reopening the complaint.

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, assists or participates in a proceeding under a law enforced by OCR. 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, please contact Kristi Bleyer, the OCR attorney assigned to this complaint, at 202-453-5901 or kristi.bleyer@ed.gov.

Sincerely,

Michael Hing
Team Leader, Team 1
District of Columbia Office
Office for Civil Rights

Enclosure

cc: David Corry, General Counsel *via email to: dcorry@liberty.edu*