



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

November 7, 2018

Jonathan R. Alger
President
James Madison University
91 Alumnae Drive
Room 208
Harrisonburg, Virginia 22807

RE: OCR Complaint No. 11-18-2228
Resolution Letter

Dear President Alger:

This letter is to advise 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 May 11, 2018 against James Madison University (the University). The Complainant alleged that the University discriminated against her on the basis of disability XXXXX and retaliated against her. Specifically, the complaint alleged:

1. The University discriminated against the Complainant the basis of disability XXXXX.
2. The University failed to investigate promptly and equitably the complaint of disability discrimination filed by the Complainant XXXXX.
3. The University retaliated against the Complainant XXXXX.

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. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive Federal financial assistance from the Department. The laws enforced by OCR prohibit retaliation against any individual who asserts rights or privileges under these laws or who files a complaint, testifies, assists, or participates in a proceeding under these laws. In reaching a determination, OCR reviewed documents provided by the Complainant and the University and interviewed the Complainant and University staff.

After carefully considering all of the information obtained during the investigation, OCR found insufficient evidence of a violation of Section 504 or Title II in regard to Allegations 1 and 2. For Allegation 3, prior to the completion of OCR’s investigation, the College expressed an interest in engaging in a voluntary resolution agreement pursuant to Section 302 of OCR’s *Case Processing Manual* (CPM), which states: “[a]llegations and issues under investigation may be resolved at any time when, prior to the conclusion of the investigation, the recipient expresses an interest in resolving the allegations and issues and OCR determines that it is appropriate to resolve them with an agreement during the course of an investigation.”¹

Following is a summary of the relevant legal standards and information obtained by OCR during the investigation.

Background

XXXXXX

Allegation 1: The Complainant was discriminated against on the basis of disability XXXXX.²

Legal Standard

The Section 504 regulation, at 34 C.F.R. § 104.4, and the Title II regulation, at 28 C.F.R. § 35.130(a), provide that no qualified individual with a disability shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under the University’s programs or activities on the basis of disability.

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 without disabilities. 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.

Analysis

Prima Facie Case:

¹ OCR’s *Case Processing Manual* may be accessed at <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>

² OCR determined that the Complainant filed the same allegation with the University pursuant to its internal grievance procedures, and the University completed its investigation XXXXX. According to Section 108 (g) of OCR’s *Case Processing Manual*, when the same allegation is filed with a University’s internal grievance procedures, OCR generally will not conduct its own investigation; instead, OCR reviews the results of the other entity’s determination and decides whether the other entity provided a comparable resolution process pursuant to legal standards that are acceptable to OCR. In this case, OCR was unable to make an initial determination as to whether the University provided a comparable resolution process; therefore, it conducted an investigation of the underlying allegation.

OCR determined that the Complainant was treated less favorably than other students without a disability XXXXX. OCR therefore finds that there is an initial, or prima facie, case of discrimination.

Legitimate, Non-Discriminatory Reason:

XXXXXX

Pretext

XXXXXX Accordingly, OCR will take no further action with respect to Allegation 1.

Allegation 2: The University failed to investigate promptly and equitably the complaint of disability discrimination filed by the Complainant XXXXX.

Legal Standard

The Section 504 regulation, at 34 C.F.R. § 104.7(b), 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. The Title II regulation, at 28 C.F.R. § 35.107(b), requires public universities that employ 50 or more people to adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints of Title II violations. Additionally, a university has an obligation to respond promptly and equitably to allegations that an employee engaged in discrimination based on disability, in the course of carrying out their responsibility to provide educational benefits and services. What is considered prompt and appropriate in a given circumstance is a fact-specific determination.

Analysis

XXXXXX

Based on the above, OCR found insufficient evidence that the University failed to respond promptly and equitably to the Complainant’s allegation of discrimination.³

Allegation 3: The University retaliated against the Complainant XXXXX.

Prior to the completion of OCR’s investigation, the District expressed an interest in engaging in a voluntary resolution agreement pursuant to Section 302 of OCR’s *Case Processing Manual* (CPM), which states: [a]llegations and issues under investigation may be resolved at any time when, prior to the conclusion of the investigation, the recipient expresses an interest in resolving the allegations and issues and OCR determines that it is appropriate to resolve them with an agreement during the course of an investigation.⁴

³ XXXXX.

⁴ OCR’s *Case Processing Manual* may be accessed at <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>

On November 7, 2018, the College signed an Agreement (copy enclosed) that, when fully implemented, will resolve the allegations and issues in this investigation. 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 is consistent with applicable law and regulation. The agreement requires the University to train all staff and administrators who conduct investigations in the University's Office of Equal Opportunity on the prohibition of retaliation against any individual who asserts rights or privileges under Section 504 or Title II or who files a complaint, testifies, assists, or participates in a proceeding under these laws. It also requires XXXXX. Please review the enclosed Agreement for further details.

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 Jennifer Barmon, at 202-453-6751 or Jennifer.Barmon@ed.gov.

Sincerely,

David Hensel
Team Leader, Team III
District of Columbia Office
Office for Civil Rights

Enclosure

cc: Susan L. Wheeler, University Counsel and Nerissa N. Rouser, Assistant University Counsel