



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

July 1, 2021

Via Email: president@daoisttraditions.edu

Mary C. Majebe
President
Daoist Traditions College
382 Montford Avenue
Asheville, NC 28801

RE: OCR Complaint No. 11-20-2017
Resolution Letter

Dear President Majebe:

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 XXXXX against the Daoist Traditions College of Medical Arts (the College). The Complainant alleged that the College discriminated against her on the basis of disability and retaliated against her after she filed a complaint and asserted her rights based on her disability. Specifically, the complaint alleged the following:

1. On XXXXX and XXXXX, the College discriminated against the Complainant on the basis of disability when it denied the Complainant's request to modify her accommodations to allow her XXXXX access to the clinic treatment rooms and herbal dispensary facilities.
2. In XXXXX, the College retaliated against the Complainant for advocating for her accommodations when she was informed that the President of the College and ADA Administrator told the Clinic Manager to be "extra vigilant" if she "stepped out of line" and to "come down hard" on her.

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

During the investigation, OCR reviewed documents provided by the Complainant and the College; and interviewed the Complainant and College faculty/staff.

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

Before OCR completed its investigation, the College expressed a willingness to resolve Allegation 2 pursuant to Section 302 of OCR's *Case Processing Manual*, which states that allegations may be resolved prior to OCR making a determination if the College expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified issues that can be resolved through a resolution agreement.

OCR also completed its investigation of Allegation 1. After carefully considering all of the information obtained during the investigation, OCR found insufficient evidence to support the Complainant's allegation.

OCR's findings and conclusions regarding Allegation 1 are discussed below, as well as a summary of the evidence obtained by OCR to date regarding Allegation 2.

Allegation 1: On XXXXX, and XXXXX, the College discriminated against the Complainant on the basis of her disability when it denied her request to modify accommodations to allow her Service Animal access to the clinic treatment rooms and herbal dispensary facilities.

Legal Standard

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 disability. The regulation at § 104.44(a) requires a college or university to modify its academic requirements as 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 college or 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.

Schools may establish reasonable requirements and procedures for students to provide documentation of their disability and request academic adjustments and auxiliary aids and services. Students are responsible for obtaining disability documentation and for knowing and following the procedures established by the school. Once the student has provided adequate notice and documentation of his/her disability and the need for modifications due to the disability, the school must provide the student with appropriate academic adjustments and auxiliary aids and services that are necessary to afford the student an equal opportunity to participate in the school's program. However, the school is not required to make adjustments or provide aids or services that would result in a fundamental alteration of the school's program or impose an undue burden.

In determining what modifications are appropriate for a student with a disability, the school should familiarize itself with the student's disability and documentation, explore potential modifications, and exercise professional judgment. The question of whether a school has to make modifications to its academic requirements or provide auxiliary aids is determined on a case-by-case basis. OCR generally does not substitute its judgment for that of qualified educators and professionals regarding modifications. Instead, OCR reviews relevant factual evidence to determine whether a

school acted in a reasonable manner and whether it took appropriate steps consistent with Section 504 in making decisions regarding a student's eligibility for academic adjustments. The school and the student should engage in an interactive process to determine appropriate modifications. If a school denies a request for a modification, it should clearly communicate the reasons for its decision to the student so that the student has a reasonable opportunity to respond and provide additional documentation that would address the school's objections.

Facts and Analysis

The Complainant attended the College in the Masters of Acupuncture and Oriental Medicine Program. In XXXXX, the Complainant first identified herself to the College as a student with a disability (XXXXX) and requested disability accommodations. The Complainant has a XXXXX XXXXX that is a XXXXX and gives her XXXXX when the Complainant's XXXXX. In a letter dated XXXXX (Accommodations Letter), the College listed the disability accommodations approved for the Complainant, which included two provisions related to the XXXXX. The Accommodations Letter states that the XXXXX is permitted in the classroom, but that he cannot be next to [the Complainant] when she is "performing acupuncture or other Chinese medicine adjunct techniques in the classroom setting to eliminate the risk of the XXXXX XXXXX into [her] while performing a technique on another person." Additionally, the Accommodations Letter states that the XXXXX is not permitted in the treatment rooms or herbal dispensary. However, it clarifies that the XXXXX "can sit or lie outside of the doorway to the herbal dispensary or treatment rooms to remain accessible to [her], provided he is not blocking the passage for other students."

In the XXXXX, the Complainant requested to modify the accommodations related to the XXXXX not being permitted in the treatment rooms or the herbal dispensary. The Complainant sent a letter to a Vice President at the College who is the ADA Administrator (the ADA Administrator) on or about XXXXX. She explained that the current accommodations were not effective because of a lack of places to XXXXX the XXXXX outside the treatment rooms. Additionally, she stated that there are "visual obstructions" that prevent her and the XXXXX from being able to see each other in the treatment rooms, and only one room, Treatment Room 4, allows the XXXXX to lie outside the room without him blocking the way of students walking to other rooms. However, she explained that it is "not possible to see him from all areas of Room 4 unless he is allowed to enter the room." The Complainant requested that XXXXX be installed at the far end of the herbal dispensary room and outside Treatment Room 4. She also asked that the XXXXX be allowed to partially enter the treatment rooms and the herbal dispensary so that she "can visually assess his XXXXX XXXXX."

In a letter dated XXXXX, the ADA Administrator responded to the Complainant and agreed to install XXXXX to XXXXX the XXXXX on the walls outside of the two treatment rooms that the Complainant uses. The College also agreed "to create a way to temporarily XXXXX" in the treatment rooms during the Complainant's clinic shifts to enable the XXXXX to sit or lay outside the XXXXX and be in sight of the Complainant while maintaining patient privacy. The letter further informed the Complainant that while the XXXXX would not be permitted inside the herbal dispensary, a XXXXX would be installed in the hand-washing area so that the XXXXX could be "XXXXX as close as possible without entering" the dispensary. The letter notes that another one of the Complainant's approved accommodations is "taking short breaks to test or treat" her

XXXXX XXXXX and that she “may need to use this accommodation before mixing a formula...which generally takes an intern about 15 minutes.”

On XXXXX, the Complainant emailed the ADA Administrator and thanked the College for installing the XXXXX. However, she explained that she tried to utilize the XXXXX but there were issues with the positioning of the XXXXX when he is tied to them. She stated that in order for the accommodation to be effective, the XXXXX needed to be allowed in the room. The ADA Administrator responded on XXXXX that she had asked the Clinic Administrator to speak with the Complainant at the clinic about “what adjustments were needed...because it sounded like [the Complainant] needed the XXXXX relocated” and she wanted to show the Clinic Administrator what adjustments were needed. However, since that “was not possible” she asked the Complainant to direct the request to her. On XXXXX, the Complainant wrote to the ADA Administrator that she needed “to look into some specifics to be as clear as possible” in her request and would respond with a description of what she needs.

On XXXXX, the Complainant replied to the ADA Administrator. In regard to the herbal dispensary, the Complainant stated that the XXXXX needs to be allowed in the dispensary in order for him to XXXXX her effectively and that it is “distracting and unfair” for her to have “to walk and/or look outside of a room to get XXXXX.” The Complainant further explained that there are times when she may be in the herbal dispensary for an extended period to make an herbal formula or to help her classmates fill formulas. In regard to the treatment rooms, the Complainant stated that the XXXXX borders in the treatment rooms do not allow for the XXXXX “to move the length of his body in all directions.” She said that he needs to be able to move freely “in order to be comfortable to do his job.” Additionally, she wrote that having XXXXX outside the treatment rooms causes people walking by to distract him. The Complainant then requested a XXXX be installed inside Treatment Room 4 so the XXXXX could be XXXXX in a corner or against a wall and not come in contact with the Complainant, the patient, or the equipment.

The College responded on XXXXX and denied the Complainant’s modification request to allow the XXXXX to enter the herbal dispensary and treatment rooms. The letter explained that the XXXXX would not be permitted inside the herbal dispensary room because it is used to “prepare herbal formulas meant to be ingested by patients” and the XXXXX presence in the room “constitutes a sanitation risk.” It stated that the XXXXX were installed in the hand-washing area so that the XXXXX could be XXXXX as close as possible to the Complainant without being in the room. The College also noted that the Complainant should not be “studying, researching, or writing formulas in the herbal dispensary room between patient appointments” and that the Clinic’s meeting room where the XXXXX is allowed was available for such purposes. Additionally, the College denied the Complainant’s request that the XXXXX be allowed in the treatment rooms because he “poses a safety risk due to the limited space in the treatment rooms and the danger that the [XXXXX] could XXXXX into [the Complainant] with XXXXX in the treatment rooms to allow the XXXXX to be in sight of the Complainant.

In an interview with OCR, the ADA Administrator explained that the herbal dispensary contains raw herbs that are mixed and made into tea mixtures for patients. She stated that the concern with having the XXXXX in the dispensary was that his XXXXX could contaminate the herbs dispensary during this process. In terms of treatment rooms, the ADA Administrator stated that

needles are used in the treatment rooms and if the XXXXX was allowed in the rooms, there was a risk that when he was XXXXX the Complainant, he could XXXX into her or a patient. She explained that, although the XXXXX was not allowed to enter the treatment rooms, the College made modifications to try and address her needs. The Clinic Manager informed OCR that having the XXXXX fit into the treatment rooms was a challenge because he was a XXXXX and there “was no reasonable place to put him.” The Complainant confirmed to OCR that the College attempted to provide alternative accommodations and that the XXXXX could XXXXX her at the XXXXX XXXXX by standing up rather than nudging her, however the Complainant felt that they were not workable or effective given the other distractions at the Clinic.

Based on the above, OCR determined that the College engaged in an interactive process with the Complainant to address her requests to modify her XXXXX accommodations. It considered her requests, explored potential modifications, some of which it granted, clearly communicated the reasons for its decisions, and provided the Complainant with an opportunity to respond. As such, OCR finds there is insufficient evidence to conclude the College violated of Section 504 in regard to Allegation 1.

Allegation 2: In XXXXX, the College retaliated against the you for advocating for your accommodations when you were informed that the President of the College (the President) and ADA Administrator told the Clinic Manager to be “extra vigilant” if the Complainant “stepped out of line” and to “come down hard” on her.

Legal Standard

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.

The following three elements must be satisfied to establish an initial, or prima facie, case of retaliation: 1) an individual engaged in a protected activity (e.g., filed a complaint or asserted a right under a law enforced by OCR); 2) an individual experienced an adverse action; and 3) there is some evidence of a causal connection between the protected activity and the adverse action. When these elements have been established, OCR then determines whether there is a legitimate, non-retaliatory reason for the adverse action; and if so, whether the reason is a pretext, or excuse, for retaliation.

The Complainant alleged that another student told her that the President and ADA Administrator had informed the Clinic Manager to be “extra vigilant” if the Complainant “stepped out of line” and to “come down hard” on her. Although, the ADA Administrator denied that she gave such a directive to the Clinic Manager, the Clinic Manager stated to OCR that her understanding was that the College wanted her “to scrutinize [the Complainant] more harshly in clinic because she was asking for so many accommodations.” She explained that she did not do so because she felt the request was inappropriate. As a result, OCR has a concern that a College administrator may have called for additional scrutiny of the Student as a direct result of her disability-based

advocacies. However, before OCR completed its investigation, the College indicated a desire to resolve any concerns.

On XXXXX, the College signed the enclosed Resolution Agreement (Agreement) which, when fully implemented, will address Allegation 2. The provisions of this Agreement are aligned with the allegation and the information obtained during OCR's investigation, and are consistent with applicable law and regulation. The Agreement requires the College to train all administrative and clinical staff on retaliation and its obligation to prevent retaliatory conduct towards the College's students and staff. Please review the enclosed Agreement for further details. OCR will monitor the College's implementation of the Agreement until the College has fulfilled the terms of the Agreement.

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

The Complainant has a right to appeal OCR's determination regarding Allegation 1 within 60 calendar days of the date of this letter. The Complainant must submit an online appeal form (<https://ocrcas.ed.gov/content/ocr-electronic-appeals-form>) or a written statement of no more than 10 pages (double-spaced, if typed) by mail to the Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue SW, Washington, D.C. 20202; by email to OCR@ed.gov; or by fax to 202-453-6012. The filing date of an appeal is the date that the appeal is submitted online, postmarked, submitted by email, or submitted by fax. In the appeal, the Complainant must explain why she or he believes the factual information was incomplete or incorrect, the legal analysis was incorrect, or the appropriate legal standard was not applied, and how the correction of any error(s) would change the outcome. Failure to provide this information may result in denial of the appeal. OCR will forward a copy of the appeal to the College. The College has the option to submit a response to the appeal to OCR within 14 calendar days of the date that OCR forwarded a copy of the appeal to the College.

Please be advised that the College 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 College's cooperation in the resolution of this complaint. If you have any questions regarding this letter, please contact the OCR Attorneys assigned to this complaint:

Sebastian Amar, at 202-453-6023 or Sebastian.Amar@ed.gov, or Amy Fellenbaum, at 202-453-7232 or Amy.Fellenbaum@ed.gov.

Sincerely,

Jennifer Barmon
Team Leader, Team III
Office for Civil Rights
District of Columbia Office

cc: Susan Russo Klein, Esq.