



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

September 28, 2018

Marvin E. Richards, Jr., Esq.
Deputy General Counsel
Cuyahoga Community College
700 Carnegie Ave.
Cleveland, OH 44115

Re: OCR Docket #15-15-2204

Dear Mr. Richards:

This letter is to inform you of the disposition of the above-referenced complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Cuyahoga Community College (the College) on May 27, 2015. The complaint alleged that the College discriminated against a student (the Student) on the basis of age. Specifically, the complaint alleged that the College's Western Campus refused to admit the Student to its Basic Police Academy solely because of his age.

OCR is responsible for enforcing the Age Discrimination Act of 1975 (the Age Act), 42 U.S.C. §6101 *et seq.*, and its implementing regulation at 34 C.F.R. Part 110. The Age Act prohibits discrimination on the basis of age by recipients of Federal financial assistance from the Department. As a recipient of such financial assistance, the College is subject to this law.

On June 23, 2015, OCR forwarded the timely allegations to the Federal Mediation and Conciliation Service (FMCS) for mediation, as required by the regulation implementing the Age Act. FMCS was, however, unable to resolve the complaint and subsequently returned the complaint to OCR on August 24, 2015.

Based on the complaint allegation, OCR investigated the following legal issue: Whether the College on the basis of age, excluded a person from participation in, denied the person the benefits of, or subjected the person to discrimination under any program or activity in violation of the regulation implementing the Age Act at 34 C.F.R. § 110.10.

During the course of the investigation, OCR reviewed documentation provided by the Complainant and the College, and interviewed counsel for the College. After carefully reviewing the information provided, OCR has determined that the evidence is sufficient to support a finding that the College excluded the Student from enrolling in its Basic Police Academy solely on the basis of his age. The bases for OCR's determination are discussed below.

- **Background**

The Student enrolled in the College in May 2015, at age 18. At that time, he met with a College counselor who told him about the College's various programs. He said that he was most interested in, and hoped to enroll in, the College's Basic Police Academy (Academy). The Academy is a 24-credit hour program certified by the Ohio Peace Officer Training Commission (OPOTC). The College offers the Academy to open-enrollment students as well as to those with an appointment to a police department. Students enrolled in the Academy take the following courses: Patrol Operations; Traffic Enforcement Investigations; Criminal Law; Firearms Techniques; Defensive Driving; The Investigative Process; Introduction to Homeland Security; Standard First Aid & Personal Safety; and Personal Fitness. The Student said that when he contacted the Academy's Program Coordinator, he was informed that he could not apply for the Academy because he was not yet 20 years old. As a result, he chose not to apply to the Academy.

- **Summary of OCR's Investigation**

On May 21, 2015, the Student and the Academy's Program Coordinator engaged in an email exchange during which the Student advised the Program Coordinator of his interest in enrolling in the Academy and that he was 18 years old. In response, the Program Coordinator advised the Student that the Academy does not accept candidates who are under 20 years old because such students would need to repeat the Academy's program if a commission is not obtained within 24 months of passing the State Certification Examination. During the exchange, the Student cited an Academy document which stated that the Academy "has the right to make the decision to make the [admission] decision with regard to individuals under 21" and asked the Program Coordinator whether this meant he could "technically apply" for admission. The Program Coordinator responded, "I am sorry, but no, you cannot because you are not yet 20 years old." On May 22, the Student sent the Program Coordinator an email in which he noted that he would be able to obtain employment through a private security company owned by a detective. Neither the Student nor the College submitted any emails indicating whether the Program Coordinator responded to that email. The Student advised OCR that he did not apply to the Academy as the Program Coordinator had advised him that he was ineligible to do so because of his age.

OCR reviewed the Academy's Application Packet available which was published online at the time the Student sought admission to the Academy to determine what admission qualifications were in place at the time he sought admission. The Packet noted that potential applicants would not be admitted if they have had any felony conviction or certain misdemeanor convictions. It also noted that acceptance into the Academy was based on the following criteria: acceptance into the College, good academic and financial standing with the College; accurate completion of the Academy's information sheet; a passing score on the physical fitness assessment; verification of BMV information (i.e., a valid Ohio driver's license with no restrictions), a completed physical exam; high school diploma/GED certificate; viability for hire; and payment of a non-refundable application fee.

Regarding viability for hire, the Packet included a page entitled, *Peace Officer Training Academy aka Basic Police Academy Age Issues*, which addressed the viability of hiring

applicants under the age of 20. The page stated: “Except under very rare circumstances, Cuyahoga Community College’s Police Academy does not accept individuals under the age of 20. If an exception is made, the potential recruit should understand the unlikelihood of getting a job with a police department until he or she is 21 years old.” It further noted that “Although the college may allow a student less than 21 years of age to enroll, it is very unlikely that a police department will hire him/her.” Finally, it advised that if a student is under 21 years of age and admitted to the Academy, the student must arrange for someone who is at least 21 to transport firearms to and from the range for firearms training.

The Program Coordinator stated in a document submitted to OCR that “It has been our practice since Tri-C began having Police Academies that 18-year old applicants would not be accepted. There are two basic reasons for this: 1) when a Cadet completes his or her Basic Police Academy, he or she has 24 months to find a police job and be commissioned by the OPOTC. If an individual goes past the second anniversary of having passed their State Certification Examination, the OPOTC requires that the individual repeat the entire Basic Police Academy if he or she desires to pursue becoming a police officer. This applies to ALL Police Academy Cadets regardless of age; 2) police departments, as a rule, do not commission individuals under the age of 21.”

The College’s Deputy General Counsel (Counsel) advised OCR that the Academy adopted the policy regarding applicants being at least 20 years old due to concerns about employment opportunities for students. Counsel stated that this concern is largely founded upon Ohio law which requires anyone who seeks to be appointed as a police officer to be 21 years old.¹ Counsel also noted that students who are accepted into the Academy may be eligible for federal financial assistance to pay for their education and explained that the College was mindful that the U.S. Department of Education’s Title IV financial aid assistance regulations require that any non-degree program offered by a public institution, such as the Academy, must lead to gainful employment.

Counsel explained that since the Program takes 24 weeks to complete the day program, or 38 weeks to complete the night/weekend program, 18-year-old students could finish the Academy, and still be more than two years from their 21st birthday and not be eligible to be hired as a police officer for the entire two-year period that their certification is effective, guaranteeing that they would have to repeat the entire Program in order to be eligible to be hired. Counsel also noted that the Academy could, however, admit a student under the age of 20 years old, per the language of the Admissions Packet if, for instance, the student had a job lined up where the student could work without having to carry a firearm; however, Counsel did not provide any examples where the Academy had so admitted such a student.

¹ See, Ohio Revised Code §124.41, which states, in part, that “No person shall be eligible to receive an original appointment to a police department, as a police officer, subject to the civil service laws of this state, unless the person has reached the age of twenty-one.”

- **Applicable Legal Standards**

The Age Act broadly prohibits age discrimination. The regulation implementing the Age Act at 34 C.F.R. Section 110.10 provides that a recipient may not use age distinctions, or take any other actions that have the effect, on the basis of age, of excluding persons from, or denying them the benefits of, a program or activity, or denying or limiting persons in their opportunity to participate in a program or activity, either directly or through contractual, licensing or other arrangements.

To prove a violation of the Age Act, OCR must find that it is more likely than not that the College excluded a student or applicant from its program because of age, and not for other legitimate reasons including, but not limited to, an exception to the Age Act recognized at 34 C.F.R. Section 110.12.

To determine whether an educational institution discriminated on the basis of age, OCR considers whether there is direct evidence of such discrimination including, but not limited to, the existence and application of a formal or informal age cut-off or similar policy, or remarks by relevant decision-makers indicating an intent to discriminate on the basis of age. If OCR finds that there is sufficient indication that age discrimination may have occurred then, unless OCR is satisfied that there is a truthful, legitimate, non-discriminatory explanation for this different treatment – including but not limited to an exception to the Age Act recognized at 34 C.F.R. Section 110.12 – then OCR may conclude that discrimination occurred. Conversely, if OCR finds evidence of a legitimate, non-discriminatory explanation for the educational institution’s actions, and such evidence appears to be truthful and legitimate, then the claim of age discrimination will fail.

As indicated above, the regulation implementing the Age Act specifically recognizes an exception to its requirements. That exception, set out at 34 C.F.R. Section 110.12, permits an educational institution to take actions otherwise prohibited by the Age Act when such action reasonably takes into account age as a necessary factor to the normal operation of a program or activity, as follows: (1) age is used as a measure or approximation of one or more other characteristics; (2) the other characteristic or characteristics must be measured or approximated in order for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity; (3) the other characteristic or characteristics can be reasonably measured or approximated by the use of age; and (4) the other characteristic or characteristics are impractical to measure directly on an individual basis.

Pursuant to 34 C.F.R. §110.11, for purposes of §110.12, the term “normal operation” means the operation of a program or activity without significant changes that would impair its ability to meet its objectives, and “statutory objective” means any purpose of a program or activity expressly stated in any Federal statute, State statute, or local statute or ordinance adopted by an elected general purpose legislative body. The regulation at 34 C.F.R. §110.14 provides that the burden of proving that an age distinction or other action falls within the exceptions outlined in §110.12 is on the recipient of Federal financial assistance.

- **Legal Analysis**

The evidence shows that Program Coordinator advised the Student that he could not apply to the Academy on May 21, 2015, because he was 18 years of age. The evidence further shows that the Program Coordinator advised, in writing, that it has been the Academy's practice "that 18-year old applicants would not be accepted." Additionally, although the Application Package included a page indicating that, in "very rare circumstances" applicants under the age of 20 years old could be admitted, and Counsel indicated that such circumstances would include those where an applicant indicated that an employment opportunity was lined up, there was no information submitted by the College indicating that the Academy had done so or would do so, such as when the Student indicated in his May 22, 2015, email to the Program Coordinator that he could obtain employment from a private security company owned by a detective. OCR has therefore determined that the foregoing constitutes direct evidence of age discrimination with respect to the admission of applicants, such as the Student, under the age of 20 years old into the Academy.

Based on the foregoing, OCR sought to determine whether the College's proffered reason for discriminating on the basis of age met any of the exceptions to the general prohibition against age discrimination in 34 C.F.R. §110.10. As noted above, 34 C.F.R. §110.12 provides an exception where age is used to achieve any statutory objective of the program or activity. "Statutory objective" is defined as "any purpose of a program or activity expressly stated in any Federal statute, State statute, or local statute or ordinance adopted by an elected general purpose legislative body."

In this instance, the College argued that the statutory objective justifying discrimination based on age is to be found in Ohio Revised Code §124.41, which limits eligibility to become a police officer to those persons who are at least 21 years old. OCR reviewed this statute and notes that, although this statute does not address the establishment of police academies by community colleges, it explicitly allows for municipal corporations and civil service townships to establish police cadet programs and to employ persons as police cadets at age eighteen for the purposes of training persons to become police officers. As such, OCR finds that the College's reliance on this statute is misplaced. Although the College points to this statute to argue that it reasonably restricts those younger than 20 from enrolling in the Academy due to the inability of such individuals to be employable as a police officers upon graduation, the statute does not compel the Academy to discriminate against students based on age in order to achieve any expressly stated statutory objective. In fact, the statute, which discusses age qualifications for appointment as a police officer subject to state civil service laws and police cadet programs operated by municipal corporations or civil service townships, it is otherwise unrelated to the Academy's post-secondary education program, which is an open enrollment certification program. Based on the above, OCR finds that the College has not met its burden under 34 C.F.R. §110.14 to demonstrate that the exception contained in 34 C.F.R. §110.12 applies. Accordingly, OCR finds that the College has violated the Age Act, as alleged.

- **Resolution and Conclusion**

To resolve the compliance findings identified above, the College signed the enclosed agreement on September 25, 2018. Under terms of the agreement, the College will be required to:

- revise its application for admission to its Basic Police Academy to remove its restriction on admitting students under the age of 20, and submit it for review and approval to OCR; and
- publish the revised application for admission on its website, and by other similarly effective means; and discontinue publication and use of the original application for admission, which will include removal of the original application from the College's website.

In light of the signed agreement, OCR finds that the complaint is resolved, and OCR is closing its investigation as of the date of this letter. OCR will, however, monitor the College's implementation of the agreement. Should the College fail to fully implement the agreement, OCR will take appropriate action to ensure the College's compliance with the Age Act regulations.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

Please be advised that the College may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the individual may file another complaint alleging such treatment. This concludes OCR's investigation of the complaint and should not be interpreted to address the College's compliance with any other regulatory provision or to address any issues other than those addressed in this letter.

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

A complainant may file a private suit in federal court, whether or not OCR finds a violation.

We appreciate the cooperation of the College during the investigation and resolution of this complaint. If you have any questions about this letter or OCR's resolution of this case, you may contact Donald S. Yarab, Supervisory Attorney/Team Leader, at (216) 522-7634. We look forward to receiving the College's first monitoring report by October 31, 2018. Please direct the report to the attention of Vincent Cheverine, who will be monitoring the College's

implementation of the agreement. Mr. Cheverine can be contacted at (216) 522-2676 or by e-mail at Vincent.Cheverine@ed.gov.

Sincerely,

/s/

Donald S. Yarab
Supervisory Attorney/Team Leader

Enclosure