



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS, REGION XV

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CLEVELAND, OH 44115

REGION XV  
MICHIGAN  
OHIO

December 18, 2020

**Via email only to [djohnson@bellanca.com](mailto:djohnson@bellanca.com)**

Derek T. Johnson, Esq.  
Bellanca Beattie, P.C.  
20480 Vernier Road  
Harper Woods, Michigan 48225

Re: OCR Docket No. 15-19-2076

Dear Mr. Johnson:

This letter is to notify you of the disposition of the above-referenced complaint filed on August 26, 2019, with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Wayne County Community College District (the College) alleging that the College discriminated against a student (the Student) on the basis of disability. Specifically, the complaint alleged that:

1. The College failed to investigate or appropriately respond to the Student's internal disability discrimination complaints of XXXXX.
2. The College retaliated against the Student for XXXXX disability discrimination complaints, beginning on XXXXX when the Student's instructor (a) XXXXX; (b) XXXXX; and (c) XXXXX.

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 by recipients of federal financial assistance. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. Persons who seek to enforce their rights under these laws are also protected from retaliation by these laws. As a recipient of federal financial assistance from the Department and as a public entity, the College is subject to these laws.

Based on the complaint allegations, OCR opened an investigation of the following legal issues:

1. Whether the College failed to adopt a grievance procedure that incorporates appropriate due process standards and that provides for the prompt and equitable resolution of complaints alleging any actions prohibited by Section 504 or Title II, in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.7(b) and the Title II implementing regulation at 28 C.F.R. § 35.107(b).

2. Whether the College intimidated, threatened, coerced, or discriminated against individuals for the purpose of interfering with any right or privilege secured by Section 504 and Title II, in violation of 34 C.F.R. § 104.61 and Title II's implementing regulation at 28 C.F.R. § 35.134.

During its investigation to date, OCR reviewed information provided by the Student's XXXXX and the College and interviewed the Student's XXXXX, the Student's instructor, and the College's dean of instruction. OCR also offered the Student's XXXXX a chance to respond to information provided by the College.

With respect to allegation #1, the College expressed an interest in resolving the allegation prior to the conclusion of OCR's investigation and OCR determined resolution was appropriate. With respect to allegation #2, OCR found insufficient evidence of a violation of Section 504 and Title II.

## **I. Allegation #1: Alleged Failure to Respond to Disability Grievance**

### **A. Information Obtained During OCR Investigation**

During the XXXXX semester, the Student was enrolled in an XXXXX course called XXXXX at the College. The Student is a person with disabilities. On XXXXX, the College issued the Student an "Academic Accommodations Notification" that approved XXXXX for certain academic adjustments related to XXXXX disabilities. The provision of those adjustments is not at issue in this OCR case.

The complaint alleged that the Student and/or XXXXX complained to the College in writing on XXXXX, that XXXXX instructor in the XXXXX course discriminated against and/or harassed the Student on the basis of disability, and that the College failed to appropriately respond.

Documentation from the College reviewed by OCR in this matter confirmed that the Student and/or XXXXX submitted written complaints to the College administration as follows:

XXXXX multiple paragraphs removed XXXXX

OCR reviewed the College's written disability grievance procedure, which is located within its Disability Support Services handbook. The handbook is located on the College's website and is publicly available. It has been previously reviewed and approved by OCR during monitoring of a resolution agreement in case #15-08-2060.

The regulation implementing Section 504 at 34 C.F.R. § 104.7(b) states, in part, that a recipient shall adopt grievance procedures that incorporate appropriate due process standards that provide for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504. The Title II regulation contains a similar requirement at 28 C.F.R. § 35.107(b). The College must make sure that all designated employees have adequate training as to what conduct constitutes disability discrimination and are able to explain how the grievance procedure operates.

## **B. Legal Analysis**

The regulation implementing Section 504 at 34 C.F.R. § 104.7(b) states, in part, that a recipient shall adopt grievance procedures that incorporate appropriate due process standards that provide for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504. The Title II regulation contains a similar requirement at 28 C.F.R. § 35.107(b). The College must make sure that all designated employees have adequate training as to what conduct constitutes disability discrimination and are able to explain how the grievance procedure operates.

## **C. Voluntary Resolution**

Under Section 302 of OCR's *Case Processing Manual*, allegations under investigation may be resolved at any time when, prior to the issuance of a letter of findings, the recipient 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 addressed through a resolution agreement. In this case, the College expressed an interest in resolving the allegation prior to the conclusion of OCR's investigation, and OCR determined resolution was appropriate. Specifically, OCR determined resolution was appropriate because the evidence obtained to date does not support that the College took any action to investigate or respond to the Student's multiple disability discrimination complaints. For example, there is no documentation from the College showing that it interviewed the Student or any other relevant individual, that the College made a determination about whether any of the allegations occurred, or that it provided the Student with notice of outcome of its investigation.

On December 18, 2020, the College signed the enclosed Resolution Agreement, which, when fully implemented, will address the first allegation in the complaint. OCR will monitor the implementation of the Resolution Agreement.

## **II. Allegation #2: Alleged Retaliation on the Basis of Disability**

### **A. Information Obtained During OCR Investigation**

As noted above, the complaint alleged that the College retaliated against the Student for XXXXX disability discrimination complaints. Specifically, the complaint alleged retaliation occurred in three ways:

XXXXX multiple paragraphs removed

The XXXXX said neither XXXXX nor the Student told the instructor about the specific complaints above and did not know if anyone from the College told XXXXX about them.

OCR interviewed both the instructor and the dean of instruction about this allegation and reviewed related documentation from the College. The instructor said XXXXX.

Documentation from the College supported the instructor's contention. Specifically, XXXXX.

XXXXXX multiple paragraphs removed XXXXX

OCR provided the XXXXX an opportunity to respond to information provided by the College. The XXXXX disputed that the instructor was unaware of the Student's complaints, and that the instructor graded the Student appropriately. However, XXXXX identified no new factual information to support these positions.

## **B. Legal Analysis and Conclusion**

The regulation implementing Title VI, at 34 C.F.R. § 100.7(e), prohibits recipients of federal financial assistance from intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by the regulation or because that individual has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the regulation. This requirement is incorporated by reference in the Section 504 regulation at 34 C.F.R. § 104.61. The Title II regulation contains a similar prohibition against retaliation at 28 C.F.R. § 35.134.

In analyzing retaliation claims, OCR examines whether: 1) an individual engaged in a protected activity; and 2) an individual experienced an adverse action caused by the recipient; and 3) there is some evidence of a causal connection between the adverse action and the protected activity.

Although all three elements must exist to establish a prima facie case, OCR need not address all three elements if it determines one is missing.

Protected activity includes participation in an investigation, proceeding, or hearing under OCR's regulations; actions taken in furtherance of a substantive or procedural right guaranteed by the statutes and regulations enforced by OCR; or expression of opposition to any practice made unlawful by a statute or regulation that OCR enforces.

Causal connection between protected activity and adverse action may be established through either direct or circumstantial evidence.

Applying the legal standard for retaliation to the facts of this case, OCR finds that the Student engaged in a protected activity when XXXXX filed complaints with the College pertaining to disability discrimination on XXXXX.

With respect to adverse action, OCR considered each of the three acts identified in the complaint as follows:

XXXXXX multiple paragraphs removed XXXXX

Given these findings of fact, OCR finds the preponderance of the evidence fails to establish that the College took adverse action against the Student. And, even if it had, OCR further finds no evidence of a causal connection between the Student's protected activity and any form of alleged

adverse action, because the instructor – the only individual involved – was unaware of the Student’s disability complaints. The weight of the evidence supports that neither the Student nor the administration ever informed the instructor that the Student had complained of disability discrimination. Accordingly, OCR found insufficient evidence to find that the College violated Section 504 and Title II, as alleged, by retaliating against the Student.

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. 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.

With respect to allegation #2 only, the complainant has a right to appeal OCR’s determination within 60 calendar days of the date indicated on this letter. In the appeal, the complainant must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal. If the complainant appeals OCR’s determination, OCR will forward a copy of the appeal form or written statement to the recipient. The recipient has the option to submit to OCR a response to the appeal. The recipient must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

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.

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, OCR 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.

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

OCR looks forward to receiving the College’s first monitoring report by April 15, 2021. If you have questions about OCR’s resolution of this complaint or the implementation of the resolution agreement, please contact me by telephone at XXXXX or by e-mail at XXXXX.

Sincerely,

XXXXXX  
Acting Team Leader

Enclosure