



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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**September 25, 2015**

**IN RESPONSE, PLEASE REFER TO: 03152298**

Dr. Dennis J. McCarthy  
Executive Director  
Western Area Career and Technical Center  
688 Western Ave.  
Canonsburg, PA 15317

Dear Dr. McCarthy:

This is to advise you that the U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation and reached a determination in the above-referenced complaint filed against the Western Area Career and Technology Center (the Center). The Complainant alleged that the Center discriminated against XXXXXX on the basis of disability by:

1. XXXXXX.
2. XXXXXX.
3. XXXXXX.
4. XXXXXX.

XXXXXX. XXXXXX:

5. XXXXXX.

OCR enforces Section 504 of the Rehabilitation Act of 1973, 29. U.S.C. § 794 and its implementing regulation, 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance. OCR also has jurisdiction as a designated agency under Title II of the Americans with Disabilities Act of 1990 (ADA) and its implementing regulation, at 28 C.F.R. Part 35, over complaints alleging discrimination on the basis of disability that are filed against public entities. These laws prohibit retaliation for the purpose of interfering with any right or privilege secured by the civil rights laws enforced by OCR, or as a result of making a complaint, testifying, or participating in any manner in an OCR

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

proceeding. As a recipient of Federal financial assistance and a public entity, the Center is subject to the provisions of Section 504, the ADA, and their implementing regulations.

OCR applies a preponderance of the evidence standard to determine whether the evidence is sufficient to support a particular conclusion. Specifically, OCR examines the evidence in support of and against a particular conclusion to determine whether the greater weight of the evidence supports the conclusion or whether the evidence is insufficient to support the conclusion.

In reaching a determination in this complaint, OCR reviewed documentation provided by the Complainant and the Center. OCR also interviewed witnesses identified by the Complainant. Based on this information, OCR determined that there is sufficient evidence to establish that the Center discriminated against the Complainant on the basis of XXXXXX disability by failing to provide one of her academic adjustments (recording in class) in her XXXXXX. OCR also identified compliance concerns regarding the Center's Section 504 and ADA grievance procedures. The Center has signed the attached resolution agreement to address these concerns. OCR determined that there is insufficient evidence to establish that the Center discriminated and retaliated against the Complainant with regard to all other allegations under investigation.. The basis for OCR's determination is set forth below.

#### Applicable Legal Standard

The regulation implementing Section 504, at 34 C.F.R. § 104.3(j) defines a person with a disability as a person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such an impairment. The regulation at 34 C.F.R. § 104.3(l)(3) defines a qualified person with a disability, in postsecondary education, as a person with a disability who meets the academic and technical standards for admission or participation in the recipient's education program or activity. The regulation at 34 C.F.R. § 104.4(a) provides that no qualified person with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance. In addition, the ADA regulation, at 28 C.F.R. Section 35.130(a), states that, "No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity". In determining whether an individual has been treated differently on the basis of disability, OCR considers whether an individual with a disability has been subjected to adverse treatment by a recipient; whether similarly-situated, non-disabled individuals were treated more favorably; whether the recipient can provide a legitimate, non-discriminatory reason for the difference in treatment; and whether any such reason is pretext for unlawful discrimination.

The Section 504 regulation, at 34 C.F.R. § 104.44(a), provides that a post-secondary institution must make such modifications to its academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating against a qualified individual with a disability. Modifications may include an adaptation in the manner in which

specific courses are conducted. Despite this requirement, post-secondary institutions are not required to modify academic requirements that would constitute a fundamental alteration to the program of instruction.

In making a compliance determination regarding the provision of academic adjustments and auxiliary aids and services in the post-secondary setting, OCR considers whether the student provided adequate notice to the post-secondary institution of the nature of the disability and the need for a modification, adjustment, aid or service. The student is responsible for providing evidence of a condition that requires academic adjustments. In some cases, this will require that the student provide the results of medical, psychological, or educational diagnostic tests and professional prescriptions for academic adjustments. In disputes over the need for academic adjustments, OCR considers whether the recipient took reasonable steps to obtain a professional determination of whether aids or adjustments were necessary and, if so, what kind of aids or adjustments. This may include a determination of whether the recipient acted on the basis of an assessment by professionals who had appropriate credentials and who used appropriate criteria. It is the prerogative of an educational institution to decide what requirements are essential, so long as each requirement has a rational relationship to the program of instruction and, therefore, is not a pretext for discrimination. OCR will defer generally to the academic judgment of educators, and therefore, OCR examines whether the recipient acted in a reasonable manner. Once a recipient approves an academic adjustment or auxiliary aid, it must be delivered in a manner that affords a person with a disability equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement.

In addition, the Section 504 regulation at 34 C.F.R. § 104.7 provides that a recipient that employs fifteen or more persons shall designate at least one person to coordinate its efforts to comply with Section 504. A recipient shall also adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part. Recipients must provide notice to students and employees of the procedure, including how and where to file a complaint.

Retaliation is prohibited under Section 504, at 34 C.F.R. §104.61, and under Title II, at 28 C.F.R. § 35.134. In analyzing retaliation allegations, OCR determines: whether the individual engaged in a protected activity (that is, exercised a right or took some action that is protected under the Federal laws that OCR enforces); whether the recipient had notice of the individual's protected activity; whether the recipient took an adverse action against the individual at the same time or sometime after the individual engaged in the protected activity; and whether there is a causal connection between the protected activity and the adverse action. If one of the above elements cannot be established, then OCR finds insufficient evidence of a violation. If these four elements are present, then a prima facie case of retaliation is established, and OCR next considers whether the Recipient has identified a legitimate, nondiscriminatory reason for taking the adverse action. If so, OCR then considers whether the reason asserted is a pretext for discrimination. In order for an activity to be considered "protected," the Complainant must have either opposed conduct prohibited by one of the laws that OCR enforces or participated in

an investigation conducted under the laws that OCR enforces. An adverse action is one that causes a lasting and tangible harm or has a chilling effect on an individual's ability to pursue his/her rights. Merely unpleasant actions would not be considered to be adverse.

### **Facts Established by the Investigation**

The Complainant enrolled XXXXXX.

### ***Center's Policies and Procedures***

The Center's non-discrimination policy states that it does "not discriminate on the basis of race, color, religion, sex, national origin, age, physical handicap, disability, or limited English proficiency in its education programs, activities, or employment policies, as required by Title IX of the 1972 Educational Amendment, Title IV of the Civil Rights Act of 1964, Section 504 Regulations of the Rehabilitation Act of 1973, and the Americans with Disabilities Act." Individuals with inquiries about these policies are directed to contact the Executive Director and Title IX, Title VI, Section 504, and ADA Coordinator, and this individual's address and telephone number are provided.

With regard to students with disabilities who may require academic adjustments or accommodations, the Center has a policy entitled, "The Policy Regarding Program Access for the Handicapped." This policy provides, "A handicap would not negate accessibility to the Practical Nursing Program if the student could meet the Expected Competencies of a Graduate Practical Nurse."

xxx – paragraphs redacted – xxx

### **Center's Policies and Procedures**

While the Center's non-discrimination statement lists the Executive Director as the Section 504 Coordinator along with his name and contact information, he is not described anywhere in the Center's policies as the person to contact to request academic adjustments.

In addition, the Center provided grievance procedures but these also do not specify the bases, including disability, upon which one may file a complaint. The procedures also lack the basic elements required of Section 504/Title II grievance procedures. Based on a preponderance of the evidence, OCR concludes that the Center's Section 504 grievance procedures do not comport with the requirements of the Section 504 regulations at 34 C.F.R. § 104.7(b) and Title II of the ADA, at 28 C.F.R. Part 35.107(a). The Center has agreed to address these procedural compliance concerns by entering into the enclosed agreement with OCR.

Consistent with our usual practice, OCR will monitor the implementation of the Agreement until we have determined that the Center is in compliance with the regulations implementing Section 504 and Title II with respect to the concerns identified in this investigation.

This concludes OCR’s investigation of the complaint and should not be interpreted to address the Center’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 Center may not harass, coerce, intimidate, or discriminate against any individual because she has filed a complaint or participated in the complaint resolution process. If this happens, the Complainant 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, 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.

If you have any questions or concerns, please contact Dannelle Walker, Team Attorney, by telephone at (215) 656-5711, or by email at: [dannelle.walker@ed.gov](mailto:dannelle.walker@ed.gov).

Sincerely,

/s/

Melissa M. Corbin  
Team Leader  
Philadelphia Office

cc: Matthew Hoffman, Esq.