UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION III
DELAWARE
KENTUCKY
MARYLAND
PENNSYLVANIA
WEST VIRGINIA

April 12, 2016

OCR Complaint No. 03152307

Esther L. Barazzone, President
Chatham University
Woodland Road
Mellon Center
Pittsburgh, PA 15232

Dear Ms. Barazzone:

This is to advise you of the resolution of the complaint filed with the Office for Civil Rights (OCR), U.S. Department of Education (the Department) XXXXXX against Chatham University (the University). Specifically, the Complainant alleged that the University discriminated against her on the basis of race by:

XXX- paragraph redacted –XXX

The Complainant also alleged that the University retaliated against her by:

XXX- paragraph redacted –XXX

In addition, the Complainant alleged that the University discriminates on the basis of disability because:

12. The basement and the first and second floors of Dilworth Hall are inaccessible to persons with mobility impairments.

OCR is responsible for enforcing

- Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, and its implementing regulation, 34 C.F.R. Part 100. Title VI prohibits discrimination on the basis of race, color or national origin by recipients of Federal financial assistance. Title VI also prohibits retaliation.

- 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. Section 504 also prohibits retaliation.

As a recipient of Federal financial assistance from the Department, the University is subject to these laws.

Consistent with OCR procedures, the University resolved this complaint by signing a voluntarily resolution agreement. The provisions of the agreement are aligned with the information gathered in our investigation to date.

Legal Standards

Issues #1-2, 4-5: Race - Different treatment

In order to establish a violation of Title VI, we would have to establish that the Complainant was treated differently than similarly-situated students on the basis of race in a way that limited the Complainant's opportunity to participate in or benefit from a school program or activity, and that either the University cannot articulate a legitimate nondiscriminatory reason for the different treatment or that the University has articulated a legitimate nondiscriminatory reason for the different treatment, but the reason is pretext for discrimination. Additionally, OCR examines whether the University treated the Complainant in a manner that was consistent with established policies and practices and whether there is any other evidence of discrimination based on race.

Issue #3: Race – Failure to respond

The regulation implementing Title VI, at 34 C.F.R. Section 100.3(a), provides that no person shall, on the ground of race, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program of the University. Recipients may not, based on race, color, or national origin, provide, restrict or deny a student any service or benefit under the recipient's educational program or subject a student to separate treatment in the receipt of any such service or benefit. See 34 C.F.R. § 100.3(b)(1)(ii), (iii), (iv) and (vi).

Under Title VI and its implementing regulation, if a student is harassed by an employee on the basis of race or national origin, the University is responsible for determining what occurred and responding appropriately. OCR evaluates the appropriateness of the responsive action by assessing whether it was prompt, thorough, and effective. What constitutes a reasonable response to harassment will differ depending upon the circumstances. However, in all cases the University must conduct a prompt, thorough and impartial inquiry designed to reliably determine what occurred. If harassment is found, it should take reasonable, timely, age-appropriate, and effective corrective action, including steps tailored to the specific situation. The response must be designed to stop the harassment, eliminate the hostile environment if one has been created, and remedy the effects of the harassment on the student who was harassed. The University must also take steps to prevent the harassment from recurring, including disciplining the harasser where appropriate. A series of escalating consequences may be necessary if the initial steps are ineffective in stopping the harassment.

Other actions may be necessary to repair the educational environment. These may include special training or other interventions, the dissemination of information, new policies, and/or other steps that are designed to clearly communicate the message that the University does not tolerate harassment and will be responsive to any student reports of harassment. The University also should take steps to prevent any retaliation against the student who made the complaint or those who provided information.

Issues #6-9, 11: Race - Retaliation

The regulation implementing Title VI, at 34 C.F.R. § 100.7(e), prohibits retaliation. To establish a prima facie case of retaliation, OCR must determine whether: (1) the Complainant engaged in a protected activity; (2) the University had notice of the Complainant's protected activity; (3) the University took an adverse action contemporaneous with or subsequent to the protected activity; and (4) there was a causal connection between the protected activity and the adverse action. If any of those elements cannot be established, then OCR cannot find evidence of a retaliation violation. If these four elements are present, then a prima facie case of retaliation is established, and OCR next considers whether the University 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. Notice of the protected activity to the University, and not necessarily to the alleged individual retaliator, is sufficient to establish the notice requirement. In determining whether an action taken by the University was adverse, OCR considers whether the action reasonably acted as a deterrent to further protected activity, or if the individual was, because of the challenged action, precluded from pursuing his or her discrimination claims. In addition, OCR considers whether the alleged adverse action caused lasting and tangible harm or had a deterrent effect. Merely unpleasant or transient incidents usually are not considered adverse.

Issue #10: Disability - Retaliation

Retaliation is also prohibited under the Section 504 implementing regulation, at 34 C.F.R. § 104.61, which incorporates by reference the procedural provisions of Title VI, as set forth above. *See above* for retaliation legal standard.

Issue #12: Disability - Accessibility

The Section 504 regulation states that no qualified person with a disability shall, because a covered entity's facilities are inaccessible to or unusable by persons with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any of the entity's programs or activities. 34 C.F.R. § 104.21. The regulation references standards for determining whether an entity's programs, activities, and services are accessible to individuals with disabilities, depending upon whether the facilities are determined to be

existing, new construction, or alterations. The applicable standard depends upon the date of construction or alteration of the facility.

For existing facilities, the regulations require an educational institution to operate each service, program, or activity so that, when viewed in its entirety, it is readily accessible to and usable by individuals with disabilities. This compliance standard is referred to as "program access." This standard does not necessarily require that the institution make each of its existing facilities or every part of a facility accessible if alternative methods are effective in providing overall access to the service, program, or activity. 34 C.F.R. §104.22(a). Under the Section 504 regulation, existing facilities are those for which construction began before June 3, 1977.

To provide program access in existing facilities, an institution may use such means as redesign of equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of health, welfare, or other social services at alternative accessible sites, alteration of existing facilities, construction of new facilities, or any other methods that result in making it program or activity accessible to persons with disabilities. A recipient is not required to make structural changes in existing facilities where other methods are effective in providing program access. However, in choosing among available methods for providing program access, the institution is required to give priority to those methods that offer services, programs, and activities to qualified individuals with disabilities in the most integrated setting appropriate. 34 C.F.R. § 104.22(b). Where programs or activities cannot or will not be made accessible using alternative methods, structural changes may be required in order for recipients to comply.

The Section 504 regulation also requires a recipient to adopt and implement procedures to ensure that interested persons can obtain information as to the existence and location of services, activities, and facilities in existing construction that are accessible to and usable by persons with disabilities. 34 C.F.R. § 104.22(f).

For new construction, the facility or newly constructed part of the facility must itself be readily accessible to and usable by persons with disabilities. 34 C.F.R. § 104.23(a). Under the Section 504 regulation, a facility will be considered new construction if construction began (ground was broken) on or after June 3, 1977.

With regard to alterations, each facility or part of a facility that is altered by, on behalf of, or for the use of an institution after the effective date of the Section 504 regulation in a manner that affects or could affect the usability of the facility or part of the facility must, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by persons with disabilities. 34 C.F.R. § 104.23(b).

For an entity covered by Section 504, new construction and alterations after June 3, 1977, but prior to January 18, 1991, must conform to the American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped (ANSI). New construction and alterations between January 18, 1991, and January 26, 1992, must conform to the Uniform Federal Accessibility Standards (UFAS). New construction and alterations after January 26, 1992, but prior to March 15, 2012, must conform to UFAS or the

1991 Americans with Disabilities Act Standards for Accessible Design (the 1991 ADA Standards) or equivalent standards. However, the regulation provides, at 34 C.F.R. § 104.23(c), that departures from particular technical and scoping requirements of UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided.

In reviewing program access for an existing facility, the UFAS may also be used as a guide to understanding whether individuals with disabilities can participate in the program, activity, or service.

Factual Summary

XXX- paragraph redacted –XXX

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Allegation 1

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Allegation 2

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Allegation 9

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Allegation 10

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Allegation 11

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XXX- paragraph redacted –XXX

Allegation 12

The Complainant asserts that the basement and second and third floors of Dilworth Hall, where the Program was located, was inaccessible. She stated that there was no elevator or chair lift for assistance with the stairs in the building. These floors contained private mock therapy session rooms that contained a one-way mirror and audio video equipment, as well as faculty offices and the student lounge. The Complainant asserts that the lack of accessibility meant that she could not bring in interviewees with a physical disability to Dilworth Hall, so the Program's research and assignments could have excluded students with disabilities.

The University denies discriminating on the basis of disability, and maintains that Dilworth Hall currently provides program accessibility. Dilworth Hall was built in 1959. According to the University, the main classes for students were held on the first floor. While the faculty offices were located on the second and third floors, the professors accommodated students with mobility impairments by holding their meetings on the first floor. The University entered into a Settlement Agreement with the U.S. Department of Justice on December 8, 2008 (No. 202-64-42); based on that, it installed an elevator that allowed access to the second and third floors. The elevator was completed in 2013.

Resolution

Under OCR procedures, a complaint may be resolved before the conclusion of an investigation if a recipient asks to resolve the complaint by signing a Voluntary Resolution Agreement. The provisions of the agreement must be aligned with the issues investigated and be consistent with applicable regulations. Such a request does not constitute an admission of liability on the part of a recipient, nor does it constitute a determination by OCR of any violation of our regulations.

Consistent with OCR's procedures, the University requested to resolve the complaint through a Voluntary Resolution Agreement (the Agreement), which was executed on April 6, 2016. Accordingly, OCR is concluding its investigation of this complaint. A copy of the signed Agreement is enclosed. As is our standard practice, OCR will monitor the University's implementation of the Agreement.

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, or participates in an OCR proceeding. 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 Beverly Johnson, the OCR Investigator assigned to this complaint, at (215) 656-8581 or by email at beverly.johnson@ed.gov or Meg Willoughby, the OCR Attorney assigned to this complaint, at (215) 656-8579 or by email at meg.willoughby@ed.gov.

Sincerely,

/s/

Vicki Piel
Team Leader/Supervisory Attorney
Philadelphia Office
Office for Civil Rights

Enclosure

cc: David E. Loder, Esq., via email