



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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DALLAS, TX 75201-6810

REGION VI
ARKANSAS
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TEXAS

Dr. Steven H. Tallant, President
Texas A&M University Kingsville
MSC 101, 700 University Blvd.
Kingsville, TX 78363-8202

RE: OCR Case No. 06142088
Texas A&M University Kingsville

Dear Dr. Tallant:

The U.S. Department of Education (Department), Office for Civil Rights, Dallas Office (OCR), has completed its investigation of the above-referenced complaint against Texas A&M University Kingsville (TAMUK) in Kingsville, Texas, which was received by OCR on February 22, 2014. The complainant alleged that TAMUK failed to conduct a timely investigation of his internal grievance filed in May 2013 alleging that he was discriminated against on the basis of disability when, in XXXX or XXXX 2013, TAMUK professors made false reports that resulted in the complainant being told that he was not in good standing in the Hispanic Studies Program.

This agency is responsible for determining whether entities that receive or benefit from Federal financial assistance from the Department or an agency that has delegated investigative authority to the Department, are in compliance with Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulations at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12132, and its implementing regulations at 28 C.F.R. Part 35, which prohibit public entities from discriminating on the basis of disability. TAMUK is a recipient of Federal financial assistance from the Department and is a public educational institution. Therefore, OCR has jurisdictional authority to investigate allegations of discrimination filed against TAMUK under Section 504 and Title II.

By letter dated March 27, 2014, OCR notified the complainant and TAMUK that it was opening for investigation the following issue:

Whether TAMUK has failed to adopt grievance procedures that provide for the prompt and equitable resolution of complaints alleging disability discrimination, in violation of Section 504, at 34 C.F.R. § 104.7(b), and Title II, at 28 C.F.R. § 35.107(b).

During the course of its investigation, OCR reviewed TAMUK policies and procedures regarding disability-based discrimination and documents pertaining to the internal grievance filed by the complainant. OCR also interviewed the TAMUK official who investigated the grievance and who was the TAMUK Section 504/Title II coordinator during the relevant time period.

A finding that a recipient has violated one of the laws that OCR enforces must be supported by a preponderance of the evidence (i.e., sufficient evidence to prove that it is more likely than not that unlawful discrimination or retaliation occurred). When there is a significant conflict in the evidence and OCR is unable to resolve that conflict, for example, due to the lack of corroborating witness statements or additional evidence, OCR generally must conclude that there is insufficient evidence to establish a violation of the law. Based on a thorough review of the information received during the investigation, OCR determined that there was insufficient information to find that TAMUK violated Section 504 or Title II with regard to the processing of the complainant's internal grievance because the grievance did not allege disability discrimination, as described more fully below. Further, prior to the conclusion of the investigation, TAMUK requested to resolve the complaint with regard to its disability-based grievance procedures.

The Section 504 regulation at 34 C.F.R. §104.8 requires recipients with 15 or more employees to designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Section 504 and to adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging discrimination on the basis of disability. Additionally, the Section 504 regulation at 34 C.F.R. §104.9 requires a recipient with 15 or more employees to notify its participants, beneficiaries, applicants, and employees, in a continuing manner, that it does not discriminate against persons on the basis of disability. Similarly, the Title II regulations at 28 C.F.R. §35.107, require public entities with 50 or more employees to designate a coordinator and adopt and publish grievance procedures. The Title II regulation at 28 C.F.R. §35.106 requires public entities to make available to applicants, participants, beneficiaries, and other interested persons information regarding Title II and its applicability to the services, programs, or activities of the public entity.

Generally, when determining whether a recipient's procedures provide for the "prompt and equitable" resolution of complaints, OCR considers the following factors: notice to potential grievants of the procedure, including where complaints may be filed; application of the procedure to complaints alleging discrimination; an adequate, reliable, and impartial investigative process, including the opportunity to present witnesses and other evidence; designated and reasonably prompt timeframes for the major stages of the complaint process; notice to the parties of the outcome of the complaint; and an assurance that the school will take steps to prevent recurrence of any discrimination and to correct is discriminatory effects on the complainant and others, if appropriate.

OCR reviewed TAMUK's disability-related grievance procedures, which included a policy that contained a notice of nondiscrimination, and identified TAMUK's Section

504/Title II coordinator. During the investigation, OCR sought clarification of the grievance procedures because TAMUK had two potentially applicable procedures with conflicting timeframes and processes. In response to OCR's investigation, TAMUK notified OCR that it had begun revising its policies. Moreover, on August 21, 2014, TAMUK notified OCR that it was interested in entering a voluntary resolution agreement to resolve the complaint prior to the conclusion of OCR's investigation.

With regard to the complainant's specific internal grievance, OCR determined that the grievance did not implicate Section 504 or Title II. Specifically, OCR examined the internal grievance filed by the complainant with TAMUK on May 22, 2013. The grievance did not mention disability or allege disability discrimination in any way; rather, the complainant stated in the internal complaint that he was retaliated against by XXXX professors in the TAMUK Hispanic Studies Program, unrelated to any protected activity under Section 504 or Title II. OCR also interviewed the TAMUK official who investigated the complaint, and she stated that she did not understand the grievance to include an allegation of disability discrimination. OCR further reviewed correspondence between the complainant and TAMUK which revealed that, although the complainant made statements *after* the grievance was filed that the prolonged investigation was complicating his health because he was a disabled veteran, he was not alleging that the acts of the professors were based on his disability. Based on this information, OCR determined that the complainant did not file an internal grievance alleging disability discrimination; consequently, TAMUK's processing of his complaint was not a violation of Section 504 or Title II.

Section 302 of OCR's Case Processing Manual provides that a complaint may be resolved at any time when, before the conclusion of an investigation, the recipient expresses an interest in resolving the complaint. Such a request to resolve the complaint during the course of an investigation must be approved by the Dallas Office's Director. The provisions of the resulting voluntary resolution agreement will be aligned with the complaint allegations or the information obtained during the investigation, and will be consistent with applicable regulations.

On August 22, 2014, the Director of the Dallas Office approved the request from TAMUK to resolve this complaint. TAMUK voluntarily submitted to OCR a Resolution Agreement (Agreement), which was signed by TAMUK on September 10, 2014. A copy of the Agreement is enclosed. OCR determined that the provisions of the Agreement are aligned with the information obtained during the investigation and are consistent with Section 504 and Title II. Accordingly, as of the date of this letter, OCR will cease all investigative actions regarding this complaint; however, OCR will actively monitor the implementation of the Agreement by TAMUK to determine whether the commitments made by TAMUK have been implemented consistently with the terms of the Agreement. If TAMUK fails to implement the Agreement, as specified, OCR will resume its investigation of the above issues. If TAMUK determines a need to modify any portion of the Agreement, TAMUK may submit, for consideration, proposed revisions to OCR.

Effective the date of this letter, OCR is closing the investigation portion as related to this complaint. This letter is not intended nor should it be construed to cover any matters not specifically addressed herein.

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.

Under OCR procedures we are obligated to advise the institution against which the complaint is filed that intimidation or retaliation against a complainant is prohibited by regulations enforced by this agency. Specifically, the regulations enforced by OCR, directly or by reference, state that no recipient or other person shall intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege secured by regulations enforced by OCR or because one has made a complaint, testified, assisted or participated in any manner in any investigation, proceeding or hearing held in connection with a complaint.

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, it 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 regarding this determination, please contact Lori Bringas, the attorney assigned to this matter, at 214-661-9638, or me at 214-661-9600.

Sincerely,

Gregory McGhee
Team Leader, Supervisory Attorney
Office for Civil Rights, Dallas Office