



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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REGION IX  
CALIFORNIA

July 5, 2016

Gene Block, Ph.D.  
Chancellor  
University of California Los Angeles  
Box 951405, 2147 Murphy Hall  
Los Angeles, CA 90095-1405

(In reply, please refer to docket number 09-14-2015)

Dear Dr. Block:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the University of California Los Angeles (UCLA). The complainant alleged that UCLA discriminated against him on the basis of disability.<sup>1</sup> Specifically, OCR investigated the following issues:

1. Whether UCLA discriminated against the complainant based on disability when he was terminated from his research lab position.<sup>2</sup>
2. Whether UCLA discriminated against the complainant when it required him to seek guidance from UCLA's Office for Students with Disabilities (OSD) prior to granting him a position as a teaching assistant (TA).
3. Whether UCLA retaliated against the complainant by pressuring him to leave his graduate program with a master's degree instead of his desired doctorate degree after he began to assert his termination from the research lab was discriminatory.
4. Whether UCLA failed to promptly and effectively respond to the complainant's internal complaint of discrimination.

OCR investigated this complaint pursuant to its authority under Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990. Section 504 and its implementing regulations prohibit discrimination on the basis of disability by recipients of federal financial assistance. Title II and its implementing regulations prohibit discrimination on the basis of disability by public entities. UCLA receives Department funds, is a public

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<sup>1</sup>The name of the complainant was provided in OCR's notification letter to UCLA and is not being provided in this letter to protect the complainant's privacy.

<sup>2</sup>The notification letter incorrectly stated that the complainant was terminated from his teaching assistant position.

education system, and is, therefore, subject to the requirements of Section 504, Title II, and their implementing regulations.

To investigate the complaint, OCR conducted interviews and reviewed documents and other information provided by the complainant and UCLA. After careful review of the information gathered in the investigation, OCR concluded that UCLA did violate Section 504 and Title II with respect to issue 1, 2, and 4 but was in compliance with respect to issue 3. The facts gathered, legal standards, and the reasons for OCR's determinations are summarized below.

The following facts are relevant to OCR's analysis.

### **General Background Facts**

- During the spring of 2013, the complainant was a second year graduate student at UCLA pursuing a doctorate degree in the Chemistry and Biochemistry Department. The complainant also attended UCLA as an undergraduate student from 2003-2007 and obtained a Bachelor of Science degree. He graduated *summa cum laude* with college and departmental honors. During his undergraduate years, the complainant's overall grade point average (GPA) was 3.90.
- In 2006, the complainant was diagnosed with executive function disorder with difficulties in writing fluency and reading fluency, ADHD, anxiety, and depression.
- After obtaining his undergraduate degree, the complainant performed research for two years in a laboratory setting at the XXXXXXXX XXXXXXXXXXXX XX XXXXXX.
- In the summer of 2011, the complainant began his graduate course of study. As part of its graduation requirements, the Chemistry/Biochemistry program requires a student to rotate through three different labs during the first year of study and then select a permanent lab in which to work. The program also requires a student to serve a minimum of three quarters as a teaching assistant.
- UCLA provides financial support to its graduate students through their service as teaching assistants (TAs) and graduate student researchers (GSRs). The two positions are considered "academic apprentice personnel" and the terms and conditions for either position are governed by UCLA's Academic Apprentice Personnel Manual (AAPM).
- UCLA requires its academic apprentice personnel to sign a Statement of Understanding that details the specifics, benefits, and requirements of their position.
- The AAPM states that GSRs:

. . .assist faculty members with scholarly research. They may or may not collaborate in the publication of research results as determined by supervising faculty members. GSRs may not be assigned teaching, administrative or general assistance duties.

- According to the AAPM, most teaching and research appointments are “for one year or less, and are self-terminating” and it advises that hire agreements for these appointments should include the following statement:

This appointment is for one academic year or such lesser term as herein set forth, and is not for a longer period unless express notification is so given to the appointee. In the absence of such express notification, the appointment ipso facto terminates at the conclusion of the academic year or such lesser time as specified.

- The AAPM requires periodic evaluation of GSRs pursuant to the following provision:

Academic units employing apprentice personnel are responsible for establishing, publicizing, and using explicit standards and procedures for the selection, training, supervision, and evaluation of apprentice employees by the regular faculty members in charge of the courses or research to which they are assigned. Evaluations must be documented and on file in the academic unit; all apprentice appointees must be informed of the results and their relationship to reappointment and/or advancement.

- The AAPM has the following provisions regarding termination of a GSR:

- a. For academic reasons: Academic apprentice appointees shall be terminated from their positions at the discretion of the Dean of the Graduate Division at any time the student withdraws from student status, does not register, is placed on academic probation, or otherwise fails to maintain satisfactory academic progress.
- b. For another good cause: Academic apprentice appointees may be terminated for such cause as incompetence or incapacitation, misconduct resulting in disciplinary action, and budgetary or programmatic considerations. Authority to terminate rests with the dean of the school or college.

Termination may take place only after the appointee has been given written notice of the intention to terminate, with reasons and appropriate documentation, and after the appointee has been given an opportunity to appear before the school or divisional dean with a representative. Termination may not take effect until at least 30 days after written notice. When the dean determines that there is reasonable cause to believe that

an appointee's continued assignment would endanger people or property, or would impair the integrity of the academic program, the student may be placed on full or partial interim suspension with pay until termination.

- UCLA's policies also make clear that "GSRs must serve under the active supervision of a UCLA faculty member."

**Issue 1: *Whether UCLA discriminated against the complainant based on disability when he was terminated from his research lab position.***

and

**Issue 2: *Whether UCLA discriminated against the complainant when it required him to seek guidance from UCLA's Office for Students with Disabilities (OSD) prior to granting him a position as a teaching assistant (TA).***

- The complainant entered his graduate program at UCLA in June 2011. In the summer of 2011, the complainant enrolled in and completed a rotation through Professor 1's research laboratory. Professor 1 provided the following evaluation of the complainant's performance in his lab:

Motivation:	Outstanding	Creativity:	Good
Independence:	Excellent	Potential:	Outstanding
Dedication:	Outstanding	Interaction:	Excellent
Familiarity at Start:	Good	Practical Skills:	Outstanding
Familiarity at End:	Excellent	Intellectual Skills:	Outstanding
Perseverance:	Outstanding	Overall Satisfaction:	Outstanding

"[The complainant] managed to produce more in his short time in my lab than two other students who worked on the project combined. As a result of his work, he will be second author on a paper we are currently preparing. He works hard and efficiently."

- In the fall of 2011, the complainant successfully completed a rotation through another professor's research lab. At the end of the rotation, the professor evaluated the complainant as follows:

Motivation:	Outstanding	Creativity:	Excellent
Independence:	Outstanding	Potential:	Excellent
Dedication:	Excellent	Interaction:	Excellent
Familiarity at Start:	Good	Practical Skills:	Outstanding
Familiarity at End:	Outstanding	Intellectual Skills:	Excellent
Perseverance:	Outstanding	Overall Satisfaction:	Excellent

"[The complainant] proved to be an excellent fit for the project and our lab. He worked hard, and came up many of the results that we hoped for. He interacted well with others, and was a pleasure to have in the group."

- In the spring of 2012, the complainant successfully completed a rotation through a third professor's research lab and the professor rated his performance as follows:

Motivation:	Excellent	Creativity:	Good
Independence:	Good	Potential:	Excellent
Dedication:	Outstanding	Interaction:	Excellent
Familiarity at Start:	Good	Practical Skills:	Excellent
Familiarity at End:	Excellent	Intellectual Skills:	Excellent
Perseverance:	Excellent	Overall Satisfaction:	Excellent

No written comments from the professor were included.

- In the winter of 2012, the complainant successfully completed a rotation through a fourth professor's research lab and the professor rated his performance as follows:

Motivation:	Excellent	Creativity:	Good
Independence:	Excellent	Potential:	Good
Dedication:	Excellent	Interaction:	Good
Familiarity at Start:	Good	Practical Skills:	Good
Familiarity at End:	Good	Intellectual Skills:	Good
Perseverance:	Outstanding	Overall Satisfaction:	Good

"[The complainant] is a very dedicated student. He worked very hard in the laboratory. He has generally good understanding of biochemistry, but is relatively weak in analytical ability and creativity. This may be a general problem for all first year grad students. Special efforts are needed to improve overall understanding of the project area and to propose original ideas for research."

- Beginning in about January 2012, the complainant began to consider his options for permanent placement in a professor's research laboratory as a GSR. In such permanent research laboratories, the professor is intended to be the mentor to the student and will advise and assist the student with the preparation of a doctoral thesis while the student performs research in the professor's lab.
- On January 8, 2012, the complainant sent an e-mail message to Professor 1 inquiring about a position in his lab which stated, in pertinent part:

Hi [Professor 1],

I just want to update you and let you know that I am still very interested in joining your lab for my PhD thesis. Do you think there will be funding? And do you think I'm a good fit for your lab? ([Lab member] can give you more details about me!)

On January 9, 2012, Professor 1 responded to the January 8 e-mail message and stated (emphasis added):

Hi [complainant],

I'm glad you're still interested as I am too. It is really only an issue of making sure I can fund you. One thing that would help is if there was a chance you could get a fellowship. What's your citizenship status?

- On February 27, 2012, the complainant sent another e-mail message to Professor 1 about a lab position and stated:

Hi [Professor 1],

I should be joining my thesis lab at the beginning of Spring Quarter. I will be applying for some training grants in spring; however, whether I would be awarded cannot be guaranteed.

Do you know whether you would take me? If so, can we discuss potential projects sometime? I'm currently deciding between your lab and [another professor]. I really really like both!

Thank you [Professor 1]!

Professor 1 responded the same day and stated (emphasis added):

Hi [complainant],

I'm sorry for being indecisive, but man this is hard. I think you're really good and will be an excellent grad student so normally I would jump. But I'm just worried about keeping you funded. It's just kind of an in-between year. Next year I may be completely flush and I'll be kicking myself, but I'm nervous this year. Thus, in the interest of prudence, I think you should try [the other professor's] lab. Sorry! Really...

- Subsequent to February 2012, the complainant contemplated transferring from UCLA to another post-secondary institution in order to complete his Ph.D. and asked Professor 1 if he would be willing to write a letter of recommendation on his behalf. Professor 1 agreed to do so. Additionally, in an e-mail exchange of April 6, 2012, Professor 1 agreed to write letters of recommendation for any training grant applications the complainant submitted and to permit him to include him as a reference in an updated curriculum vita.

- Instead of joining Professor 1's lab in spring 2012, the complainant completed a fourth rotation through a different professor's lab (as noted above in the evaluations of the complainant). At around the same time, Professor 1 began to encourage the complainant to join his lab for the next quarter as evidenced by an e-mail exchange on April 26-27, 2012 between the two that stated, in pertinent part:

➤ April 26, 2012 e-mail message to complainant from Professor 1:

Here's [sic] the CBI fellowship applications. I hope you stay and if so, I think you have a good shot at this one.

➤ April 27, 2012 e-mail message response from complainant:

I am leaning more toward your lab than going to [other university]. The [other university] plan came about only when there was [sic] no other labs that is exciting to me. XXXXXXXX and I both put our careers as the highest priority. Yes, it was shocking when you mentioned there's a spot for me.

I am over 70% likely to stay at UCLA as long as your lab is open. It does feel right. I just need a little more time to finalize my thoughts. It is a big life decision to me. Can I give you a final answer soon?

In terms of projects, I do think it's good to start with improving lipase catalytic activity. I will discuss with [other lab member] soon.

Thanks for your support, [Professor 1]!

➤ April 27, 2012 e-mail message response from Professor 1:

Cool. I'll have my fingers crossed. We really need you, whenever you are ready!

- In June 2012, the complainant joined Professor 1's lab as a GSR.
- Contrary to UCLA established policy, the complainant was never provided with or required to sign a Statement of Understanding or hire agreement, when he began working as a GSR.
- In January 2013, while the complainant continued to perform research in Professor 1's lab, he began serving as a teaching assistant (TA) for one of Professor 1's undergraduate courses and he took a graduate course with Professor 2.
- On March 14, 2013, the complainant sent an e-mail message to Professor 1 that stated, in pertinent part:

I've been a bit anxious since next quarter I'll be 1. preparing for Oral, 2. TA, and also 3. hope to finish the project [as a GSR with you] for the first publication. ...

Just wondering whether you can help with the TA assignment. As of now, I'm still waiting to hear back. Since I registered very late, they have already matched TAs with the classes....

My request is attached. Do you have any influence on this?

- Later the same morning, Professor 1 responded to the e-mail message and stated (emphasis added):

I don't really have any influence. How about seeing what you get. If it's not something reasonable, forget about it and plan on TAing in the Fall (unless you swing a fellowship!).

- The complainant's final examination was due in Professor 2's course on March 19, 2013. On that date, he called Professor 2 and requested more time to turn it in. Professor 2 granted him until 5:00 p.m. to turn in the exam to his office.
- According to the complainant, on March 19, 2013, he was required to proctor an examination until 7:00 p.m. in the class for which he was serving as a TA.
- By the morning of March 20, 2013, Professor 2 had not received the exam. He called Professor 1 to ascertain if something was wrong with the complainant. Professor 1 told Professor 2 that he had no knowledge of any issues with the complainant.
- During the afternoon of March 20, the complainant went to Professor 2's office to turn in the exam. Professor 2 told the complainant that it was too late and he could not accept the exam. The two had a contentious discussion about whether the exam should be accepted. The complainant eventually informed Professor 2 that he had a learning disability and UCLA's Office for Students with Disabilities (OSD) would require him to accept the examination late. Professor 2 told OCR that he decided to accept the examination because he believed it was the best and easiest course of conduct.
- Because the complainant had received academic accommodations through the OSD as an undergraduate student, he told OCR that he believed that he might be able to invoke additional time for his examination with Professor 2.
- Later in the afternoon or early evening of March 20, Professor 2 spoke with Professor 1 about the March 20 events with the complainant. He informed him that he had accepted the complainant's final exam even though it was late.



- Professor 2 and Professor 1 denied to OCR that Professor 2 stated anything to Professor 1 about complainant being disabled or his references to OSD and it requiring Professor 2 to accept the exam.
- On March 21, 2013, at 12:47 a.m., Professor 1 sent an e-mail message to the complainant in which he asked if the complainant would be in the lab that day. The complainant responded that he would be in the lab and asked if there was a specific time that he should be there. Professor 1 responded and stated “[w]henever you get in is fine.” A few minutes after Professor 1’s e-mail message, the complainant responded with a message that stated: “Hmm. Am I in trouble?” He received no response.
- On March 21, 2013, at 1:51 p.m., Professor 1 sent an e-mail message to the complainant that asked “Are you coming in?” At 4:34 p.m. on the same day, the complainant responded by informing Professor 1 that he had just woken up and would be in the lab in 20 minutes.
- When the complainant arrived at the lab on March 21, 2013, Professor 1 met with him and informed him that he could no longer work in his lab. He told him that he spoke with Professor 2 and concluded that the complainant could not be effective when he was simultaneously performing research and working as a TA. He asserted that the complainant’s research in his lab was worthless, he did not have basic understanding of concepts, he did not communicate effectively, and he would not succeed as a Ph.D. student in his lab. The complainant denied all of Professor 1’s assertions, stated that he had been successful in the lab and produced results that Professor 1 had used in grant applications and would use in a future science publication, and informed him of his disability. The discussion between the two was heated and emotional. Eventually, Professor 1 left the lab during the discussion to go home.
- Prior to March 21, 2013, Professor 1 had never provided to the complainant any written or oral criticism of his work or performance, any type of warning that his performance was inadequate or incompetent, or any opportunity to correct what Professor 1 perceived to be deficiencies in his performance.
- Professor 1 acknowledged to OCR that all of his written communications with the complainant were either favorable or did not contain any negative or critical comments.
- Professor 1 never evaluated the complainant or provided the evaluation to the complainant as required by the AAPM.
- When terminating the complainant from his lab, Professor 1 did not follow the process for termination of GSRs that was stated in the AAPM. He informed OCR that he was not required to follow the process and the determination of who performs research in his lab was ultimately his only.

- Professor 1 told OCR that he always had concerns or issues with the complainant dating back to the first time that he rotated in his lab in the summer of 2011 and that he was not pleased to have the complainant in his lab again starting in June 2012. He stated that he has always had an issue with the ineffective communication ability of the complainant but acknowledged that he never stated this to the complainant or attempted to determine if there was any cause to the complainant's communication difficulties.
- Other than stating that he was attempting to be nice and supportive, Professor 1 had no explanation for why his written communications to the complainant (see, e.g., e-mail messages of January 9, February 27, March 14, 2013, and April 27, 2012) contradicted his asserted issues with him.
- Professor 1 acknowledged to OCR that his e-mail message of March 14, 2013 to the complainant expressed no dissatisfaction with the complainant and clearly implied that he expected the complainant to be in his lab the next academic period. Professor 1 was not able to state anything that occurred between March 14 and March 21, 2013 that would have caused him to determine that the complainant should not be in his lab the next academic period. He had no explanation for the contradiction in his statements.
- UCLA also told OCR that Professor 1 had issues with the complainant's performance as a TA for one of his courses because he did not test out one of the exams prior to its issuance. To support this statement, UCLA provided OCR with an email chain between Professor 1 and the complainant and another TA who were both asked to take an exam before Professor 1 gave it to the students:

In this regard, on February 20, 2013 at 4:44 p.m., Professor 1 sent the following to the complainant and another student:

Hi guys,

So I have a new exam written. Can you give it a go? I'm going out of town again so I need to get this finished...

Can one or both of you arrange for a problem/review session on Sunday? They will love you for it.

UCLA asserted to OCR that Professor 1 continued to ask the complainant for feedback, but nothing happened, which resulted in him expressing "his high level of frustration" in the e-mail message sent to the complainant on February 22, 2013 at 5:07 p.m.:

I had to leave. What the hell?

UCLA next provided the following e-mail message from the complainant to Professor 1 to which UCLA did not attribute a date or time:

Hi [Professor 1], I'm so sorry. I was in the 6th floor conference room, working on the exam! I could not focus inside the lab, even w/ ear plugs.

I'm very very sorry.

UCLA then represented to OCR that (emphasis in original):

[a]lthough [the complainant] had been given many days to look at the exam before Professor [1]'s travel, hours before the deadline approached [the complainant] was unavailable and had not provided the feedback. Finally [the complainant] sent feedback *after* Professor [1] had to leave for his trip so he could not actually review any of the work that [the complainant] might have done.

Finally, UCLA concluded its description of the alleged issue by providing the following e-mail message from the complainant to Professor 1 (like the previous e-mail message, it did not include the date or time of the e-mail message):

Hi [Professor 1],

Everything looks good. I spent maybe 1.5 hr on it, but that's probably just me.

Minor comments:

#1.b)

High salt concentrations decrease  $C_{\infty}$ . (Infinity symbol did not show up on my version, maybe it was either my laptop, the printer, or a combination of my laptop plus printer)  
1. that threw me off a bit; 2. we should make sure it shows up on the actual copy.

Typo:

FRET efficiency was measured a high and low salt concentration. "at high and low"

#2.e)

Typo:

cicular M-DNA at 25. "...circular."

- UCLA's representations to OCR, however, were not complete and, as a result, misleading. OCR requested and received from the complainant the entirety of the e-mail history related to the above asserted issue and learned that, in addition to failing to provide date and time stamps for some of the e-mail messages that were provided, several critical e-mail

messages were not provided to OCR by UCLA when it asserted the issue as a justification for criticizing the complainant's performance as a TA. The omitted dates and times and e-mail messages included:

- ✓ The complainant's initial e-mail message apologizing for being in a different location and explaining his reason for moving to that location was sent to Professor 1 only 16 minutes after Professor 1's e-mail message (complainant sent his e-mail message at 5:23 p.m. on February 22, 2013 in response to Professor 1's 5:07 p.m. e-mail message of the same date).
- ✓ After the complainant's 5:23 p.m. e-mail message on February 22, 2013, Professor 1 immediately responded on the same day with a 5:32 p.m. e-mail message that stated "Any comments?" (this e-mail message was not included in those given to OCR by UCLA as part of its asserted justification).
- ✓ The complainant's e-mail message to Professor 1 that stated his comments and for which ULCA did not provide a date or time was sent at 5:51 p.m. on February 22, 2013, 19 minutes after Professor 1's message requesting his comments.
- ✓ At 5:55 p.m. on February 22, 2013, Professor 1 responded to the complainant's 5:51 p.m. message with an e-mail message that stated "OK. Can you fix the typos and give it to [admin support person]?" (this e-mail message was not included in those given to OCR by UCLA as part of its asserted justification).
- ✓ At 6:06 p.m. on February 22, 2013, the complainant responded to Professor 1's 5:55 p.m. message with an e-mail message that stated (this e-mail message was not included in those given to OCR by UCLA as part of its asserted justification):

Yup. Will do.

Sorry again for not being here earlier!

- OCR asked Professor 1 about this alleged issue when he was interviewed and Professor 1 acknowledged that the e-mail messages reflect that the complainant did what was requested of him. Professor 1 never stated otherwise to him on February 22 or any time thereafter.
- Professor 1 also stated to OCR that, based on student reviews/surveys, the complainant did not do well as a TA and this contributed to the determination that he could no longer have him working in the lab. However, the student reviews/surveys in question were not completed until after the date of termination.

- In a memorandum prepared five days after he terminated the complainant, based on UCLA's request, Professor 1 also asserted that the complainant did not know how to perform some basic calculations.
- In response, the complainant provided information to OCR that he had received an A- in Biochemistry and an A+ in Biochemistry lab as an undergraduate and worked for two years in the biochemistry lab of the XXXXXXXX XXXXXXXXXXXX XX XXXXXX, in which he studied enzymology and was required to determine enzyme specific activities on numerous occasions. He also stated that he performed the calculations found in Professor 1's grant proposal that was submitted in or about February 2013.
- The complainant also provided to OCR a history of e-mail messages between him and Professor 1 that included several that were complimentary or favorable [e.g., October 2012 e-mail message to complainant with the simple response of "Excellent!;" March 8, 2013 e-mail message chain in which the complainant reminds Professor 1 of something "[Professor 1] hadn't thought about" (PPI buildup).]
- On March 22, 2013, Professor 1 agreed to write a letter of recommendation for the complainant and, in December 2013, he wrote:

I am happy to recommend [the complainant] for your graduate program.

[The complainant] rotated in my lab in the Fall of 2011. He worked with a postdoc in the lab to develop a lipase enzyme for biodiesel synthesis. We are working to improve the stability and activity of the enzyme enough that it can become a viable replacement for current catalysts. [The complainant] implemented an *in vitro* evolution approach and performed a massive screen for mutants with improved stability and solvent tolerance. He ended up discovering one of our best mutants, which formed the basis of later rounds of evolution. This work was published in XXXXXXXXXXXXXXXX XXX XXXXXXXXX and [the complainant] is second author. A great result from a single lab rotation.

[The complainant] joined my lab in the Summer of 2012. He initiated a project to produce the commodity chemical, and potential biofuel, isoprene. We are developing a new approach to metabolic engineering using *in vitro* biotransformation rather than the usual cellular engineering approach. [The complainant] cloned, expressed and purified the eight enzymes in the pathway and also tested assay methods for isoprene, which is something we had not done before in the lab. He showed that it was possible to make isoprene from glycolysis intermediates, which had not been done before. Since [the complainant] left the lab in the Spring of 2013, the project has been taken over by a postdoc in the lab and we will soon submit a paper describing the *in vitro*

production of isoprene from pyruvate in high yield. [The complainant] is a co-first author on this paper.

Unfortunately, my lab did not prove to be a good fit for [the complainant], but as should be clear from the fact that [he] will be on two publications after a relatively short period in my lab, [he] is highly motivated and hard-working. His undergraduate academic record is very strong and he has already proven that he can be successful in graduate school. He deserves strong consideration for your program.

- Professor 1 told OCR that while the letter of recommendation may contradict the reasons he asserted for releasing the complainant from his lab, he wrote the letter in order to help the complainant move on.
- On April 22, 2013, as part of the informal resolution procedure related to the complainant's internal grievance (discussed more fully below), an assistant dean with UCLA's Office of the Dean of Students interviewed Professor 1. Both the assistant dean and Professor 1 confirmed to OCR that Professor 1 made the following statements during the interview:
  - He was not enthused about having the complainant in his lab because he had trouble communicating with the complainant since he always appeared and spoke in a nervous tone.
  - The complainant could not grasp certain things that a Ph.D. student should be able to understand.
  - After seeing more of his work, he realized that the complainant did not know the material and could not do necessary calculations and, although he had the technical skills to do enough, he was not doing work at the level of a Ph.D. student.
- In December 2013, Professor 1 submitted a manuscript for publication to the science journal XXXXXXXXXXXXXXXX that relied on work performed by the complainant while in Professor 1's lab, the published article appeared in the XXX XXXX edition of the journal and the complainant was listed as a co-first author for the article.<sup>3</sup>
- Professor 1, the assistant dean, and the department chair refused to acknowledge to OCR that Professor 1's release of the complainant from his lab was viewed as a termination by them at the time that it occurred.

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<sup>3</sup>The complainant also contributed to an earlier publication by Professor 1 in XXX XXXX and his contributions were recognized by being listed as one of the authors of the publication.

- However, UCLA did state to OCR that the complainant was not released from the lab for academic reasons. Per the AAPM, the only other reason for which a GSR can be released is for a good cause termination.
- During his April 22 interview described above, Professor 1 stated that he “fired” the complainant from his lab. He decides who gets to be in his lab, there was no process for him to follow in order to fire the complainant, and he was unsure if the complainant could appeal his determination.
- As part of the informal resolution process of the complainant’s internal grievance, the assistant dean scheduled an interview of the chair of the Department of Chemistry and Biochemistry. In his April 30, 2013 e-mail message requesting a meeting with the department chair, the assistant dean stated, in pertinent part:

[The complainant] has been in contact with our office expressing his experiences and situation while being employed in Professor [1]’s laboratory. I would like to meet with you. . .regarding the policies and procedures with hiring and terminating the student employees.

- On April 30, 2013, the department chair sent an e-mail message in response to the assistant dean that stated, in pertinent part:

I will be more than happy to meet with you regarding policies and procedures with hiring and terminating the student employees. In fact, based on [the complainant’s] experience I recently charged our graduate office to help us document these procedures and to prepare material to help educate our faculty.

- At the conclusion of the informal resolution process of the complainant’s internal grievance, the assistant dean orally informed the complainant that he had been wrongfully terminated from Professor 1’s lab.
- In addition, on May 20, 2013, the complainant sent an e-mail message to the assistant dean that stated, in pertinent part:

On March 21<sup>st</sup>, 2013, [Professor 1] discriminated against me on the basis of disability. So far, we have determined that I was “wrongful terminated” based on the fact that the termination was not done according to the protocol.

- On the same day, the assistant dean responded to the complainant’s e-mail message, did not dispute or contradict the complainant’s statement regarding wrongful termination, and further stated, in pertinent part:

All of the information you have, you have enough to proceed with the grievance process if you choose. Yet, you still need to be able to articulate what you want in return from this process and as we discussed, receiving money will not be an option...

- In an April 11, 2013 e-mail message to the complainant, an assistant vice chancellor at UCLA stated, in pertinent part:

According to information from the Graduate Division, [Professor 1] must engage in a formal process to notify a student of their [sic] termination/separation, after which the student has a certain amount of time to appeal the decision.

- On February 27, 2014, the complainant sent an e-mail message to the program chair in which he expressed an interest in returning to the program and requested that he be given a position as a TA.<sup>4</sup>
- In a March 6, 2014 e-mail message, the chair responded to the complainant by stating, in pertinent part:

In order for me to do that, I will need to make sure that we are prepared to help you in the best possible way. Before I can ask [administrator] in our graduate office to find the right appointment for you, we will need to have a meeting with OSD personnel to make sure that we are making the right accommodations.

Please get in touch with [administrator] and give him the name of your OSD advisors so we can schedule a meeting with you and them. ...

I will need your reply to this message followed by the timely advise [sic] from OSD to guarantee a TA slot.

The chair sent a follow-up e-mail message later the same afternoon that stated:

We will need to set up the meeting with the OSD experts soon as we are now in the process of assigning TA positions and we need what accommodations we would need to offer. Please let us know when we can do that. We only have a few days.

- On March 6 and 12, 2014, the complainant sent an e-mail message to the chair in which he sought assurances that he would not be further discriminated against if he rejoined the program. In a March 12, 2014 e-mail message to the complainant, the chair responded by stating, in pertinent part:

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<sup>4</sup>On March 3, 2014, the complainant forwarded the message to the chair after having not received a response.



You have my assurance that with help from the office of students with disabilities, graduate division, and perhaps other university resources, you will receive all the required accommodations that will give you the opportunity to meet the university requirements that are needed to earn a degree.

Finally, we will not be able to provide you with a TA position this Spring unless we have the requested meeting by next Wednesday.

- In a March 12, 2014 e-mail message to the chair, the complainant stated:

Why is OSD needed for my TAship? Please proceed referring to my previous T[A] assignments requests.

Please clarify the above and the mentioned dates.

- The chair responded on the same day by stating “[w]e need OSD advise [sic] to get her advise [sic] so we can provide you with the required accommodations” and, on March 14, 2014, the complainant replied with an e-mail message that stated, in pertinent part:

Place me in a course which I previously received an A or A+. I am in the East Coast and have no time for for [sic] such unusual prerequisite.

No need to attempt anything unusual. Please assist me in continuing my education.

Otherwise this may be perceived as you [sic] attempt to push me to leave the department.

- In a March 17, 2014 e-mail message to the complainant, the chair stated, in pertinent part:

As I mentioned previously, in order for me to help, we need the assistance of OSD. I am legally obligated to provide you with reasonable accommodations.

- The need for OSD involvement is also mentioned in June 17, 2013, July 22, 2013, September 19, 2013, and December 15, 2013 e-mail messages to the complainant.

- In the months that followed the complainant’s dismissal from Professor 1’s lab, various individuals at the university collaborated on trying to find ways of assisting the complainant. For the spring quarter of 2013, the university paid his expected stipend and fees and agreed to permit him to enroll in independent study rather than working in a TA position. For the summer of 2013, the university initially offered funding to the complainant through working as a TA. After the complainant stated he could not work 100% as a TA, the university offered to fund him 50% through a TA position and 50% through a stipend. The

complainant, however, declined the TA position. Beginning in the fall quarter of 2013, the complainant was on a leave of absence.

### **Legal Standards**

The Section 504 regulations provide that no qualified individual with a disability shall, based on disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any postsecondary education academic or research program of a recipient.<sup>5</sup> The Title II regulations contain a similar prohibition applicable to public postsecondary educational institutions.<sup>6</sup>

When reviewing claims of discrimination based on disability where there is an absence of direct evidence of discrimination, to establish a prima facie case, OCR looks to whether the complainant was a qualified individual with a disability, whether action sufficiently adverse was taken against him, and whether the action was on account of his disability. If all of these factors are shown, then a prima facie case of discrimination has been made. OCR then determines whether the university has a legitimate nondiscriminatory reason for taking the action against the complainant and, finally, whether the university's legitimate reason is pretextual.

OCR concludes that an act of discrimination occurs when, at the end of this analysis, the preponderance of the evidence establishes that action was taken against the complainant under circumstances evidencing it was based on his disability and the university's proffered reason for the action was pretextual.

### **Issue 1 Analysis**

The complainant asserts that he was discriminated against because of his disability when he was dismissed from Professor 1's lab. There is no dispute that the complainant was qualified for his program and that he was an individual with a disability. UCLA disputed that the action taken against the complainant was adverse because it was not a termination and the complainant could work as a GSR in another lab. OCR did not find this assertion credible, given the written email messages from various high level officials discussing the dismissal as a termination and UCLA's acknowledgment that the complainant was not dismissed for academic reasons. As such, OCR finds that the dismissal from Professor's 1 lab was a termination and an adverse action.

The causal connection between the dismissal and the complainant's disability is sufficiently established by the circumstances surrounding the complainant's discussion with Professor 2, Professor 2's subsequent conversation with Professor 1, and Professor 1's dismissal of the

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<sup>5</sup>34 C.F.R. §§ 104.4(a), 104.4(b)(1)(i) & 104.43(a).

<sup>6</sup>28 C.F.R. § 35.130(a).

complainant the following day, along with his reference to his conversation with Professor 2 when he dismissed the complainant.

In an attempt to convince Professor 2 to accept his late examination, the complainant told Professor 2 about his disability and that he would involve the OSD in the situation and that they would require Professor 2 to accept the exam. Both the complainant and Professor 2 agreed that the conversation between them was contentious and, whether the exam was accepted would largely dictate the complainant's success or failure in the course. Professor 2 told OCR that the complainant shared that he had a disability and made the statement about involving OSD in the matter. In light of this information, he determined that the best course to follow was to accept the exam.

Professor 2 and Professor 1 both told OCR that they had a conversation about the complainant turning in the exam late and Professor 2's acceptance of the exam on the same day that the complainant had the discussion with Professor 2. They both, however, denied that any mention of complainant's disability or his threat to involve the OSD in the matter was made during that conversation. OCR did not find the Professors' statements to be credible. The complainant threatening to involve the OSD during his conversation with Professor 2 was the basis for his agreeing to accept the exam late and it was the focal point of the contentious discussion with the complainant. Given that Professor 2 called Professor 1 to discuss his interaction with the complainant, OCR does not find it credible that Professor 2 would not include in that conversation with Professor 1 the reason why he agreed to accept the late exam.

Further, the fact that Professor 1 specifically referenced his conversation with Professor 2 at the time he informed the complainant that he was dismissing him from the lab supports a determination that the complainant's disability disclosure was mentioned by Professor 2 during the conversation with Professor 1. There would be no need to mention Professor 2 or the conversation, if the conversation between Professor 1 and Professor 2 only included information that he accepted a late exam from the complainant, since acceptance of the exam had no relevance to the complainant's performance in Professor 1's lab. In weighing the evidence, OCR also considered the inconsistency in Professor 1's statement of reasons, because at no time did Professor 1 state to OCR that the issue of Professor 2 accepting the exam late was a reason for the termination, yet he specifically discussed the conversation with Professor 2 when he dismissed the student.

The various incidents surrounding the dismissal of the complainant are all significantly proximate to each other to provide additional circumstantial evidence that the reason for the dismissal was the disclosure of the student's disability:

- During the afternoon of March 20, 2013, the complainant disclosed his disability status to Professor 2 in order to have him accept his late exam.
- During the late afternoon/early evening of the same day, Professor 2 called Professor 1 about accepting the late exam.

- At 12:47 a.m. on March 21, 2013, Professor 1 sent an e-mail message asking the complainant if he will be in the lab during the day.
- During the late afternoon on March 21, 2013, the complainant was dismissed from the lab despite having never been advised that his performance was inadequate and he was at risk of being dismissed.

The close proximity in time of one day or less, between the complainant's disclosure of his disability status to Professor 2, Professor 2's subsequent conversation with Professor 1, and Professor 1's notice to complainant and the ultimate dismissal of the complainant provides additional indicia of causation in this matter to establish a prima facie case of discrimination.

Having established a prima facie case, there is no dispute that UCLA has proffered legitimate nondiscriminatory reasons for dismissing the complainant from the lab. OCR analyzes the proffered reasons given for dismissing the complainant from the lab to determine whether the stated reasons have been shown to be pretextual and whether information exists to show that the complainant's disability was either a "motivating factor" under Title II or the sole reason under Section 504 for the dismissal determination.

Upon examination of the legitimate nondiscriminatory reasons provided by UCLA, OCR finds that the evidence does not support the reasons provided and that the reasons proffered were not the actual or motivating factor behind the determination to dismiss the complainant from the lab. OCR's examination of the various reasons provided to support the dismissal determination follows:

#### **Always Had Issues/Not Pleased with Having Complainant in Lab**

Professor 1 stated that he had always had concerns about the complainant's ability dating back to the complainant's rotation through his lab the first time in the summer of 2011. He told the assistant dean and OCR that he was not pleased to have the complainant back in his lab again starting in June 2012. Nothing presented to OCR, however, corroborates these statements by Professor 1 and, in fact, the information provided refutes or disproves these statements.

When Professor 1 evaluated the complainant's performance in his lab in 2011, he provided him with scores of "outstanding" in seven categories, "excellent" in three categories, and "good" in the remaining two categories. No negative or poor score was given to the complainant. Additionally, Professor 1's comments in the evaluation were only positive. He stated that the complainant worked hard and efficiently and produced more in the short time he was in the lab than two other students who worked on a project combined. Moreover, the complainant's work in the lab was acknowledged as being meaningful by Professor 1 when he listed the complainant as a second author on an article that he published.

Rather than decline to accept the complainant into his lab a second time, or to even discourage him from joining the lab, Professor 1 sent encouraging emails to the complainant and then

agreed to have the complainant in his lab a second time beginning in June 2012. OCR does not find it credible that a professor would encourage or permit a student to enroll in his lab when he knows that the student cannot perform and does not understand basic terms and formulas necessary for successfully working in the lab.

Likewise, there was no information presented to OCR that supported Professor 1's assertion that he was not pleased to have the complainant in his lab again in June 2012. All of the information reviewed by OCR leads to the opposite conclusion - that Professor 1 not only desired to have the complainant but actively sought out his participation in the lab. In a January 9, 2012 e-mail message to the complainant, Professor 1 exhibited pleasure in having the complainant in his lab by informing him that he too was still interested in having him join his lab. Professor 1 then responded to the complainant's inquiry about whether he would accept the complainant in his lab by stating, in a February 27, 2012 e-mail message that he thought the complainant was really good, will be an excellent graduate student, and that normally he would jump at the opportunity to have the complainant in his lab but issues surrounding funding may prevent him from joining the lab. Additionally, in April 2012, Professor 1 agreed to write letters of recommendation for the complainant's grant applications and to permit him to list him on his CV as a reference.

When the complainant began to seriously consider joining Professor 1's lab, Professor 1 offered nothing but encouragement to the complainant and expressed his desire to have the complainant in his lab as evidenced by his April 2012 e-mail messages in which he tells the complainant that he: hopes he stays at UCLA rather than transfer to another institution; has his fingers crossed that the complainant joins his lab; and, really needs the complainant in his lab.

The above information contradicts the statement that Professor 1 always had issues with the complainant and was not pleased to have him in his lab again. As such, OCR finds that the assertions cannot provide a legitimate basis to support the dismissal.

### **Unhappy with Complainant Prior to March 21, 2013**

UCLA explained that Professor 1 had been unhappy with the complainant's performance in his lab for some time prior to March 21, 2013 and it provided a few examples of what Professor 1 stated were problems with the complainant's performance (e.g., presentations at group meetings, struggle to figure out what complainant was doing or to get numbers from him, complainant could not perform basic calculations).

As an initial matter, UCLA was unable to provide any documentation that established that the above-stated concerns were shared with the complainant or that he was provided an opportunity to correct or improve. The written communications between the complainant and Professor 1 contradict the assertion that the concerns existed since the communications were all positive or neutral and none had any critical or detrimental content. Rather, some of

Professor 1's communications during this period were complimentary or favorable to the complainant (e.g., October 2012 and March 2013 e-mail messages).

Moreover, the assertion that Professor 1 had concerns with the complainant prior to March 14, 2013 is belied by Professor 1's March 14 e-mail message to the complainant, which he acknowledged to OCR implied that the student would be in his lab again for the next academic period. Professor 1 stated to OCR that nothing occurred between March 14 and March 21, 2013 that contributed to his determination to dismiss the complainant from his lab. Thus, any alleged bases for the dismissal occurred on or before March 14. Professor 1's post-termination justifications are inconsistent with the message conveyed in his March 14 e-mail message and therefore not credible.

Additionally, the complainant's actual work product and Professor 1's acceptance and use of the work product show that the complainant's performance in the lab was acceptable. Professor 1 used complainant's work in support of grant applications he submitted and for a scholarly article published in a science journal. In fact, the contributions of the complainant to the scholarly article were so critical to publication that Professor 1 acknowledged this by listing the complainant as a first author of the article.

Professor 1's alleged issue with the complainant's performance as a TA, when considered with the complete documentation surrounding the alleged issue, is also not a legitimate justification for the termination. Whereas UCLA asserted that the complainant failed to adequately perform his responsibilities related to screening Professor 1's exams before they were given to a class, the e-mail communication between the complainant and Professor 1 surrounding the screening of the exam shows no dissatisfaction being expressed by Professor 1 to the complainant and that the complainant fulfilled the obligation as expected.<sup>7</sup> UCLA's citation to the student reviews of the complainant's performance as a TA is likewise unavailing since the reviews were not available to Professor 1 at the time he made his determination to dismiss the complainant and, thus, could not have provided support for the termination determination.

Finally, the letter of recommendation written by Professor 1 for the complainant stated only positive and complimentary things about the complainant, his abilities, and his performance while in Professor 1's lab, which all contradicted the alleged bases provided to justify the dismissal of the complainant from the lab. While Professor 1 explained to OCR that he wrote the letter in an effort to help the complainant move on, he never stated that the content of the letter was untrue. OCR concludes that Professor 1 would not knowingly write a letter of recommendation that stated false information about the complainant and would serve to potentially mislead another post-secondary institution into believing the complainant was competent when, in fact, if Professor 1 believed he was not.

### **Other Indicia of Pretext**

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<sup>7</sup>UCLA's incomplete and selective disclosure to OCR of the e-mail messages in an effort to support the asserted justification also contributes to a determination that the asserted justification is pretextual.

In addition to the above-stated information, other factors that may support a determination of pretext include the failure to address alleged performance issues at the time that they occurred, along with the failure to provide any opportunity to address or correct the issues, and the failure to follow established procedures or a deviation from those procedures. Each of these exists in this matter.

Despite asserting that he had concerns about the complainant's ability and performance from the first time the complainant rotated through his lab in 2011, Professor 1 did not document the issues or otherwise record them and never formally counseled the complainant about them. These failures undercut the stated justifications for dismissing the complainant from the lab, since providing notice and an opportunity to correct performance issues is an accepted standard management and supervisory tool to obtain better performance and, in the event that performance does not improve, to serve as a basis for termination.

More importantly, the failure to document the alleged performance issues was compounded by Professor 1's creation of a memorandum five days after the complainant was dismissed from his lab that documented the alleged bases for the dismissal determination. In weighing the evidence, OCR gives less weight to a document created at the request of UCLA in response to the complainant's allegations of improper dismissal that belatedly provides the alleged historical performance issues of the complainant, after having not prepared any document that stated any performance issues at the time that they occurred in the more than 12 months that the complainant was in Professor 1's lab. In addition, the complainant was never made aware of the document or given an opportunity to address its content.

Linked to the failure to provide notice is the failure to follow established procedure. UCLA's AAPM requires periodic review of GSRs by the faculty members in charge of the research to which they are assigned. It further requires that the evaluations be documented, filed with the academic unit, and that the GSRs be informed of the results and how they impact their reappointment or advancement. Professor 1 never took any of these steps.

The AAPM also states specific steps that must be taken in order to dismiss a GSR from a lab position, including that the GSR must receive advance written notice of the dismissal with reasons, appropriate documentation and an opportunity to appear before the school or divisional dean with a representative. The AAPM also prohibits immediate termination and requires at least a 30-day waiting period of time after notice of dismissal before the dismissal can take effect. These provisions are for the benefit of a GSR and a means of ensuring that the termination decision is legitimate and correct. Professor 1 did not undertake any of these necessary steps before dismissing the complainant.

The AAPM also states that the authority to terminate a GSR "rests with the dean of the school or college" but no dean was involved with the dismissal. These failures to follow established procedure ultimately led UCLA itself, during the informal resolution process of the

complainant's internal grievance, to conclude that the complainant had been "wrongfully terminated" from his position.

The complainant's historical performance, both as a student and a researcher, also adds to a pretextual determination. The complainant was successful as an undergraduate student as evidenced by his GPA and graduation *summa cum laude* with college and departmental honors. He thereafter successfully completed post-graduate research work with various entities and successfully completed the necessary graduate program work that was leading to a graduate degree. As part of the graduate program, he successfully completed four lab rotations, including one rotation through Professor 1's lab, and none of the faculty noted any of the concerns that Professor 1 allegedly noted at the time he dismissed the complainant. OCR did not find any support for the allegation that the complainant transformed from a student who consistently received above average performance ratings and excelled to a student who did not understand basic calculations and could not successfully complete the graduate degree requirements. Such dramatic changes in performance rarely occur and UCLA did not provide any credible evidence in support of the statement. An assertion that such a change occurred to counter an allegation of discrimination provides evidence of pretext.

### **Disability Was Either a Motivating Factor or Sole Reason**

A determination that the justifications offered by UCLA are pretextual provides sufficient evidence to find that the dismissal of the complainant from Professor 1's lab was due to his disability since there are no legitimate nondiscriminatory justifications left to support the dismissal. This, on its own, may be sufficient to make a determination that under Section 504 disability was the sole reason and under Title II it was a motivating factor in the complainant's dismissal.

Additionally, the same information used to establish the prima facie case of discrimination may be useful to prove the ultimate issue of discrimination. Thus, the previous analysis regarding the establishment of causation is equally applicable to the ultimate determination in this matter. Based on the above, OCR determined that there was sufficient information to support a finding of noncompliance with respect to issue 1.

### **Issue 2 Analysis**

Subsequent to the submission of this complaint to OCR, from the end of February 2014 through mid-March 2014, the complainant and UCLA communicated about the complainant reentering the program and continuing to pursue his graduate degree. After reviewing UCLA's response to the complainant's requests to reenter the program, OCR identified an additional area of discrimination as identified below.

In response to the complainant's email request to the department chair on February 27, 2014 requesting to return to the program and receive a position as a TA, in two March 6, 2014 e-mail



messages to the complainant, the chair advised him that he needed to have a meeting with OSD to discuss accommodations. He stated that he could not provide a TA position until such a meeting occurred and appropriate accommodations were in place.

The requirement to have a meeting with OSD prior to providing a position as a TA was restated by the chair in a March 12, 2014 e-mail message to the complainant prompting the complainant to respond with an e-mail message on the same date that explicitly asked "Why is OSD needed for my TAship?" In response to this question, the chair, also in a March 14, 2014 e-mail message to the complainant stated "we need OSD advise [sic] to get her advise [sic] so we can provide you with the required accommodations." The complainant thereafter objected to the requirement to have OSD involvement and labeled it an "unusual prerequisite." Despite the complainant's objection to the continued request for OSD involvement and his continued requests to provide him with a TA position without the involvement of the OSD, the chair, in a March 17, 2014 e-mail message to the complainant, persisted in requiring the involvement of the OSD in any decision to provide a TA position to the complainant.

UCLA's requirement that the complainant involve the OSD in his requests to be assigned as a TA as a prerequisite to providing a TA position to the complainant constituted impermissible discrimination against the complainant based on his status as a student with a disability. The complainant had the right to seek a position as a TA in the same manner as any student without a disability. However, UCLA did not permit the complainant to proceed in this manner. Instead, it required the complainant to complete the extra step of obtaining the assistance of the OSD for any request to serve as a TA while not requiring the same of students without disabilities who were seeking to be assigned to positions as TAs.

Moreover, when the complainant informed the UCLA that he was not physically in California, such meeting became an actual impediment to his assignment to a TA position because of the short timeline placed on the assignment. By enforcing the pre-meeting requirement, he was, in fact, prohibited from being assigned to a TA position on the basis of disability.

For these reasons, OCR found that UCLA's requirement constituted a burden being placed on the complainant that was not placed on students without disabilities simply because he was a student with a disability. As such, OCR determined that there was sufficient evidence to support a finding that UCLA violated the provisions of Title II and Section 504 that prohibit different treatment of students with disabilities based on their disability. OCR notes that the same analysis and conclusion applies to UCLA's attempt to involve the OSD in the complainant's continued involvement in the program that is found in e-mails to him dated June 17, July 22, September 19, and December 15, 2013.

***Issue 3: Whether UCLA retaliated against the complainant by pressuring him to leave his graduate program with a master's degree instead of his desired doctorate degree after he began to assert his termination from the research lab was discriminatory.***

- On March 22, 2013, the complainant sent an e-mail message to his graduate advisor in which he stated he will “. . . have to leave with a masters,” indicated that he desired a “terminal masters” degree, and he inquired about the requirements and the process to obtain one. The graduate advisor responded the same day and informed the complainant that he would ask the graduate office about the process and get back to the complainant.
- In a March 25, 2013 e-mail message, the graduate advisor stated to the complainant that “. . . it appears that you have essentially completed the requirements for the masters [sic] degree, as soon as the required paperwork is completed” and, in a March 26, 2013 e-mail message, he advised the complainant that he signed off on the master’s degree.
- In response to the notification that his master’s degree had been granted, the complainant sent a March 26, 2013 e-mail message to the graduate advisor in which he stated that he had not yet decided to leave the university and was keeping his options open.

### **Legal Standards**

The Section 504 regulations incorporate 34 C.F.R. § 100.7(e) of the regulations implementing Title VI of the Civil Rights Act of 1964 and prohibit colleges/universities from intimidating, coercing, or retaliating against individuals because they engage in activities protected by Section 504.<sup>8</sup> The Title II regulations similarly prohibit intimidation, coercion, or retaliation against individuals engaging in activities protected by Title II.<sup>9</sup>

When OCR investigates an allegation of retaliation, it examines whether the alleged victim engaged in a protected activity and was subsequently subjected to an adverse action by the college/university under circumstances that suggest a connection between the protected activity and the adverse action. If a preliminary connection is found, OCR determines whether the college/university can provide a nondiscriminatory reason for the adverse action. OCR then evaluates whether the reason provided is merely a pretext and whether the preponderance of the evidence establishes that the adverse action was in fact retaliation.

### **Analysis**

The information provided to OCR does not support the complainant’s assertion that UCLA forced him to accept a master’s degree. The e-mail correspondence between the complainant and UCLA shows that it was the complainant who sought such a degree and expressly stated that he wanted such a degree. Although UCLA may have acted hastily in its eventual granting of the degree without ensuring it had an unequivocal statement of intent from the complainant to accept, such presumptiveness does not rise to the level of retaliation or diminish the

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<sup>8</sup>34 C.F.R. § 104.61.

<sup>9</sup>28 C.F.R. § 35.134.

complainant's actions in affirmatively requesting such a degree. As such, OCR found that there was insufficient information to support a finding of noncompliance with respect to issue 3.

**Issue 4: *Whether UCLA failed to promptly and effectively respond to the complainant's internal complaint of discrimination.***

- UCLA has adopted a grievance procedure, "Procedure 230.1: Student Grievances Regarding Violations of Anti-Discrimination Laws or University Policies on Discrimination," that provides the process for complaints of discrimination based on disability.<sup>10</sup> The procedure has three steps in it: consultation, informal resolution, and formal resolution.

During the first step, consultation, a complainant first attempts resolution through the "unit" alleged to have committed the discrimination. The policy states that the student:

must attempt to resolve the matter informally within thirty (30) Days of the time at which the Student could have been reasonably expected to have knowledge of the alleged violation or, if the violation occurs at the end of an academic quarter of semester, within thirty (30) days of the beginning of the succeeding academic quarter or semester. The Student should seek such resolution directly with the affected unit.

If consultation is unsuccessful, then the complainant can request to proceed through the second step, "informal resolution," by making a request for such to UCLA's Office of the Dean of Students. Informal resolution is an attempt by a Dean of Students' representative to resolve the issue with the complainant and the unit alleged to have discriminated.

If the informal resolution is unsuccessful, then the complainant can pursue "formal resolution" of a complaint. To initiate a formal grievance<sup>11</sup>, the policy states:

In the event that informal resolution is not successful, the Student must file a formal grievance with the campus Hearing Coordinator. Formal grievances must be filed within thirty (30) Days of the time at which the Student could be reasonably expected to have knowledge of the alleged violation or, when the violation occurs at the end of an academic quarter or semester, within thirty (30) Days of the beginning of the succeeding academic quarter or semester.

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<sup>10</sup>UCLA's notice of nondiscrimination is the same as the notice of nondiscrimination found in this policy and it does not comply with the regulatory requirements because it fails to inform readers that nondiscrimination principles apply to employment at UCLA ("This nondiscrimination policy covers admission, access, and treatment in University programs and activities.").

<sup>11</sup>UCLA informed OCR that a complainant is not required to submit a written complaint during the first attempt at resolution or during the informal resolution attempts.

The policy then proceeds to detail the responsibilities of a student complainant, the hearing coordinator, and the affected unit. Among the requirements and conditions imposed on the complainant are the following:

- the complainant's formal grievance "must include an explanation of the specific action being grieved, the specific policy and/or regulation alleged to be violated, and the remedy requested;"
- the complainant must notify the hearing coordinator in writing if she or he desires a hearing after receiving the affected unit's response to the complaint and, when requesting a hearing, "must indicate whether he/she is to be assisted by a representative, the name of the representative, and whether that representative or the Student is an attorney;"
- the hearing officer "conducts the hearing in the presence of the Student and an official representing the affected University unit; both have the right to be present throughout the hearing and to be represented by another person;"<sup>12</sup>
- the Student and affected unit can conduct cross-examination of each other's witnesses (there is no protection against the possibility that the subject of the complaint may use the cross-examination as a means of harassing or intimidating the complainant); and
- the Student may obtain a copy of any recording of the proceeding at his or her own expense (no similar cost is imposed on the subject of the complaint).

The formal process culminates with a hearing officer decision and recommendation that is given to a vice chancellor for review and his or her decision. The vice chancellor's decision may be appealed to the Chancellor on two limited grounds and the Chancellor's decision is final.

- On March 25, 2013, the complainant contacted UCLA's Section 504 and ADA coordinator and requested assistance and, on April 2, 2013, the two met to discuss the matter. For the next several days, various administrators at UCLA attempted to resolve an issue regarding whether the complainant's matter was considered to be an employment or a student issue. On April 10, 2013, the coordinator advised the complainant of his ability to file a disability discrimination complaint through the Dean of Students Office and provided him with the name and contact information for an assistant dean who could accept his complaint.
- On April 11, 2013, the complainant contacted the assistant dean, sent to him some information regarding his situation, and requested an appointment with him to discuss a possible grievance. On April 15, 2013, the complainant discussed his situation with the assistant dean.

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<sup>12</sup>Based on a plain reading of the provision, the subject of the complaint need not participate in the hearing.

- On May 8, 2013, the assistant dean informed the complainant that he concluded the complainant was terminated from Professor 1's laboratory without the proper processes being followed. However, pursuant to the complainant's request at the time, he did not investigate or make any determinations about whether disability discrimination took place.
- On May 13, 2013, the complainant advised the assistant dean of his desire to proceed with a grievance for disability discrimination against Professor 1. Thereafter, the complainant and the assistant dean communicated regarding the complainant pursuing a grievance based on disability discrimination.
- On May 15, 2013, the assistant dean sent an email to the complainant in which it is stated "Please remember that if you plan to leave the university, as we discussed in our meeting, utilizing the grievance will not be purposeful for you and other options should be considered."
- On May 17, 2013, in response to questions from the complainant, the Section 504/ADA coordinator advised the complainant to discuss pursuit of a formal grievance against Professor 1 with the assistant dean pursuant to UCLA policy 230.1 and, on the same date, the complainant informed the coordinator that he would pursue the process.
- On May 20, 2013, the assistant dean sent to the complainant an e-mail message that stated, in pertinent part:

All of the information you have, you have enough to proceed with the grievance process if you choose. Yet, you still need to be able to articulate what you want in return from this process and as we discussed, receiving money will not be an option.

Before considering the grievance process, have you determined if you want to remain a student here at UCLA? Remember, if you plan to leave, the process will not be beneficial. Let me know if you have any questions. Take care.

- With respect to the assistant dean's statement that the "if you plan to leave, the process will not be beneficial," the assistant dean told OCR that he intended to convey to the complainant that things dependent upon enrollment at UCLA, such as concessions toward degree advancement or completion, would not be possible if the complainant was not enrolled at UCLA.
- On May 23, 2013, the assistant dean advised the hearing coordinator in the Office of the Dean of Students that the complainant was ready to proceed with the filing of a grievance asserting disability discrimination and, on the same date, the complainant contacted the hearing coordinator in order to schedule an appointment with him to discuss his grievance.

- In a May 24, 2013 e-mail message to the complainant, the hearing coordinator stated:

As mentioned, the grievance process is attached to this e-mail. To move forward, you must submit a written document which indicates the following:

- 1) Which action(s) you are grieving, including who committed them, when, where, etc.;
- 2) Which protected class(es) you are grieving the action to be discriminatory of;
- 3) What your requested remedies or “fixes” are for the grievance.

Once you provide me with the written document, I send it on the [sic] person, department, or whomever it is that you direct the grievance and they have an obligation to respond. The entirety of the procedure 230.1 is attached, so you may review it if you have any questions.

- On June 10, 2013, in response to a question from the complainant, the hearing coordinator informed the complainant that the process could begin right away and that grievances generally take at least 60 days to hear.
- In a July 4, 2013 e-mail message, in response to additional questions from the complainant, the Section 504/ADA coordinator again advised the complainant to pursue any issues of disability discrimination through the grievance process and offered to facilitate any communication between the complainant and the Office of the Dean of Students.
- In a July 7, 2013 e-mail message to the Section 504/ADA coordinator, the complainant asked the coordinator to assist him with the grievance process.
- In a July 8, 2013 e-mail message to the assistant dean, the Section 504/ADA coordinator forwarded the complainant’s previous e-mail messages and asked the assistant dean to “reach out to [the complainant] further to discuss how he can commence with the process” and, in an e-mail message of the same date, the Section 504/ADA coordinator advised the complainant that he had requested the assistant dean contact him to initiate the grievance process.
- On July 8, 2013, the assistant dean sent an e-mail message to the complainant advising him to contact the hearing coordinator in order to pursue a formal grievance (the hearing coordinator was included as a “cc” in the e-mail message).
- In a July 9, 2013 e-mail message, the complainant expressed concerns about the grievance procedure and possible retaliation against those who may participate in it. Both the Section 504/ADA coordinator and the assistant dean assured the complainant that the grievance

would be processed according to protocols and done with professionalism in e-mail messages dated July 9 and July 12, 2013, respectively.

- In a July 16, 2013 e-mail message to the hearing coordinator, the complainant asked to schedule an appointment with the coordinator and the two eventually agreed to meet on July 19, 2013. On the morning of July 19, 2013, however, the complainant informed the hearing coordinator that he had to cancel the appointment.
- In a July 26, 2013 e-mail message to the complainant, the hearing coordinator stated:

I hope you're doing well. I wanted to follow-up with my e-mail last week and let you know that I am still available to meet with you, if you'd like. Further, you can (without even meeting me), submit your grievance electronically by e-mailing me the following information:

- 1) What actions are you grieving (who perpetrated the action, what happened, and how it affected you) discrimination from;
- 2) What protected class(es) are you claiming the discrimination occurred on;
- 3) What remedy ("fixes") are you seeking to make the matter whole again?

Without this information in some written form, I cannot move forward. Be advised that, while our office is support [sic] and flexible in helping you in this process, there is both a need for it to be timely and clearly articulated. I have attached UCLA Procedure 230.1 if you'd like to review yourself.

- Subsequent to July 19, 2013, the complainant did not contact the hearing coordinator. On August 21, 2013, the hearing coordinator closed the complainant's matter without taking any action.
- The complainant explained to OCR some of his concerns with the formal grievance process including his view of the integrity of the process and the fear that retaliation would take place against those students in the program who may need to become involved as witnesses on his behalf. This concern was reflected in his redaction of student names and identifying information in the documentation he provided to UCLA during the process and to OCR during this investigation.

### **Legal Standards**

The Section 504 regulations require a recipient employing 15 or more persons to adopt grievance procedures that incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints alleging disability discrimination.<sup>13</sup> The Title II

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<sup>13</sup>34 C.F.R. § 104.7(b).

regulations similarly require a public entity employing 50 or more persons to adopt and publish prompt and equitable grievance procedures.<sup>14</sup>

OCR examines a number of factors in evaluating whether a recipient/public entity's grievance procedures are prompt and equitable, including whether the procedures provide for: notice of the procedure to students and employees, including where to file complaints; application of the procedure to complaints alleging discrimination by employees, other students, or third parties; adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence; designated and reasonably prompt timeframes for major stages of the complaint process; notice to the parties of the outcome of the complaint; and, an assurance that steps will be taken to prevent recurrence of any discrimination and to correct its effects.

### **Analysis**

UCLA has designated Procedure 230.1 as its grievance procedure for disability discrimination complaints and the complainant utilized it in order to grieve his dismissal. He began the process on April 11, 2013 and, on August 21, 2013, UCLA closed his complaint without taking any action. Because there was no response to his complaint, OCR must determine why and whether the failure to respond was the result of UCLA's failure to provide a prompt and equitable grievance procedure.

On August 21, 2013, UCLA closed the complainant's grievance because of his failure to proceed with the grievance process. The complainant told OCR that he lacked confidence in the internal grievance process due to his belief that he would not receive a fair process and that anyone he would involve to provide evidence on his behalf would later suffer some type of retaliation. While some of his belief can be directly traced to the actions and inactions of UCLA in dealing with him personally (i.e., what happened to him after he disclosed his disability to Professor 2, the dissuading language found in communications discussing the grievance procedure, and the requirement that he involve the OSD in any effort to obtain a TA position, etc.), some of it is also attributable to the provisions found and not found in Procedure 230.1

First, the failure to include any provision addressing retaliation and informing complainants and others that it is prohibited can serve to deter individuals from pursuing discrimination complaints since they are left with the impression that retaliation either is permitted or not a concern of the university, if it happens. Procedure 230.1 is entirely silent on the issue of retaliation. This has real application in this matter since the complainant's fear of retaliation against those he would involve in the process played a role in his determination not to continue with the process.

Also absent from Procedure 230.1 is a provision assuring complainants that the university will take steps to stop the discrimination, prevent recurrence, and remedy discriminatory effects on

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<sup>14</sup>28 C.F.R. § 35.107(b).



the complainant and others (including providing examples of sanctions and remedies). Without such a provision, complainants, such as the complainant in this matter, are not provided with an assurance that the process will have a meaningful resolution if they subject themselves to it.

A provision that is present in UCLA's procedure that affected the complainant's pursuit of his grievance is the requirement that a formal grievance state three specific items before it will be considered to be filed. While OCR understands that the information the procedure requires is important to the eventual resolution of the matter, strict adherence to the requirements as a prerequisite to investigation cannot be mandated when to do so would operate in an inequitable manner or result in the University failing to fulfill its independent obligation to promptly and equitably investigate and resolve a report of discrimination under Title II and Section 504. For instance, where a complainant has already pursued the first two stages of the procedure, consultation and informal resolution, and stated the three required items during one or both of those stages, UCLA should consider whether it is necessary to restate the three items again. Further UCLA's procedure requires the complainant to recite the laws impacted in order to obtain a resolution, but the grievance procedure under Title II and Section 504 is designed to ensure all complaints of potential disability discrimination are addressed, and does not require a complainant to know citations to the specific laws enacted to protect them from discrimination in order to obtain a prompt resolution. UCLA is obligated under both Title II and Section 504 to promptly and effectively address reports of discrimination on the basis of disability, and the failure of a complainant to provide specific information in writing does not relieve the University of its obligation to do so. As such, OCR found that this requirement imposes a barrier that improperly limits its ability to fulfill this fundamental obligation.

Furthermore, some students may be unaware of what types of remedies are available to them (particularly since UCLA's procedure makes no mention of any remedies). Students should not be precluded from pursuing the formal stage because of their inability to state a remedy of which they are unaware. Moreover, the remedy provided to a complainant has no bearing on the determination that discrimination did or did not take place, which the University is under an obligation to discern regardless of this deficiency in the written pleading.

In addition to the above, the first two stages of the procedure, consultation and informal resolution, appear to be mandatory for a complainant to pursue before being able to pursue the formal resolution stage. However, complainants should not be required to meet with the individual whom they are accusing of discriminatory or harassing conduct in order to obtain an investigation of a complaint. OCR understands the importance of informal resolution processes to bring about early resolution, but such a process should be voluntary and the complainant should be informed of the ability to stop the informal process and pursue the formal stage.

OCR identified a number of additional areas of concern related to UCLA's grievance procedure, including that:

- It does not provide for effective notice of it to students.

- It requires a complaint to be filed within 30 days of the discriminatory action and imposes short time frames for the initial informal processes that may not be met if those processes exceed the maximum time frames permitted.
- It does not have any provisions that: provide definitions and examples of discriminatory conduct; provide for confidentiality; require employees to report discriminatory actions; provide for interim measures; address the training of investigators and decision makers; and provide examples of remedies and sanctions.
- It does not explicitly include academic disputes premised on discriminatory conduct as included within its coverage.
- It has inequitable provisions including requiring the complainant to notify UCLA if he or she will use a representative and whether the representative is an attorney without the same requirement being placed on the subject of the complaint; and requiring the complainant to pay for a recording of the hearing while not requiring the subject of the complaint to also pay for a recording.
- It does not allow third parties to file a complaint on behalf of a student with a disability.

With respect to application of the procedures to the complainant, OCR is also concerned that some of the communications to the complainant during the grievance procedure, specifically the e-mail message of May 15 and May 20, had language that could reasonably be read as an attempt to dissuade the complainant from fully pursuing the grievance procedure to completion. Both of the statements were not only incorrect but discouraging, and raise concerns for OCR that the primary employee interfacing with complainants had not received appropriate training regarding the policy and the importance of reflecting that the process will be completed in a prompt, fair, and equitable manner. Based on the above, OCR determined that there was sufficient information to support a finding of noncompliance with respect to issue 4.

To address the issues alleged in the complaint, UCLA, without admitting to any violation of law, entered into the enclosed resolution agreement which is aligned with the complaint allegations and the findings and information obtained by OCR during its investigation. The agreement requires UCLA to, among other things: revise its current grievance procedure in order to provide a prompt and equitable process; create a guidance document for the grievance process; provide training about the grievance process to those involved with it and about the process and disability discrimination in general to its Chemistry department; and, discuss with the complainant any financial redress that may be due to him as a result of the issues of noncompliance found by OCR and, thereafter, provide him with compensation for any redress that may be due to him.

This concludes OCR's investigation of the complaint and should not be interpreted to address UCLA's compliance with any other regulatory provision or to address any issues other than

those addressed in this letter. OCR is closing the investigation of this complaint as of the date of this letter and notifying the complainant concurrently.

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 UCLA 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 a 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, it will seek to protect, to the extent provided by the law, personal information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

When fully implemented, the resolution agreement is intended to address all of OCR's compliance concerns in this investigation. OCR will monitor the implementation of the agreement until UCLA is in compliance with Section 504, Title II, and 34 C.F.R. §§ 104.4, 104.43, & 104.7(b) and 28 C.F.R. §§ 35.130(a) & 35.107(b), the statutes and regulations at issue in the case.

The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Thank you and your staff, specifically Amy Blum, Interim Vice Chancellor-Legal Affairs, for your cooperation and assistance in resolving this matter. If you have any questions regarding this letter, please contact Alan Konig, Civil Rights Attorney, at (415) 486-5527 or [Alan.Konig@ed.gov](mailto:Alan.Konig@ed.gov).

Sincerely,

/s/

James M. Wood  
Team Leader

cc: Amy Blum, Interim Vice Chancellor-Legal Affairs