



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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SAN FRANCISCO, CA 94105

REGION IX
CALIFORNIA

November 13, 2015

Dr. Jose Fierro
President/Superintendent
Cerritos College
11110 Alondra Blvd.
Norwalk, CA 90650

(In reply, please refer to # 09-14-2049.)

Dear President Fierro:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against Cerritos College (College). The complainant¹ alleged that the College discriminated against him on the basis of disability. The issues OCR investigated were:

1. Whether the College discriminated against the complainant on the basis of his disability by failing to provide him with a clinical site and the academic accommodations necessary to afford him an equal opportunity to complete the Pharmacy Technology program.
2. Whether the College failed to respond adequately to the complainant's internal grievance alleging discrimination on the basis of disability.

OCR enforces Section 504 of the Rehabilitation Act of 1973 and its implementing regulation. Section 504 prohibits discrimination on the basis of disability in programs and activities operated by recipients of Federal financial assistance. OCR also has jurisdiction as a designated agency under Title II of the Americans with Disabilities Act of 1990 and its implementing regulation over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The College receives Department funds, is a public education system, and is subject to the requirements of Section 504 and Title II.

To investigate this case, OCR interviewed the complainant, College and College Hospital employees. OCR also reviewed documents and records submitted by all parties. OCR concluded that the College failed to provide the complainant with an equal opportunity to complete a clinical course in the Pharmacy Technician program, and failed to provide a

¹ OCR notified the College of the identities of the complainant when the investigation began. We are withholding his name from this letter to protect his privacy.

prompt and equitable response to his complaint of discrimination on the basis of disability. On October 30, 2015, the College submitted a Resolution Agreement which, when fully implemented, will resolve these areas of non-compliance.

The facts gathered during the investigation, the applicable legal standards, and the reasons for our determination are summarized below.

Background

- The complainant was enrolled in the Pharmacy Technician Program at the College from 2008 until his dismissal on November 30, 2012. He has disabilities that affect his memory and ability to concentrate, his physical mobility, and his hearing and speech. He was deemed a qualified student with a disability and was registered with the College's Disabled Student Programs and Services (DSPS).
- Students in the Pharmacy Technician program are required to complete a series of on-campus courses and two "clinical experience" practicum classes, one at a community pharmacy, and one in a hospital setting. In order to pass Pharmacy 95 (PHAR 95), the hospital clinical experience course, students must attend a weekly seminar, complete 200 hours in a hospital pharmacy, and demonstrate 33 critical skills.
- The College negotiates clinical training agreements with various facilities where Pharmacy Technician program students may complete their clinical training. OCR reviewed the written clinical training agreements between the College and these facilities and determined that none of them mention the need to provide academic accommodations to students with disabilities or specify whether the College or the facility is responsible for providing academic adjustments and/or auxiliary aids and services to such students. While most of these agreements included a nondiscrimination policy statement, several did not.
- During the summer 2012 term, 19 students were enrolled in PHAR 95. In addition to the complainant, one of the students was disabled. All of the other students were placed at clinical sites. During the fall 2012 term, eleven students were enrolled; the complainant and two other students were disabled. The other three students with disabilities enrolled in PHAR 95 during the summer and fall terms successfully completed their internship assignments.

Issue 1: Whether the College discriminated against the complainant on the basis of his disability by failing to provide him with a clinical site and the academic accommodations necessary to provide him an equal opportunity to complete his final course in the Pharmacy Technology program.

The Section 504 regulations, at 34 C.F.R. §104.43(a), provide that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any postsecondary

education program of a recipient. Pursuant to §104.43 (b), a college or university that considers an activity operated by another entity to be part of its educational program must assure itself that the other education program or activity, as a whole, provides an equal opportunity for the participation of qualified handicapped persons.

The Title II regulations, at 28 C.F.R. §35.130(a), contain a similar prohibition applicable to public postsecondary educational institutions.

The Section 504 regulations, at 34 C.F.R. §104.44(a), require recipient colleges and universities to make modifications to their academic requirements that are necessary to ensure that such requirements do not discriminate, or have the effect of discriminating, against qualified individuals with disabilities. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific required courses, and adaptation of the manner in which courses are conducted. However, academic requirements that recipient colleges and universities can demonstrate are essential to the program of instruction being pursued or to any directly related licensing requirement will not be regarded as discriminatory.

Under the Title II regulations, at 28 C.F.R. §35.130(b)(1)(ii) and (iii), public colleges and universities may not afford a qualified individual with a disability opportunities that are not equal to those afforded others, and may not provide aids, benefits or services that are not effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others. Under 28 C.F.R. §35.130(b)(7), public colleges and universities must make reasonable modifications in policies, practices or procedures when necessary to avoid discrimination on the basis of disability, unless doing so would fundamentally alter the nature of the service, program or activity. Section 35.103(a) provides that the Title II regulations shall not be construed to permit a lesser standard than is established by the Section 504 regulations. Therefore, OCR interprets the Title II regulations to require public colleges and universities to provide necessary academic adjustments to the same extent as is required under the Section 504 regulations.

Our investigation showed the following:

Selection of a Clinical Placement for the Complainant

- Throughout the complainant's enrollment in the College Pharmacy Technician program, College faculty and staff in both the program and the DSPPS office worked extensively with him to attempt to meet his needs. During the fall of 2010, the former Pharmacy Technology department chair began considering possible clinical placements for the complainant. He contacted the Veterans Administration hospital in XXXX XXXXX (VA), and was told that the pharmacy there should be able to provide the complainant the accommodations he needed.
- In November 2011, the new department chair (the Chair) met with representatives of the VA regarding procedures for placing Pharmacy Technology students at the

facility. According to an email the Chair wrote to the dean after this meeting, he was told that “they have a new outpatient facility that no longer accommodates students with disabilities.” The facility director “suggested another placement for students with disabilities because the environment is so ‘fast paced.’” The Chair noted that, from his observation, the pharmacy room “is crowded, busy, and everybody is moving fast,” and would therefore not be “an ideal site” for a person with difficulty maneuvering.

- By the beginning of the summer 2012 term, the complainant had completed all required courses and clinical placements except PHAR 95. The complainant enrolled in PHAR 95 for the summer 2012 semester (May 21, 2012 – August 10, 2012).
- The complainant was approved to begin a clinical placement for PHAR 95 at XXXXXXXXXXXX XXXXXXXXXXXX Medical Center on May 24, 2015. At the end of his first day at the placement, the XXXXXXXXXXXX pharmacy technician supervisor informed the Chair that the complainant could not return to complete his internship at the facility because their pharmacist “strongly objects” to him because of his “health problems.” There is no evidence that the College disputed this decision or attempted to determine whether, with accommodations the complainant could perform the essential functions of the intern position.
- The Chair stated that he contacted two other hospital pharmacies in an attempt to locate a placement for the complainant. He did not identify the complainant or describe the specific accommodations he required; instead, he asked more generally about the availability of accommodations. He reported that the supervisor of one facility stated that she would not be able to accommodate a student “who made requests such as the one [the complainant] made.” The director of the other pharmacy reported that they had no work where a person would be seated, could not accommodate a student in a wheelchair, and that interns must have good vision and good hearing.
- The College did not place the complainant at another clinical site to replace XXXXXXXXXXXX Hospital, and he was unable to complete the clinical portion of PHAR 95 during the summer term.
- The complainant contacted the health program dean regarding the failure of the Pharmacy Technician program to find him a clinical placement. The dean provided the complainant with a document dated June XX, 2012, stating that the complainant should complete the seminar portion of PHAR 95, and would 1) receive an incomplete “I” for PHAR 95 for summer 2012; 2) be assigned to XXXXXXXX Hospital after the summer students had completed their hours; 3) be assigned to clinical hours on Sundays only, which would “eventually” be changed to Saturdays and

Sundays; and 4) receive a letter grade once he completed 200 hours of onsite training.²

- The Chair informed OCR that he was able to place the complainant at XXXXXXXX Hospital by using his connections at the hospital, where XX XXX XXXXXXXX XX XXX pharmacist on Sundays.
- XXXXXXXX Hospital is a psychiatric hospital located XXXX XXXX X XXXX XXXX XXX XXXXXXXX. According to the XXXXXXXX Hospital Director of Pharmacy, pharmacy technician students usually do not want to complete internships at the hospital, because it is a psychiatric hospital and because the pharmacy does not prepare IVs and has no external customers. However, College students were occasionally placed at the Hospital prior to the complainant's placement there, including during the summer of 2012.
- According to XXXXXXXX Hospital administrators, pharmacy technicians normally deliver medications to patient units. Since psychiatric patients can be violent, however, the technicians needed to be able to move away quickly or defend themselves. The administrators agreed that the complainant's inability to run would need to be accommodated.
- The syllabus for PHAR 95 states that students are expected to work at their clinical sites for no fewer than 32 hours per week, and are required to complete their training in six weeks. Their clinical preceptor is expected to sign off on their completion of 33 "critical elements," including maintaining medication profiles and paperwork, preparing sterile products, delivering medications, and performing billing and inventory functions.
- The complainant's clinical hours were limited to the six hours on Sundays when the XXXXX, XXX XXX XXXX XXX XXXX XX XXXXXXXX XXX XXX XXXX XXXXXXXX, worked in the XXXXXXXX Hospital pharmacy. The Chair informed OCR that the complainant had a year after the end of the fall 2012 semester in which to resolve his incomplete in PHAR 95, and would have been allowed to continue to work at XXXXXXXX Hospital until he completed the required hours. Completion of the required hours would have taken 32 weeks.
- Shortly after the complainant began working at XXXXXXXX Hospital, he requested that his clinical hours be expanded to Saturdays. The Chair stated the complainant's hours could not be expanded XXXXXXXX XX didn't work on Saturdays and the pharmacist on duty did not want to oversee the complainant. The XXXXXXXX Hospital Director of Pharmacy stated that the complainant was not "ready" to work with another pharmacist, and denied the request.

² The dean retired shortly after making these arrangements.

- The complainant stated that he was not allowed to practice most of the essential skills covered by PHAR 95. He stated that his work consisted almost entirely of returning medications to their proper place in the pharmacy. The Chair and XXXXXXX Hospital staff stated that the complainant had received training on computer billing practices during his first two weeks, but had made a major error resulting in a large number of mistaken billings.³ After this incident, the complainant was not allowed to enter data on the computer, and was therefore unable to perform several of the critical elements. The Chair and XXXXXXX Hospital staff acknowledged that, because of the limited work performed at XXXXXXX Hospital on Sundays, and the nature of the complainant's accommodations (including limitations on preparing medications and entering patient wards), he was unable to perform many other critical elements.

Academic Accommodations at XXXXXXX Hospital

- The Student had received academic adjustments through the DSPS office throughout his enrollment at the College. Prior to beginning his pharmacy practicum classes, he arranged to receive extra time and the use of a quiet location for course examinations. By letter dated May XX, 2012, a DSPS counselor outlined the following additional accommodations that would be "beneficial" for the student during his clinical placement: 1) *the option to have on hand a conversion chart and basic formulas for I.V. preparation*; 2) *being able to be seated during some of the duties*; and 3) *approved breaks*.
- By email dated May XX, 2012, the Chair informed the former dean of the College Health Occupations Program that in addition to the DSPS approved academic adjustments listed above, a "support person" would also be available to the complainant at his clinical site.
- The Chair informed the Director of Pharmacy and Director of Human Resources of XXXXXXX Hospital that the complainant had a disability and would need accommodations. Neither administrator received a copy of the accommodations that had been approved through DSPS.
- On August X, 2012, the complainant met with the Chair, the XXXXXXX Hospital Human Resources Director and the Director of Pharmacy to discuss disability accommodations. At the end of this meeting, all parties signed a document agreeing to the following accommodations for the complainant: 1) he would be allowed to do his work sitting down; 2) he would not go to the patient units, but would remain in the Pharmacy Department during his shift; 3) he would not be required to answer the telephone; and 4) he would not pour medications, due to a partial right side paralysis. The agreement emphasized that these accommodations would only be provided during weekend shifts, eight hours on Saturdays and six hours on Sundays.

³ The complainant denied that he had made these errors, and stated that, as a pharmacy technician intern, he would not have had access to the computer fields where the errors were allegedly made.

- The complainant informed OCR that he did not need the conversion charts and IV formulas included in the accommodations approved by DSPS, and confirmed that he received three of the four accommodations agreed to by XXXXXXXX Hospital. He alleged, however, that he was not allowed to sit down during long portions of his work shift. He also alleged that he was not provided a support person.
- The complainant stated that there were only three stools in the pharmacy area, and that frequently when he returned from a break, all available seats were being used by the pharmacist and the two pharmacy technicians. Several staff members and administrators told OCR that at least four stools were always available, and that the complainant was able to perform most of his work while sitting. OCR was unable to establish, by a preponderance of the evidence, that the complainant was denied this accommodation.
- While there was some disagreement between the complainant and other pharmacy staff as to the length and frequency of the complainant's breaks, they agreed that he took breaks. The complainant suggested that he did not take as many breaks as his DSPS-approved accommodations permitted, but did not allege that pharmacy staff prevented him from doing so.
- The accommodation of a "support person" was not approved by DSPS, but was apparently added to the accommodations list after DSPS created it. The Chair stated that he was uncertain about the functions of a support person, but that he was available to answer questions at all times that the complainant was working in the XXXXXXXX Hospital pharmacy. The complainant denied that the Chair was willing to provide him with the assistance he needed.

Termination of XXXXXXXX Hospital Assignment

- During the complainant's time at XXXXXXXX Hospital, several incidents occurred that were attributed to the complainant. As noted above, on one occasion, a number of prescriptions were erroneously entered into a computer field, resulting in mistaken billing and, allegedly, loss of revenue for the pharmacy. The complainant denied having access to the field where the prescriptions were entered.
- Both the pharmacy technicians who worked on Sundays and the pharmacist who operated the pharmacy on Mondays noticed that a large number of unused medications were misfiled or placed in inappropriate locations, including a confidential shred bin and the trash can. Because the incidents involving misplaced medications occurred on Sundays, and coincided with the beginning of the complainant's work in the Hospital, staff believed that the complainant was responsible. On at least one occasion, the pharmacy technicians divided medications that needed to be refilled among themselves and the complainant. Staff reported that the medications assigned to the complainant were misplaced. Staff also reported that the complainant often failed to remove identifying patient

information from medication storage bags or return them to the proper location for reuse.

- The complainant denied having misfiled medications, and claimed that nurses from the patient wards and other hospital staff had regularly entered the pharmacy, frequently taking medications or filling prescriptions themselves, and returning medications to the wrong places. All of the XXXXXXXX Hospital staff interviewed by OCR denied that this had occurred, or that it could have occurred.
- The Chair and pharmacy staff stated that they had pointed out the misfilings repeatedly to the complainant, and had instructed him to ask the Chair or a pharmacy technician if he had questions about procedures, or about the proper placement of a medication. They stated that he did not change his behavior, and often became upset and defensive. The complainant stated that he was frequently accused of misfiling medications and making other errors, but that he had not done so.
- Pharmacy staff informed OCR that, during the months of October and November, relations between the complainant and pharmacy staff deteriorated. Staff stated that the complainant was often rude or sarcastic toward them. They also expressed concerns about patient safety, since misfiled medications could lead to errors in filling prescriptions. They indicated that the complainant's performance had not improved over the course of his internship, and that he had become more resistant to their feedback. The complainant informed OCR that, while staff had accused him of misfiling medications, they had not informed him of any other concerns.
- The Chair forwarded a written statement of staff concerns to the XXXXXXXX Hospital Director of Pharmacy in late November. Based on these concerns, the complainant's clinical placement at XXXXXXXX Hospital was terminated effective November XX, 2012. OCR received conflicting testimony as to whether this decision was made by XXXXXXXX Hospital or by the College.
- OCR determined that another non-disabled student was terminated from a clinical placement at XXXXXXXX Hospital because he/she was unable to get along with pharmacy staff and was unwilling to conform to pharmacy standards.
- A "Preceptor's interim evaluation" of the complainant's performance was completed on November XX, 2012. Although the Chair had acted as the complainant's clinical preceptor, the director of pharmacy, who had met the complainant only once, before he began work at the pharmacy, signed the evaluation as his preceptor. The evaluation rated the complainant as punctual, polite and professionally groomed and attired, but noted extensive concerns about his safety, rudeness, failure to adhere to proper protocol, and failure to follow directions and ask for help. These criticisms were largely identical to the concerns expressed in the written statement by pharmacy staff. The complainant was rated minimally acceptable competency or unacceptable performance in nine of the 33 "critical

elements”. Eighteen elements were marked “not applicable,” and four were not rated.

- On November XX, 2012, staff from the Division of Health Occupations and DSPS, including the deans of both divisions, met with the Chair and other program staff to discuss the complainant’s evaluation and whether he could be placed at another clinical site. The group decided that because of the concerns expressed at XXXXXXXX Hospital about safety and collegiality, and because of their inability to find a site that could accommodate him, the College would not be able to obtain another clinical placement. The Vice President of Academic Affairs participated in this meeting, and in the decision.
- On December X, 2012, the Chair and the complainant’s DSPS counselor met with the complainant, discussed the interim evaluation with him, and informed him that he would be terminated from the Pharmacy Technician program.
- The complainant received an ‘F’ grade in PHAR 95, and was removed from the Pharmacy Technician program.⁴

The Section 504 and Title II regulations state that a college, in providing any aid, benefit, or service may not directly, or through contractual arrangements, deny a qualified disabled person the opportunity to participate in or benefit from the aid, benefit or service. In addition, the Section 504 regulations, at 34 C.F.R. § 104.43(b), specifically address situations in which a portion of a college’s educational program takes place in a program that the college itself does not operate. Under such circumstances, the university must assure itself that the other entity provides an equal opportunity for participation by individuals with disabilities.

In this case, a portion of the College’s pharmacy technician program took place in clinical placements in pharmacies operated by neighboring hospitals. Such clinical placements were a required component of the College program. The College was therefore obliged to assure itself that the internship site in which it placed its students did not discriminate against individuals with disabilities.

OCR determined that the process used by the College to place the Complainant at a clinical site denied him equal access to the educational program, in violation of Section 504 and Title II. The evidence establishes that the Complainant was placed at a hospital setting in May of 2012, but that, after one day, the hospital informed the College that the pharmacist “doesn’t like the student has health problems,” and that, for that reason, the Complainant could not return to the pharmacy. OCR did not find evidence that the College took steps to assure itself that the hospital was not discriminating against the complainant by determining whether he could be accommodated in this placement or whether, as the notice implied, he had been

⁴ The complainant was informed that he could be certified as a pharmacy technician without completing the pharmacy technician program if he took the Pharmacy Technician Certification Exam. The College offered him tutoring to prepare for this examination.

excluded because of his disability. Instead, it accepted the refusal of the pharmacy to accept the Complainant. In attempting to locate additional clinical sites, it willingly accepted statements that other pharmacies “no longer accommodate students with disabilities” or were unable to provide the general type of accommodation that the complainant “requested.” It is possible that these sites would not have been able to accommodate the complainant without fundamentally altering their programs. However, the evidence does not establish that the College attempted to determine whether accommodations could have been provided that would have enabled the complainant to participate in these programs without such an alteration. The College did not identify a placement for the complainant during the summer term, when he initially enrolled in PHAR 95, and he was forced to accept an incomplete grade.

OCR found that the placement ultimately identified for the complainant was not comparable to the placements provided to nondisabled students. While the PHAR 95 syllabus contemplated a clinical placement for 32 hours per week, the complainant was allowed to work at XXXXXXX Hospital for only six hours, while he could be directly supervised by the Chair. Although other students were occasionally placed at XXXXXXX Hospital, it was not considered an ideal placement because it did not offer students experience in several essential skills, including those pertaining to intravenous medications. These limitations were exacerbated for the complainant, for whom interaction with the hospital’s psychiatric patients was deemed to be unsafe, and whose clinical experience occurred entirely on Sundays, when the activities of the pharmacy were limited. Ultimately, the complainant had no access to 22 of the 33 elements of a clinical experience considered “critical” for the pharmacy technician program.

OCR notes that the accommodations approved for the complainant – access to seating, the option to use a conversion chart and basic IV preparation formulas, and the ability to take breaks – did not by themselves appear difficult to implement. The evidence suggests that College faculty and administrators considered the complainant’s disabilities to limit his performance more profoundly than this list implies, and to require additional unspecified accommodations. Because these accommodations were not specifically identified and discussed with pharmacy and administrators, no determination was made as to whether the complainant could successfully participate in a clinical placement that was comparable to those provided to other students in the class.

OCR determined that there was insufficient evidence to establish that the College denied the complainant his approved disability accommodations once he was placed at XXXXXXX Hospital. Although the complainant claimed that he was not given a chair to sit at while he was working, the preponderance of the evidence did not support this allegation. The complainant acknowledged receiving, or not needing, the other accommodations identified by DSPS and XXXXXXX Hospital.

While a list of the complainant’s accommodations prepared by the Chair included a “support person”, this provision was never defined. The regulations implementing

Section 504, at 104.44(d)(2) provide that colleges and universities need not provide “devices or services of a personal nature”. The Chair was present in the pharmacy during the complainant’s work shifts. The complainant alleged that the Chair was unwilling to assist him; the Chair claimed that he was available, but that the complainant rarely asked him questions. OCR did not establish, by the preponderance of the evidence that the College failed to provide a required accommodation in connection with this allegation.

OCR also concluded that the preponderance of the evidence did not establish that the complainant’s placement at XXXXXXX Hospital was terminated because of his disability. The College and the Hospital asserted that the complainant repeatedly failed to follow pharmacy protocol regarding the filing and storage of medications and other pharmacy supplies, and that he became increasingly abrasive towards other pharmacy staff. The complainant disputed these claims. The preponderance of the evidence supported the College’s claims that the College administrators and hospital staff believed that the complainant was creating unsafe conditions for patients and a contentious atmosphere for other employees, and that they terminated his placement for those reasons. OCR confirmed that the clinical placement of another College pharmacy technician student was terminated for similar reasons. OCR concluded that the evidence did not establish that the reasons proffered by the College were a pretext for discrimination based on disability.

Issue 2: Whether the College failed to respond adequately to an internal complaint the complainant made on March XX, 2013 alleging that he had been discriminated against based on disability.

The Section 504 regulations, at 34 C.F.R. §104.7(b), 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. The Title II regulations, at 28 C.F.R. §35.107(b), similarly require a public entity employing 50 or more persons to adopt and publish prompt and equitable grievance procedures. 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 the following: 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.

Our investigation showed the following:

Grievance Procedures

- At the time of the complainant's termination from the Pharmacy Technician program, the College had several complaint procedures, including the following:
 - Student Grievance Procedures (AP 5530), which explicitly excluded “grades and grading, sexual harassment, and other illegal discrimination”;
 - Procedures concerning “Discrimination and Harassment Investigations” (AP 3435): These procedures do not specifically state the bases for complaints of discrimination and harassment, but appear to pertain primarily to complaints of sexual harassment and sexual violence. The Vice President of Human Resources is responsible for receiving and coordinating the investigation of such complaints under this procedure. The procedure provides for the full investigation of complaints, and written notice of findings to the complainant, within 90 days after they are filed, and outlines possible disciplinary and corrective actions, as well as interim remedies. However, it does not clearly differentiate between formal and informal complaint procedures, and does not provide for resolution of complaints that do not directly impact the complainant.
 - Section 504/ADA Complaint Procedure: This policy is available to any person who believes he/she has been subjected to discrimination on the basis of disability. It includes an optional informal procedure, a formal investigation by the Section 504/ADA Coordinator, and a hearing if the recommendations of the coordinator do not resolve the complaint “to the satisfaction of all parties.” The procedure includes timeframes for each step, although the hearing panel is only expected to “make every reasonable effort” to complete the hearing and present findings and recommendations within 14 days after the panel is formed. If all timelines are followed, the process could take as long as 138 days, or more than a semester.
 - Student Grade Grievance Procedure: The policy is used to address situations where a grade was assigned “due to mistake, fraud, bad faith, or incompetence.” It includes several levels of review, but not required formal investigation. A recommendation must be made at each level within ten days.

Complainant's Grievance

- In January 2013, after the termination of his clinical placement, the complainant attended meetings with the Chair and College administrators, and with several DSPS counselors, in order to discuss his options. He was informed that he could take the Pharmacy Technician national certification exam without completing Pharm 95, enroll in another program at the College, or pursue other career training. His DSPS counselor also listed a grade grievance as a possible recourse. There is no evidence that he was referred to a procedure for addressing discrimination on the basis of disability.
- On January XX, 2013, the complainant filed a formal grievance on the College's “Student Grievance Form” against the PHAR 95 instructor regarding allegedly false statements on his November evaluation, and requesting that his F grade in Pharm

95 be changed to an incomplete, and that he be allowed to complete his clinical hours at a different hospital. The complainant did not make any discrimination allegations on this complaint form. A note on the form indicates that the complainant had mistakenly been given the student grievance form, but that his complaint should be considered a grade grievance.

- On February X, 2013, the complainant wrote a letter to the Vice President of Academic Affairs (Vice President) to formally appeal his PHAR 95 grade. He alleged that the F grade he received in PHAR 95 was due to fraud, neglect, bad faith, and “fraud, retaliation/discrimination” by the Chair. Among the allegations in his complaint, the complainant alleged that the Chair had retaliated against him because he had previously complained to the former dean about the Chair. The complaint stated that the Chair had made comments that questioned his ability to succeed in the because of his disability.
- The Vice President of Academic Affairs stated that she treated the complainant’s appeal as a grade grievance, and did not consider it to include allegations of discrimination on the basis of disability.
- On February XX, 2013, the complainant met with the Vice President, the Coordinator of Judicial Affairs, and the dean of health occupations, to discuss his grievance and to present any documentation. According to the Vice President, the discussion at this meeting focused on the complainant’s concern that his Pharm 95 grade was not a fair reflection of his performance. The Vice President stated that the complainant did not raise discrimination during this meeting.
- The Vice President of Academic Affairs investigated the complainant’s appeal by reviewing documentation provided by the complainant, the Chair, and XXXXXXXX Hospital, and by interviewing the complainant, the Chair, the complainant’s DSPS Counselor, and the Dean of Health Occupations. She stated that she did not talk to XXXXXXXX Hospital employees, but instead reviewed the evaluations of the complainant’s performance that they had provided. She also received information from the Dean of Health Occupations, who had spoken to the XXXXXXXX Hospital Director of Pharmacy.
- The Dean of Health Occupations told OCR that the pharmacy director had told her that the complainant’s termination had resulted from his creation of a “hostile environment” in the pharmacy, and was not related to his accommodations. She stated that she did not question this conclusion, but instead relied on the Chair to have ascertained the necessary facts.
- By letter dated March X, 2013, the Vice President notified the complainant of her decision. She determined that his allegations of fraud and bad faith regarding his Pharm 95 F grade were unfounded and that his F grade would therefore stand. The letter outlined the opportunities the complainant had been given to meet with College administrators, and the documents that the Vice President had reviewed. It did not include factual findings, and did not address the Chair’s alleged animus against the

complainant, or his alleged statements that the complainant was unlikely to succeed because of his disability.

- The complainant appealed the Vice President’s ruling to the College President and to the College Board of Trustees, both of which denied his appeals. The Vice President stated that the complainant raised his allegations of discrimination for the first time during this hearing. The evidence does not establish that the Board, or any administrator, followed up on these allegations.

The regulations implementing Section 504 and Title II require colleges and universities to adopt grievance procedures that incorporate appropriate due process procedures and that provide for the prompt and equitable resolution of complaints of discrimination on the basis of disability. In order to meet these criteria, complaint procedures must, at a minimum, provide clear notice to complainants of the applicability of the procedures to complaints of discrimination, of the process that will be followed, and of the steps they must take to pursue a complaint. They must include designated timeframes for the major stages of the process which result in the prompt resolution of complaints. They must also provide for a thorough and impartial investigation of complaints, notice to complainants of the findings and results of the investigation, and provisions for corrective action designed to end any discrimination and remedy its effects.

OCR determined that the College had adopted grievance procedures for the resolution of complaints of discrimination on the basis of disability, which included timeframes and an investigation by the College Section 504/ADA coordinator, identified in the procedures as the Dean of DSPS. In the “preliminary” stage of the process, the coordinator is required to conduct a thorough investigation and make findings and “recommendations” within 60 days after a complaint is filed. It is not clear from the procedures what occurs if the recommendations are not acceptable to the individuals or departments who are alleged to have engaged in discrimination, but it appears that the complainant must then pursue a hearing before an ad hoc Section 504/ADA Discrimination Complaint Panel. At this “formal” stage, the complainant apparently has the burden of presenting evidence in support of the complaint. If the procedures reach this stage, the entire process can take more than a semester, even if the hearing panel adheres to the timelines, which are not mandatory. After reviewing this procedure, OCR concluded that it did not provide for the prompt resolution of complaints of discrimination. OCR was also concerned that the procedures do not require the College to adopt remedial actions if an impartial investigation reveals that discrimination has occurred, and that they were not available to persons who wish to complaint about discrimination that did not directly affect them.

After reviewing the other complaint procedures forwarded by the College, OCR concluded that none of them are clearly applicable to complaints of discrimination on the basis of disability. The grade grievance procedure, which was followed in this case, does not specifically address situations where a student alleges that a poor grade resulted from discrimination, and does not require a thorough investigation. The College informed OCR that, if a grade grievance includes allegations of discrimination, it should be referred to the Human Resources compliance officer, presumably for

investigation through the general discrimination and harassment investigation procedure. As noted above, that procedure does not include a clear statement that they are applicable to complaints of discrimination on the basis of disability.

OCR determined that, although the complainant's grievance contested his grade in PHAR 95, the College was on notice that he believed that he had been subjected to discrimination on the basis of disability. The complainant had repeatedly complained that the Chair's efforts to locate a clinical placement that could provide him accommodations were inadequate, and all meetings to discuss his grade and his future in the program included representatives of DSPS. Nevertheless, when he was informed of his options after being removed from his clinical placement, he was referred only to the grade grievance procedure. Even when he filed a grade appeal that referred to "retaliation/discrimination," and stated that the Chair had "made comments about my success ability due to my disability," his complaint was not considered to allege discrimination, and he was not referred to the Section 504/ADA complaint procedures.

Because the complainant's grievance was not viewed as alleging discrimination, the investigation of his complaint was not fully investigated, and the College did not equitably and impartially review his allegations that he had been subjected to discrimination, or that the Chair was biased against him because of his disabilities, and because of his prior complaints concerning the Chair's efforts to find him a clinical placement. OCR concluded that the College's complaint procedures do not fully comply with the requirements of Section 504 and Title II, and that the complainant did not receive a prompt and equitable investigation of his complaint of discrimination, in violation of Section 504 and Title II.

Conclusion

On October 30, 2015, the College submitted the enclosed Agreement that is intended to, when fully implemented, resolve the issues in this complaint. The Resolution Agreement requires the College to refund the tuition and fees paid by the complainant for PHAR 95 and to take steps to ensure that students are not subjected to disability-based discrimination in clinical placements and that complaints of discrimination on the basis of disabilities are promptly and equitably resolved. The College agreed to provide written notice to all clinical facilities which clinical placements of College students that they may not discriminate against students on the basis of disability and that they must provide reasonable accommodations to such students. The College will also develop written guidance to College instructors and staff members concerning their responsibilities for identifying necessary clinical accommodations for students with disabilities and ensure they are provided. In addition, the College will adopt or revise procedures for resolving complaints of discrimination on the basis of disability and provide guidance on responding to allegations of discrimination that are included in grade grievances.

Based on the commitments the College has made in the Agreement described above, OCR has determined that it is appropriate to close the investigative phase of this case.

This letter sets forth OCR's determination in an OCR complaint investigation. It 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.

OCR is informing the complainant of its determinations by concurrent letter. The complainant may have the right to file a private suit whether or not OCR finds a violation.

OCR routinely advises recipients of Federal funds and public education entities that Federal regulations prohibit intimidation, harassment or retaliation against those filing complaints with OCR and those participating in the complaint resolution process. Complainants and participants who feel that such actions have occurred may file a separate complaint with OCR.

Additionally, under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions about this letter, please call Danette Ng, Civil Rights Investigator, at (415) 486-5539 or Katie Riggs, Case Attorney, at (415) 486-5544.

Sincerely,

/s/

Anamaria Loya
Team Leader

Enclosure