



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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PHILADELPHIA, PA 19107-3323

REGION III  
DELAWARE  
KENTUCKY  
MARYLAND  
PENNSYLVANIA  
WEST VIRGINIA

July 17, 2019

**VIA EMAIL ONLY**

(b)(6); (b)(7)(C)

Re: OCR Complaint No. 03192166

Dear (b)(6); (b)(7)(C)

On May 15, 2019, the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) received your complaint against the University of Pittsburgh (the University). You allege that the University is discriminating against you on the basis of disability and retaliated against you. Specifically, you allege the University:

1. Failed to make reasonable modifications to policies, practices, and procedures to permit you to participate in the University’s programs and benefit from its services in the following ways:
  - a. Not ensuring that you had access to its food service and meal plan system during the 2018–2019 academic year;
  - b. Requiring you to pay club and activity fees for food you were unable to eat; and
  - c. Denying you the opportunities to live on campus, attend special events, and register for the fall 2019 semester.
2. Treated you differently than non-disabled students during an exam on March 7, 2019 when a professor was not available to answer your questions about the exam, but he was available to respond to other students’ questions during the exam.
3. Retaliated against you after you advocated for your disability-related rights when a Dean told you that you did not belong at the University and should “just go” if all you do is complain.
4. Failed to have a process to provide disability-related services to students with food allergies.

5. (b)(6); (b)(7)(C)

OCR enforces:

- Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department.
- Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131, and its implementing regulation, 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities.
- Section 504 and Title II prohibit retaliation against any individual who asserts rights or privileges under these laws or who files a complaint, testifies, or participates in an OCR proceeding.

Because the University receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to these laws.

Because OCR determined that it has jurisdiction and that the complaint was timely filed, OCR is opening allegations 1 and 2 for investigation. Please note that opening the complaint for investigation in no way implies that OCR has made a determination on the merits of the complaint. During the investigation, OCR is a neutral fact-finder, collecting and analyzing relevant evidence from you, the University, and other sources, as appropriate. OCR will ensure that its investigation is legally sufficient and fully responds to the complaint in accordance with the provisions of the *Case Processing Manual*, available at <http://www.ed.gov/ocr/docs/ocrcpm.pdf>.

Our goal is the prompt, appropriate resolution of the complaint. While we are proceeding with an investigation, there are other approaches that can achieve this goal. Information on OCR's complaint processing procedures is available at <http://www.ed.gov/ocr/complaints-how.html>. In particular, please note the section on Facilitated Resolution Between the Parties (FRBP). Under this voluntary, informal approach, similar to mediation, OCR helps facilitate settlement discussions between you and the University. If you believe FRBP can be useful in this case, please contact the OCR staff person identified below as soon as possible.

For the reasons explained below, OCR is dismissing allegations 3, 4, and 5. OCR reviewed the information you provided with your complaint, as well as information your mother submitted to OCR on your behalf, and your responses to OCR's follow-up emails dated May 21, 2019 and July 1, 2019. As explained in Section 108 of OCR's Case Processing Manual, OCR will dismiss an allegation when: (a) the allegation, on its face or as clarified, fails to state a violation of one of the laws and regulations OCR enforces; or the allegation, on its face or as clarified, lacks sufficient factual detail (e.g., who, what, where, when, how), or is so speculative, conclusory or incoherent that OCR cannot infer that discrimination or retaliation may have occurred or may be occurring. OCR may also dismiss an allegation when OCR obtains credible information indicating that the allegations raised by the complainant are currently resolved and are therefore no longer appropriate for investigation.

Concerning allegation 3, to investigate a claim of retaliation, the Complainant must allege (or OCR must be able to infer from the facts given) that: (1) an individual experienced an adverse action caused by the recipient; and (2) the recipient knew that the individual engaged in a protected activity. If either element is not established, OCR will not proceed with an investigation. In determining whether an action taken by the University was adverse, OCR considers whether the alleged adverse action caused lasting and tangible harm, whether the action reasonably acted as a deterrent to further protected activity, or if the individual was, because of the challenged action, precluded from pursuing his or her discrimination claims. Merely unpleasant or transient incidents usually are not considered adverse.

You reported to OCR that the Dean told you that you complained too much, did not belong at the University, and “maybe you should just go.” We have reviewed the statement of the University official which you allege is retaliatory and we have determined that it does not constitute an adverse action within the meaning of our regulations and policy because it does not rise to the level of a lasting and tangible harm. Therefore, this allegation does not state a violation of the laws OCR enforces and we are dismissing it effective the date of this letter.

With regard to allegation 4, you alleged that the University does not have a process to provide disability-related services to students with food allergies. In your response to OCR’s inquiries, you stated that the University added information to its website about food allergy accommodations, and the University’s website now has forms for Housing/Dining Accommodation Requests and Dietary Modifications Requests located at its Office of Disability Resources and Services webpage. There is no requirement under the laws and regulations that OCR enforces for recipient institutions to have a specific process for providing disability-related services to students with food allergies. In addition, as the University now has a process to provide accommodations to students with food allergies, OCR is dismissing allegation 4, as it is currently resolved and not appropriate for investigation.

(b)(6); (b)(7)(C)

You have a right to appeal OCR’s determination in dismissing allegations 3 and 5 within 60 calendar days of the date indicated on this letter. An appeal can be filed electronically, by mail,



or fax. You must either submit a completed online form at <https://wdcrobcop01.ed.gov/CFAPPS/OCR/ocrAppealsForm.cfm>, or mail a written statement of no more than ten (10) pages (double-spaced, if typed). If submitted by mail, please send to the Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue SW, Washington, D.C. 20202. If submitted via e-mail, send to [OCR@ed.gov](mailto:OCR@ed.gov); if submitted via fax, please send to 202-453-6012. The filing date on an appeal is the date the appeal is postmarked, submitted electronically or submitted via fax. In the appeal, you must explain why you believe the factual information was incomplete or incorrect, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would result in the case being opened for investigation; failure to do so may result in dismissal of the appeal.

Please be advised that the University must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, or participates in an OCR proceeding. If this happens, the individual may file a retaliation complaint with OCR.

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

If you have any questions, please contact Andrea DelMonte, the OCR attorney assigned to this complaint, at 215-656-8554 or [andrea.delmonte@ed.gov](mailto:andrea.delmonte@ed.gov).

Sincerely,



Melissa M. Corbin  
Team Leader  
Office for Civil Rights, Philadelphia