



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS, REGION IX

NOV 24 2009

Mr. Peter Garcia
President
Los Medanos Community College
2700 East Leland Road
Pittsburg, California 94565

(In reply, please refer to Docket# 09-09-2120.)

Dear President Garcia:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against Los Medanos Community College which is part of the Contra Costa Community College District. The complainant¹ alleged that the College discriminated against her based on disability. The issues investigated by OCR were whether the College:

- 1) met its obligation to provide her with a prompt and equitable grievance procedure to address her claim of discrimination;
- 2) maintains a policy, practice or method of administration that arbitrarily precludes the provision of accommodations in the clinical setting;
- 3) denied the complainant approved academic accommodations in the clinical setting;
- 4) retaliated against her because she filed an internal complaint of disability discrimination.

OCR investigated this complaint under the authority of Section 504 of the Rehabilitation Act of 1973 and its implementing regulation. 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 based on disability against certain public agencies. The College receives Department funds, is a public education system, and is subject to the requirements of Section 504 and Title II.

¹OCR notified the College of the identity of the complainant when the investigation began. OCR is withholding her name from this letter to protect her privacy.

OCR investigated this complaint by reviewing documentation provided by the College and the complainant, including the complainant's internal complaint, the College's investigative report and decision, the complainant's College records, and correspondence between the complainant and the District. OCR also interviewed College and District staff members and the complainant. OCR found that the College/District has maintained a policy/practice that precludes the provision of academic accommodations in a clinical setting. OCR found insufficient evidence to substantiate the complainant's claim that she herself was denied academic accommodations. OCR also found insufficient evidence that the complainant was subjected to retaliation. Because OCR found that the College's criteria and procedures for providing accommodations in clinical nursing placements conflicted with the regulations implementing Section 504 and Title II OCR found the College in noncompliance on this issue and sought a remedy. On November 18, 2009, the College signed the attached Resolution Agreement which will address the area of noncompliance once it is fully implemented.

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

Issue One: Whether the College/District failed to provide the complainant with a prompt and equitable grievance procedure to address her claim that her approved accommodations were not implemented in her clinical placement.

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. §34.107(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:

- The complainant enrolled in the College's Registered Nursing Program in January 2008 as a second semester transfer student. She completed the semester successfully.

- In August 2008, the complainant requested accommodations based on disability. She provided verification of a back injury, and completed testing through the College's Disabled Students Programs and Services (DSPS) office, which verified a learning disability. On August 27, 2008, shortly after the Fall semester began, DSPS approved twenty-one accommodations for the complainant. The accommodations fell into two categories. One consisted of widespread support such as counseling and advising, assistance with registration, reduced course load, and tutoring. The other consisted of accommodations that were specific to classroom instruction; assignments and exams. These included time and a half on exams, NP notetaking paper, discretion to stand or leave the classroom for short period, testing breaks, testing with reduced distractions, test question responses read onto tape, testing with a reader, testing with a scribe, recorded books, use of a recorder for lectures, and modified chair/table.
- The complainant was enrolled in RN 31, Nursing in Health/Illness II, a third semester requirement in the two-year RN nursing program, during the Fall 2008 semester. In September, she successfully completed her first three-week pediatric clinical rotation. In mid-September, she began her second six-week medical/surgical rotation.
- After three weeks in the medical/surgical rotation, the Nursing Program placed the complainant on probation because she was not meeting the clinical objectives. The College developed an action plan for improvement, and set forth specific tasks the complainant was to complete each day by specified times. On October 15 and 22, 2008, the clinical instructor met with the complainant again and informed her she was still not meeting clinical objectives. Updated Probationary Forms were given to the complainant at each of these meetings. At the end of the six week rotation the clinical instructor wrote a Clinical Evaluation in which a determination was made that the complainant had not met the clinical objectives or demonstrated improvement as required by the Probationary Forms. The faculty of the Nursing Program decided to terminate the complainant from the program. On October 29 the clinical and classroom instructors met with the complainant, informed her of the decision, and gave her the Clinical Evaluation.
- The complainant sent a letter to the Director of the Nursing Program on November 6, 2008 alleging that her clinical and classroom instructors discriminated against her on the basis of age, ethnicity and disability. She made numerous specific allegations of discrimination with regard to each of these bases. One of the complainant's allegations was that her clinical instructor failed to implement her approved accommodations in her clinical placement, specifically that the instructor would not allow the complainant to tape record discussions on the hospital floor, clinical conferences in the hospital, or her probationary conferences.
- The Director forwarded this letter to the College's Senior Dean of Student Services. The Dean contacted the complainant who signed an informal

complaint form on November 6. The Dean began the resolution process by interviewing the complainant and College staff members. In January 2009 the complainant notified the Dean that the complainant had consulted with legal counsel, who contacted the College. The Dean decided that the investigation should be conducted as a formal complaint and notified the complainant. The complainant signed a formal complaint form on January 28, 2009. The Contra Costa Community College District retained a law firm to conduct the investigation of the formal complaint.

- The District has a written procedure for processing complaints of discrimination, including complaints based on disability, titled Human Resources Procedure 1040.07. It provides for both informal and formal complaint procedures. An investigation must be conducted if a formal complaint is filed, including interviewing the complainant and all relevant witnesses, reviewing files and documentation, and reaching conclusions. Within 90 days of receiving a formal complaint, the investigation must be completed and a written determination sent to the complainant as to whether discrimination occurred, along with a copy or summary of the investigative report. Two levels of appeal are set forth in the procedure.
- A staff member from the law firm which the District retained conducted the formal complaint investigation and issued an investigative report dated April 6, 2009. The report demonstrates that the investigator reviewed submissions from the complainant, the complainant's nursing school records and DSPS records, and nursing program requirements. The investigator conducted interviews with the complainant, the College Dean, the Director of the nursing program, the clinical instructor, the classroom instructor, the DSPS coordinator and learning disability specialist and other DSPS staff members.
- The investigator gathered detailed information about each instance of alleged discrimination on the basis of age, ethnicity and disability alleged by the complainant. The investigative report analyzed the evidence related to each of the complainant's allegations of discrimination.
- The District Human Resources Operations Manager sent a written decision to the complainant dated April 7, 2009. It summarized the complainant's major allegations, described the evidence considered for each allegation, and stated there was no evidence to support any of the allegations of discrimination. This letter described the complainant's right to appeal and the appeal procedures. The complainant filed an appeal which was denied.

OCR concludes that the College followed its complaint procedure governing complaints of discrimination in this case. After the complainant filed her formal complaint, the College retained an investigator who identified and interviewed relevant witnesses, and collected and reviewed relevant records and documentation. A detailed investigative report was prepared which addressed all of the numerous specific allegations of

discrimination made by the complainant. A written decision was issued to the complainant which summarized all of the issues investigated and explained the conclusion reached concerning each one. The decision was issued within the time frame specified in the discrimination complaint procedures.

One of the complainant's allegations was that her clinical instructor failed to implement her approved accommodations in her clinical nursing placement, and would not allow the complainant to tape record discussions on the hospital floor, clinical conferences in the hospital, or her probationary conferences. For reasons set out below under Issue Two, OCR was concerned by the legal rationale that the College adopted in its report to support the conclusion that the complainant was legitimately denied of accommodations in the clinical setting. As further explained below under Issue Two, this justification reflected an assumption that there was no duty to accommodate individuals with disabilities in the clinical setting and that there was no possibility and no need to consider in an interactive manner whether accommodations that included recording information could be tailored or limited so that they could be harmonized with the requirements of HIPPA. Because the investigation was otherwise prompt, thorough, and equitable, and reached the same "bottom-line" as OCR's own investigation – that discrimination had not taken place -- OCR did not consider it necessary to seek a separate remedy to address its concerns about the grievance process. Moreover, the most common remedy for a defective grievance is to request a new investigation by the recipient. In this instance, OCR delved into the merits of this matter on its own and additional investigation would only constitute a waste of resources.

Issue Two: Whether the College maintains a policy, practice or method of administration that arbitrarily precludes the provision of accommodations in the clinical setting.

Under the requirements of Section 504 and Title II, a student with a disability is obligated to notify the college or university of the nature of the disability and the need for a modification, adjustment, aid or service. Once a college or university receives such notice it has an obligation to engage the student in an interactive process concerning the student's disability and related needs. As part of this process, the college or university may request that the student provide documentation, such as medical, psychological or educational assessments, of the impairment and functional limitation.

The Section 504 regulations, at 34 C.F.R. §104.44(d)(1), require recipient colleges and universities to take steps to ensure that no disabled student is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination because of the absence of educational auxiliary aids for students with impaired sensory, manual or speaking skills. Section 104.44(d)(2) provides that auxiliary aids may include taped texts, interpreters or other effective methods of making orally delivered materials available to students with hearing impairments, readers in libraries for students with visual impairments, classroom equipment adapted for use by students with manual impairments, and other similar services and actions. Recipient colleges and universities, however, need

not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

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. Under 28 C.F.R. §35.135, public colleges and universities are not required to provide disabled individuals with personal devices, individually prescribed devices, readers for personal use or study, or services of a personal nature. 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 auxiliary aids to the same extent as is required under the Section 504 regulations.

Our investigation showed the following:

- With respect to accommodations for the complainant in her clinical placement, the investigative report completed by the College stated that the complainant "was not entitled to accommodations in the clinical setting because it was outside the College and [the complainant] had to perform as a nurse." It further stated that "students do not have the right to tape record in hospital or clinical settings because taping violates HIPAA regulations and patient confidentiality." The investigator interviewed several witnesses concerning this issue.
 - o According to the investigative report, the DSPS director stated that if the complainant wanted accommodations in the clinical setting she would have to ask the hospital and that DSPS could not tell the clinical nurse how to accommodate a student.
 - o The investigative report states that the DSPS learning disability specialist stated that various factors govern accommodations in the clinical setting such as hospital rules and HIPAA and instructors do not have total control and are limited in what they can do.
 - o The investigative report states that the clinical nursing instructor stated that "no accommodations are given in the clinical setting." According to

² The Health Insurance Portability and Accountability Act (HIPAA) requires appropriate safeguards to protect the privacy of personal health information, and sets limits and conditions on the uses and disclosures that may be made of such information without patient authorization. The Department of Education does not enforce HIPAA; OCR within the Department of Health and Human Services has this authority.

the report, this instructor said she would not have received any notification from DSPS about accommodations for this reason. It also states that the clinical instructor said she allowed the complainant to tape record the first probationary conference but not the others, based on a request from the Director of the Nursing Program.

- o According to the investigative report, the classroom nursing instructor stated that she received notice of the complainant's classroom accommodations, students regularly recorded her classroom lectures, the complainant recorded the first probationary conference but was not allowed to record the others, and tape recording on the clinic floor was not allowed due to HIPAA.
 - o According to the investigative report, the Director of Nursing stated that the complainant would not be allowed to tape record conversations with her instructors or nurses on the hospital floor because of HIPAA, and she directed that the complainant not be allowed to tape record her probationary conferences after the first one.
- In response to the Complainant's grievance, the District Human Resources Operations Manager sent a written decision to the complainant dated April 7, 2009. The College concluded that the provision of tape recording in hospital or clinical settings violates HIPAA regulations and patient confidentiality and therefore her "requests to tape record in these situations were legitimately denied."

With respect to the issue of accommodations for the complainant in the nursing clinical setting, it is clear from the investigative report that College staff members believed that nursing students were not entitled to accommodations in the clinical setting under any circumstances, and that the College did not have a role determining whether a student needed accommodations in the clinical setting. Staff did not recognize any affirmative duty to secure or interact with the clinical staff to secure such accommodations. The complaint investigator relied upon these statements in reaching the conclusion that the complainant did not have the right to tape record in her clinical placement. Therefore this allegation of discrimination was not sustained by the College/District.

OCR determined that staff of the College/District did not recognize its obligation under Section 504 and Title II to (1) decide whether a student with a disability needs accommodations in a clinical placement that is part of the student's educational program, and (2) If so, take the necessary steps to provide or secure those accommodations to the extent that they are authorized by law. Even when students are placed in clinical settings that are not programs directly administered by a college/district, the college/district is obligated to engage in an interactive process with the student for determining the appropriate accommodations in the clinical setting and help the student to secure such accommodations if the student desires, and failing that, place the student in a setting that will implement those accommodations authorized by law.

OCR encourages postsecondary institutions to engage in an interactive process with students in determining which academic accommodations are appropriate and do not fundamentally alter course requirements. When a specific accommodation requested by a student cannot be implemented due to the nature of the clinical setting or due to legal regulations applicable to that setting, a college/district must explore whether there are other effective options for accommodating the student. The investigation and conclusions reached by the College/District did not take into account these legal requirements. The determination regarding the complainant's allegation stated that there was no evidence to demonstrate that she was denied accommodations in her clinical placement. However, in reaching this conclusion, the report relied upon an incorrect interpretation of the College's responsibilities under Section 504/Title II. As explained further under Issue Three, OCR does not dispute the College's ultimate conclusion in the investigative report, but found the manner in which the conclusion was reached to be in conflict with laws enforced by OCR. Therefore OCR found that the College had maintained a policy/practice that was not in compliance with the Section 504/Title II regulations, and obtained a remedy appropriate to this noncompliance.

Issue Three: Whether the College denied the complainant approved academic accommodations in the clinical setting.

As noted above, OCR was troubled by the manner in which the College reached its conclusions in the investigation of the complainant's allegations. Accordingly, OCR independently investigated whether the College failed to implement the complainant's approved accommodations in her clinical placement. Specifically, OCR investigated whether the clinical instructor allowed the complainant to tape record discussions on the hospital floor, clinical conferences in the hospital, or her probationary conferences. The complainant stated to OCR that DSPS approved these accommodations, and that she also asked the clinical instructor to implement them.

- As noted above, DSPS approved several accommodations for the complainant. The accommodations provided for tests to be read onto tape, recorded books, and use of a recorder for lectures. Based on the context of the accommodations form prepared by DSPS for the complainant, these accommodations seemed to be related to classroom instruction.
- OCR interviewed the complainant several times. She told OCR that she thought she shared her accommodation form with her clinical instructor, but she did not have a clear memory of this. She thought the clinical instructor told her that no accommodations were available in the clinical setting. She did not discuss any specific accommodations with her clinical instructor. She thought she may have e-mailed the clinical instructor about her need for accommodations but she did not have copies of those e-mails. The complainant stated that she thought she mentioned her accommodations when she asked to tape the probationary conferences, but she did not show the instructors this form during these conferences. The complainant acknowledged to OCR that she tape recorded the

first probationary conference, and stated she was not allowed to record the subsequent ones.

- The complainant contacted DSPS about non-implementation of her accommodations after she was terminated from the Nursing Program.
- In an interview with OCR, the DSPS learning disability specialist stated that the location in which the complainant's accommodations were to be provided was not specified on the accommodation form. She and the complainant did not discuss the clinical placement. The complainant never notified the specialist that the complainant was denied any accommodations in the clinical setting until after she was terminated from the nursing program.
- The complainant's clinical instructor stated to OCR that she was generally aware that the complainant was disabled because the complainant had mentioned it during an informal encounter in the Nursing Program's skills lab. She stated that the complainant did not ask her for accommodations in the clinical setting. She stated that the complainant did not tell her that the difficulties she was experiencing in the clinical setting (such as accessing the computer and difficulties with organizational skills) were related to a disability. The clinical instructor stated that the College did not have a policy to provide accommodations in the clinical setting, but stated that such an issue had never come up. She stated that clinical students and instructors are guests of the facility, and thus accommodations could be limited or restricted by the facility. She did not suggest any actions that the College would take to secure or refine accommodations students requested but were denied in a clinical setting.
- The clinical instructor told OCR that the complainant taped the first probationary conference but was not allowed to tape the subsequent ones because the classroom instructor informed her that she could not do so.
- The classroom instructor told OCR that the complainant did not raise her disability, or lack of accommodations, as reasons for her performance problems during the first probationary meeting. The classroom instructor confirmed that the complainant taped the first probationary conference but the instructor disallowed it at the subsequent conferences. She stated that she was advised not to allow the complainant to tape the meeting because the tape could be altered later. The instructor explicitly stated that the complainant did not state at the time that she needed to tape the conference as an accommodation for a disability.
- In the interview with OCR, the Director of Nursing stated that she has never received a request for accommodations in the clinical setting. She stated that when she learned the complainant taped her first probationary conference she advised the instructors that if the complainant taped a conference they should also tape it so that the College would have a copy for its records. The Director

stated that neither the complainant nor anyone else raised the issue that recording these conferences should be an accommodation for complainant's disability. She did not think taping a probationary conference raised any privacy concerns under HIPAA.

The complainant stated to OCR that she asked that the accommodation of tape recording be implemented in her clinical placement and was denied. OCR did not find this testimony persuasive. The complainant relied on the DSPS accommodation form, which referred to taping lectures in the classroom; however, this document makes no mention of taping as a necessity for any other part of the complainant's educational experience. It referred to activities that are specific to classroom instruction and did not note anything related to the clinical placement. It did not appear that the complainant wished to tape record during her first rotation of the Fall 2008 semester, and the complainant was unclear as to when she decided that she wished to tape record. In interviews with OCR the complainant could not describe or provide any evidence of how or when she asked to be allowed to tape record in the clinical setting or while performing clinical duties. Nor could the complainant provide evidence that this request was denied. For example, she did not indicate that she brought a tape recorder to the clinical placement and was told not to use it. In addition, the evidence shows that the complainant did not seek assistance from DSPS in having her accommodations implemented while she was in the clinical placement. Thus, a preponderance of the evidence collected by OCR did not support a conclusion that the College had agreed to the accommodation of tape recording in the clinical placement, or that the complainant had asked for this accommodation.

The complainant did tape record her first probationary conference, but was directed not to tape the others. These conferences could be considered like classroom lectures, thus providing a potential basis for complainant's claim that this accommodation should have been allowed in these conferences. However, the evidence showed that when the complainant was told she could not tape, she did not inform the instructors who told her this that she needed to tape due to her disability. Nor did she inform the instructors that she thought this was already an approved accommodation for her. (OCR notes that even though the complainant taped her first conference her performance did not subsequently improve according to her evaluations by the Nursing Program.)

Based on these factors, OCR concluded there is insufficient evidence to establish that the College was in noncompliance with the regulations implementing Section 504 and Title II with respect to Issue Three.

Issue Four: Whether the College subjected the complainant to retaliation after she filed her internal complaint of discrimination.

The complainant alleged that she was subjected to several adverse actions by the College after she filed her internal complaint.

The Section 504 regulations, at 34 C.F.R. §104.61, incorporate 34 C.F.R. § 100.7(e) of the regulations implementing Title VI of the Civil Rights Act of 1964 and prohibit school districts from intimidating, coercing or retaliating against individuals because they engage in activities protected by Section 504. The Title II regulations, at 28 C.F.R. §35.134, similarly prohibit intimidation, coercion, or retaliation against individuals engaging in activities protected by Title II.

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

Our investigation showed the following:

- The complainant requested that the College provide her partial credit for completing her first rotation in RN 31, and for the weeks she completed for the second rotation. The College has responded that it does not grant partial credit for a class that is not completed, and that there is no procedure in place for doing so. The College has denied the complainant's request for credit.
- OCR asked the complainant to identify a student who has received the kind of partial/experiential credit she is requesting. She stated that she did not know of such a student but that a counselor at the College told her that such credit is possible.
- The complainant stated that the College allows transfer credit for students admitted to the vocational nursing program and that competency-based credit can be granted for knowledge and/or skills acquitted through experience. The complainant thinks her experience while on the two rotations should count towards this type of credit. In addition, two other classes offered by the College, RN 98 and 99, allow credit for independent study courses. Complainant believes the College could consider her experience taking RN 31 as independent study.
- The Director of Nursing told OCR that under College and Department policies students completing a portion of the required work for a class are not provided partial credit, particularly in a circumstance where the Student received a failing grade and was terminated from the program. While the College does offer independent study or credit or work experience in certain cases, the Director stated that these circumstances do not match the complainant's situation.

- On July 2, 2009, the College/District wrote the complainant a letter directing her to relay any requests for information directly to the Human Resources Department and to the operations manager specifically. The letter asks her to "cease any further contact with college staff" because the College considers her contacts and messages to be harassing. The letter warns her that the College may pursue a temporary restraining order against her.
- OCR received documents and testimony from College and District staff members showing that the complainant frequently communicated with the College and District by telephone, email, mail and in person from October 2008 to the present.
- On August 20, 2009, the Human Resources Operations Manager wrote the complainant a letter informing her that her recent visit to campus to serve subpoenas on College staff was disruptive and harassing. The letter warns the complainant that if she does not request permission to be on campus in the future, she will be escorted off campus by a police officer.
- The complainant told OCR that earlier in August she visited the College and spoke to a dean about serving a subpoena on a College counselor who had been hospitalized. She made inquiry as to which hospital he was in, and when the dean asked her to leave, became upset and yelled at the dean for interfering in her attempts.
- In October 2009, the complainant was on the College campus with a campus reporter and stopped by the nursing department for a photo. The complainant told OCR that a police officer approached her because someone from the nursing department called him. He asked the complainant why she was there but did not escort her off campus. She also learned that the College had not imposed a restraining order against her. She thought the police officer approaching her was harassing.
- The complainant filed a small claims court action against the College claiming that the College was in breach of contract for terminating her enrollment in the nursing program. The complainant states that the District's Associate Vice-Chancellor appeared on behalf of the College during the court hearing. She states that he should not have appeared because she filed an internal complaint against him because the grievance process that he supervised failed to consider her breach of contract claim.

Generally, filing an internal complaint alleging discrimination on the basis of disability is an activity protected under Section 504 and Title II. OCR determined that the complainant engaged in such a protected activity when she filed her internal complaint in November 2008. OCR analyzed each of the complainant's examples of alleged adverse actions.

First, OCR considered the complainant's allegation that the College denied her experiential credit for the nine weeks of her clinical rotations during the Fall 2008 semester. OCR learned that the College only provides credit for experience in a clinical setting as part of transferring credit from another institution, or as part of an independent work contract through the student's employer. Neither circumstance applied to the complainant. OCR found no indication that the College applied different criteria to the complainant than it applies to other students. The College provided a nondiscriminatory reason for denying the complainant's request, and OCR found no evidence that this reason was pretextual.

Second, OCR considered the letter from the College/District to the complainant dated July 2, 2009 asking the complainant to direct all her contact to a specified district employee. Because the complainant was provided a means to contact the College about her concerns, and was not denied a method of communicating with the College, OCR did not find that the complainant was subjected to an adverse action as a result of this letter.

Third, OCR considered the provision of a letter from the College/District dated August 20, 2009 forbidding the complainant from coming on campus to deliver subpoenas regarding a small claims court contract action, requiring her to use a process server instead, and noting that there is a \$150 witness to be paid to the District for each witness, each day. Because this directive makes no provision for any campus contact, OCR concluded that this was an adverse action. The question then becomes whether this action was motivated by a desire to discourage the complaint from engaging in further protected activities or for another reason that did not offend any of the anti-retaliation provisions of the laws enforced by OCR. OCR concluded that the latter was the case. The College took the position that it barred the complainant because she had engaged in disruptive and harassing behavior towards college staff when she came on campus. OCR found that the College's nonretaliatory explanation was legitimate and supported by a preponderance of the evidence. Thus we found no retaliation. Accordingly, it was not necessary for OCR to determine whether the College's absolute requirement to use a process server for small claims court actions was consistent with California law. Further, since the action in small claims court was a contract and not a civil rights action, OCR made no determination whether any part of the College's adverse action was motivated by a desire to assist its employees in avoiding a small claim court action.

Fourth, OCR considered the incident in October 2009 when the complainant visited the campus without getting advance permission and was approached by a police officer. The officer questioned the complainant briefly but took no other action. The complainant was not escorted off campus. OCR concluded that this incident was not adverse to the complainant.

Finally, OCR considered the complainant's claim that the appearance by the District's Associate Vice-Chancellor at the small claims court hearing was retaliatory. OCR determined that the College/District has a right to be represented by an official of its

own choosing in a legal proceeding. Thus the appearance of this official was not an adverse action towards the complainant.

OCR concluded that there is insufficient evidence to establish retaliation under the regulations implementing Section 504 or Title II with respect to the incidents alleged by the complainant.

On November 18, 2009, OCR received the signed Resolution Agreement from the College, which is enclosed with this letter, identifying actions the College will take to develop and implement appropriate procedures regarding the provision of academic accommodations for students in clinical placements. Based on this commitment, OCR is closing this case as of the date of this letter and concurrently notifying the complainant.

This letter is a letter of finding(s) issued by OCR to address an individual OCR case. Letters of findings contain fact-specific investigative findings and dispositions of individual cases. Letters of findings are not formal statements of OCR policy and they 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 routinely advises recipients of Federal funds and public educational 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.

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

If you have any questions about this letter, please contact Ava Decimemide-Law, Investigator, at (415) 486-5513 or Susan Spelletich, Attorney, at (415) 486-5558.

Sincerely,

Arthur C. Zeidman
Director
San Francisco Office for Civil Rights

Enclosure

Resolution Agreement
OCR Docket Number 09-09-2120
Los Medanos Community College

In order to resolve the compliance issues under Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities of 1990 identified by the U.S. Department of Education, Office for Civil Rights (OCR) in the above-referenced case, Los Medanos Community College without admitting to any violation of law agrees to implement this Resolution Agreement.

A. Develop or revise accommodation procedures for students.

The College will develop and/or revise policies and procedures for providing academic adjustments and auxiliary aids (accommodations) to students with disabilities to ensure full compliance with Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act and their implementing regulations. The policies and procedures will specifically address the following:

1. Clarification that the Office of Disabled Students Programs and Services is responsible for determining accommodations for students with disabilities in all classes and programs in which the student is enrolled or plans to enroll. This responsibility includes all clinical and internship programs which are a part of a student's educational program at the College, including clinical placements through the Nursing Department.
2. Clarification that the Office of Disabled Students Programs and Services will engage in an interactive process to determine accommodations with any student who has provided verification of disability for any College class or program, including clinical placements.
3. Clarification that the method by which the instructors of a student who has been granted accommodations are notified of the accommodations approved for the student.
4. Clarification of the procedure that the College will implement when the Office of Disabled Students Programs and Services denies a student's request for accommodation and the student disagrees with that decision.
5. Clarification of the procedure that the College will implement when a student states that an accommodation approved by the Office of Disabled Students Programs and Services has not been implemented.

B. Reporting, dissemination and training

1. The College will submit its proposed policies and procedures to OCR for review and approval by February 28, 2010.
2. Within 75 days of receiving final OCR approval of the policies and procedures, the College will adopt the policies and procedures, post them on the College website, and make copies available in appropriate locations. The College will also review all its publications and its website to ensure they include the revised policies and procedures.
3. Within 75 days of adopting the policies and procedures, the College will provide verification to OCR that the College community has been provided with effective notice of the policies and procedures.
4. Within 75 days of adopting the policies and procedures, the College will provide verification to OCR that it has trained all staff members of the Office of Disabled Students Services and Programs on the policies and procedures.
5. Within 75 days of adopting the policies and procedures, the College will provide verification to OCR that it has trained College instructors who supervise students in clinical or internship placements on the policies and procedures.

Peter Garcia,

President, Los Medanos Community College

11/18/09 _____ Date