



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS  
CHICAGO OFFICE  
CITIGROUP CENTER  
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CHICAGO, ILLINOIS 60661

AUG 21 2008

TEL: 312-730-1560  
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(b)(7)(C)

Re: OCR #05-08-2164

Dear (b)(7)(C)

This is to notify you that the U.S. Department of Education, Office for Civil Rights (OCR), has carefully evaluated the above-referenced complaint you filed with OCR against Madison Area Technical College (MATC) on June 18, 2008. We conducted the evaluation in accordance with OCR's *Case Processing Manual*.

You alleged that MATC discriminated against you on the bases of sex, age, and disability by failing to respond to your complaints of harassment by a MATC employee during the 2007-08 school year. You also alleged that MATC retaliated against you because of your harassment complaints, forcing you to leave MATC.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 106, the Age Discrimination Act of 1975 (Age Act), 42 U.S.C. §§ 6102 – 6103, and its implementing regulation at 34 C.F.R. Part 110, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (Section 504), and its implementing regulation at 34 C.F.R. Part 104, and Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132 (Title II), and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination based on sex, age, and disability by recipients of Federal financial assistance and public entities, respectively. As a recipient of Federal financial assistance from the Department and a public entity, MATC is subject to the provisions of these statutes. Accordingly, OCR has jurisdiction over this complaint.

Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §2000d, and its implementing regulation at 34 C.F.R. § 100.7(e), prohibit recipients from intimidating, threatening, coercing or discriminating against any individual for the purpose of interfering with any right or privilege secured by the regulation, or because an individual has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under the regulation. These regulations are incorporated by reference in Section 504 at 34 C.F.R. § 104.61; in the Age Act at 34 C.F.R. §110.34 (a) and (b); and in Title IX at 34 C.F.R. §106.71. The implementing regulation of Title II, at 28 C.F.R. § 35.134(b), contains similar

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provisions prohibiting retaliation, intimidation, threats, coercion, and interference of an individual's right to engage in protected activity.

The standards adopted by Title II were designed not to restrict the rights or remedies available under Section 504. The Title II regulations applicable to the issues raised in the present complaint do not provide greater protection than the applicable Section 504 regulations and, therefore, OCR will apply the Section 504 standards when analyzing the issues raised in this complaint.

Consistent with the procedures applicable to complaints of age discrimination under the Age Act, on July 2, 2008, OCR referred the complaint to the Federal Mediation and Conciliation Service (FMCS) for possible mediation. On July 25, 2008, FMCS informed OCR that FMCS had discontinued its efforts to mediate the complaint and returned the complaint to OCR for appropriate processing.

OCR has carefully considered the information you provided in connection with this complaint. Based on the information provided, OCR has determined that there is insufficient evidence to establish a violation of the Age Act, Title IX, Section 504, and Title II as set forth below.

#### Harassment

You alleged that MATC discriminated against you on the bases of sex, disability, and age by failing to respond to your complaints of harassment by a MATC employee (Employee) during the 2007-08 academic year. You asserted that the Employee targeted you for harassment because you are of short stature and have hair replacements to cover a scar.

Harassment under Title IX, Section 504, and the Age Act is intimidation or abusive behavior toward a student based on sex, disability, and age that creates a hostile environment by interfering with or denying a student's participation in or receipt of benefits, services, or opportunities in the institution's program. Harassing conduct may take many forms, including verbal acts and name-calling, as well as nonverbal behavior, such as graphic and written statements, or conduct that is physically threatening, harmful, or humiliating.

In analyzing claims of harassment, OCR considers a variety of factors to determine whether a hostile environment has been created, i.e. whether the harassing conduct is sufficiently serious that it denies or limits a student's ability to participate in or benefit from the school's program based on disability. When an institution learns that harassment may have occurred, the institution must investigate the incident(s) promptly and respond appropriately.

You stated during a telephone conversation on June 27, 2008 with an OCR staff member that you were unable to identify any specific remarks made by the Employee who was harassing you. On August 8, 2008, in an OCR interview, you reiterated that you could not recall the

Employee making any specific comments to you that were based on sex, disability or age. Additionally, you affirmed that you complained to MATC about the Employee's alleged harassing conduct, but you did not inform MATC that you believed this harassing conduct was based on your sex, age, or disability.

To determine whether MATC discriminated against you, OCR analyzed the documentation and other information you provided. This information does not support your allegation that that you were harassed by the Employee based on your sex, age, or disability. You clearly stated that you were harassed because of your short stature and hair replacements. The information further established that you did not inform MATC that you were being harassed based on your sex, age, or disability. Therefore, MATC had no reason to believe that you were complaining about harassment based on a protected category under the statutes enforced by OCR. Moreover, even assuming that your statement that you were being harassed based on your short stature and hair replacements was sufficient to put MATC on notice that you were complaining about disability, age or sex discrimination, the conduct you described is not sufficient to create a hostile environment under Title IX, Section 504, or the Age Act.

Accordingly, OCR has determined that there is insufficient evidence to support your allegation of discrimination in violation of Title IX, the Age Act, Section 504, or Title II.

#### Retaliation

You also alleged that MATC retaliated against you because it did not investigate your complaints of harassment by the Employee, forcing you to leave MATC. A *prima facie* case of retaliation exists when each of the following is established: 1) an individual engaged in an activity protected by a statute OCR enforces; 2) the recipient had notice of the protected activity; 3) the recipient took an adverse action contemporaneous with or subsequent to the protected activity; and 4) there is an inferable causal connection between the protected activity and the adverse action. If a *prima facie* case is established, then OCR considers whether the recipient has a legitimate non-retaliatory reason for its action and whether the reason is a pretext for retaliation.

OCR carefully reviewed the information you provided to determine whether retaliation occurred. OCR determined that your complaint to MATC regarding harassment by the Employee because of your short stature and hair replacement does not constitute an activity protected by a statute enforced by OCR. Also, you informed OCR that your complaint to MATC did not assert age, disability or sex discrimination. Accordingly, MATC did not have notice that you had engaged in a protected activity. You have not provided sufficient evidence that MATC retaliated against you because you opposed prohibited discrimination. Therefore, OCR determined there is insufficient evidence that you were subjected to retaliation in violation of Title IX, the Age Act, Section 504 and Title II.

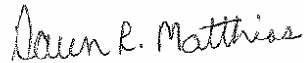
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This concludes OCR's investigation of this complaint, which is being closed effective the date of this letter. Please be advised that you may request OCR to reconsider its determination. To request a reconsideration send a letter to the Office Director within 60 days of the date of this letter. Your letter must explain why you believe the factual information was incomplete, the analysis of the facts was incorrect, and/or the appropriate legal standard was not applied, and how this would change OCR's determination. Failure to meet the 60-day timeframe or failure to include the required information in your letter may result in the closure of the request for reconsideration.

In addition, under the regulations implementing the Age Discrimination Act at 34 C.F.R. § 110.39, we are required to advise you that you may file a civil action for injunctive relief following the exhaustion of administrative remedies under the Act. Administrative remedies are exhausted if (1) one hundred eighty days have elapsed since the complainant filed the complaint with OCR, and OCR has made no finding with regard to the complaint; or (2) OCR issues any finding in favor of the recipient.

If you have any questions, please contact Mr. Michael Chang, at 312-730-1572, or by email at [Michael.Chang@ed.gov](mailto:Michael.Chang@ed.gov).

Sincerely,



Dawn R. Matthias  
Team Leader