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February 7, 2017

Dr. Steven R. Gonzales, President
GateWay Community College
108 North 40th Street
Phoenix, Arizona 85034

Re: GateWay Community College
OCR Case Number: 08-16-2199

Dear Dr. Gonzales:

We have concluded our investigation of the above-referenced complaint filed on May 17, 2016, against GateWay Community College (the College), alleging discrimination on the basis of disability. Specifically, the Complainant alleged that she did not receive the approved academic adjustments during the spring semester of 2016 in the HUC 111 and 114 courses.

We conducted an investigation under the authority of Section 504 of the Rehabilitation Act of 1973 and its implementing regulation, which prohibit discrimination on the basis of disability in programs and activities funded by the U.S. Department of Education; and Title II of the Americans with Disabilities Act and its implementing regulation, which prohibit discrimination on the basis of disability by public entities. The College is subject to Section 504 and Title II because it is a recipient of Federal financial assistance from the Department and a public entity.

During the investigation, we reviewed documentation provided by the College and the Complainant. We also interviewed the Complainant and College staff. We find that the preponderance of the evidence supports that the College violated Section 504 and Title II as alleged. This letter explains our findings. We thank the College for entering into a Resolution Agreement, which when fully executed, will resolve our compliance concerns.

Findings of fact

GateWay Community College is part of the Maricopa County Community Colleges District (MCCCCD). The Complainant had been taking courses at several colleges within MCCCCD since 2008. During the time period at issue, the Complainant was pursuing a certification in Health Unit Coordinating (HUC) at the College. A health unit coordinator is described as working under the supervision of a nursing department, doing things like transcribing doctors' orders, scheduling tests and treatments, handling the telephone, and managing patients' charts and unit supplies. According to the program's materials, the HUC program is a 16-week program, which includes 11 weeks of coursework and five weeks of clinical experience. All HUC courses are taught by two faculty members, referred to in this letter as Instructor A (who is also the HUC program director) and Instructor B.

The Complainant registered for her first HUC course (HUC 113), in Fall 2015. The course was taught by Instructor A. She also registered with the College's Disability Resources and Services department (DRS) that semester, and she received extended time and a quiet testing environment as academic adjustments.

In Spring 2016, the Complainant enrolled in four HUC courses, including the two at issue in this complaint (HUC 111 and 114). Both courses were taught by Instructor B. The Complainant again initiated the process of registering with DRS and requesting academic adjustments for her courses.

As described by the manager of the DRS office, the general process for requesting academic adjustments in Spring 2016 was that a student would come into the office to make the request, and provide documentation of their disability. The manager would then work with the student to develop the appropriate academic adjustments. The approved academic adjustments would be recorded on an Instructor Notification Form (INF) for each course, which would be provided to the student to give to each course instructor.

The DRS manager also explained to OCR that students need to request new paperwork each semester even if there are no changes to their disability status, because academic adjustments are approved on a course-by-course basis, so the adjustments that were applicable in a previous semester might not be appropriate.

The Complainant initiated the process of receiving academic adjustments for her Spring 2016 courses on January 21, 2016. The semester started on January 20, 2016. The Complainant's INF forms were available for her to pick up on February 1, 2016, eleven days after the student requested them. The DRS manager and the DRS office manager both explained to OCR that the office has an internal deadline of processing student requests within two weeks, which they achieved in this case. The forms indicate that the Complainant was to receive time and a half for tests, quizzes, and exams; and a testing environment free of distractions (which is understood to mean that tests would be administered in the College's Testing Center).

However, because the INF forms were not provided to Instructor B until approximately February 4, 2016, the student did not receive the approved academic adjustments on the first two quizzes in both HUC 111 and 114. DRS staff contacted Instructor B prior to the issuance of the INF forms to let her know that the Complainant would be receiving accommodations, but Instructor B told OCR that without the INF forms she would not know what accommodations to provide to the Complainant.

The Complainant was also enrolled in HUC 113 (not at issue in this case) with Instructor A. The documentation shows that Instructor A began providing the quizzes for HUC 113 to the testing center on January 22, 2016, along with instructions to permit time and a half, prior to receiving the INF forms.

The College provided OCR copies of the INF forms for HUC 111 and 114. In addition to the boxes checked indicating time and half and distraction-free testing environment, a handwritten note on the forms states “These accommodations are appropriate only to any quizzes, tests, or exams unrelated to skill-testing in the lab.” This note was made by the DRS office manager, who completed the forms. An additional handwritten note is present underneath this on the INF for HUC 114, which states, “Not including transcription tests.” This note was made by Instructor B when she signed the form.

OCR determined through interviews that the HUC faculty believed that accommodations were not appropriate for the transcription tests in HUC 114 because they tested a “core competency” of the program or tested a skill that would be used in the jobs that students were being trained for. Instructor A described that the transcription tests were skills tests where students needed to demonstrate certain competencies which cannot be done in a testing center and have to be done in a certain amount of time. She further explained that a transcription test measures a student’s ability to process physicians’ orders. The student would follow certain steps during the test, including finding additional forms available in the classroom, and asking certain questions of the instructor (who would play the role of a nurse). Instructor B explained that because the test is an assessment of how a student would be handling a specific set of orders in the hospital setting, it has to be timed. As a result, the HUC faculty determined that the Complainant’s approved academic adjustments (time and a half for tests, and a distraction-free testing environment (i.e., the Testing Center), were not appropriate.

The College has a policy to handle situations where an instructor believes the modification determined by disability services would alter an academic requirement that is essential to the instruction or to a directly related licensing requirement, Policy 2.8.1. This is a policy of the MCCD, which was developed with OCR’s approval in the resolution of a previous OCR complaint. Policy 2.8.1 outlines several steps to follow:

- First, the instructor meets with the director of DRS to attempt to resolve the matter informally. If the issue is unresolved, the instructor submits a written request to the college’s chief academic officer (the Vice President for Academic Affairs) for his or her academic judgment on the question.
- Any change to the original recommendation resulting from the above meeting or the chief academic officer’s decision will be communicated to the student by DRS. The interactive exchange will continue.
- If a student is not satisfied with the academic adjustment provided, he or she may file a complaint under the Discrimination Complaint Procedures for Students. Then the VP for Student Affairs will investigate.¹ This will involve consultation with the duly appointed faculty representatives who serve in the development of the curriculum for the institution and the program. The committee will study the required academic adjustment and alternatives, their feasibility, cost, and effect on the academic program to come to a rationally justifiable conclusion as to whether the academic adjustment would result in lowering academic standards or requiring substantial program alteration. The conclusion will be submitted to the chief academic officer, who will make a final determination.

¹ OCR notes that currently, the same individual serves as the College’s VP for Academic Affairs and the VP for Student Affairs. We question whether the policy can function as previously approved by OCR when the same individual is called upon both to make a determination about appropriate academic adjustments, and then to

When Instructor B learned that the student would be receiving academic adjustments, she informed the DRS office via email on January 26, 2016, that “[w]e only give the tests in HUC 114 in the classroom.” She wrote that “the transcription exams and other quizzes are timed so that we may assess the ability of the student to read, process, and act on the exam content within a specified time period. The student must also be able to obtain additional forms which are NOT provided within the exam itself, but are in a file which the student must access in order to get the appropriate forms. Additionally, the student must be able to ask very specific questions during the exam of the instructor – which also cannot be provided ahead of time or with the exam. Part of the process is “simulating” what happens in an actual nursing unit.”

In response, the DRS office manager wrote, “We are of the understanding that you do not support accommodations in your HUC lab. If the accommodation changes the core competencies or become an overwhelming cost to the department or the institution, the accommodation is not appropriate. We will notify the student that there are no accommodations in your HUC 114 lab if they are inappropriate.” The DRS office notified the student that she would not receive accommodations for the transcription tests in HUC 114, and the INF form included the note mentioned above: “These accommodations are appropriate only to any quizzes, tests, or exams unrelated to skill-testing in the lab.” The DRS office did not engage in any further conversation with the student or the instructor about whether other accommodations might be appropriate on the transcription tests. Neither the DRS office nor the HUC faculty pursued the process described in Regulation 2.8.1 for situations where a faculty member finds an approved academic adjustment to be inappropriate.

Following the completion of her INF forms, the Complainant was taking her quizzes for HUC 111 and 114 in the Testing Center (with the exception of the transcription tests). Typically, a quiz would not be scheduled to take the entire class period. The Complainant described that after the quiz was completed, the class would continue with the lesson scheduled for that day. She explained that she would report to the Testing Center prior to the scheduled starting time of the class so that she could complete the quiz using her allotted time and a half, and then report to the classroom to participate in the remainder of the class period.

However, on March 7, 2016, the Complainant arrived at the Testing Center to take a quiz for HUC 111, to find that the quiz had not been provided by Instructor B. The director of the testing center told OCR that she attempted to contact Instructor B but received no response. The Complainant described that when they could not reach Instructor B, she left the Testing Center and went to the classroom but found it empty. She waited for some time in the hallway, when another student saw her and informed her that Instructor B was out sick, and that Instructor A, who taught another section of the same course, had gathered both sections in her classroom to take the quiz.

When Instructor A learned that the Complainant was in the hallway, she offered that the Complainant could come into the classroom and take the quiz. The Complainant told OCR that Instructor A told her she could “quickly” take the test in the classroom and that she felt rushed.

investigate a student’s dissatisfaction with that determination. This question is not directly raised in this case, but we wish to note that our previous approval of the policy may not stand if it is not implemented as written.

Instructor A denied that she rushed the Complainant or told her she only had a specific amount of time to complete the quiz. The Complainant also explained that she did not know how long the other students had already been working on the quiz or how long she had to complete it.

On March 10, the Complainant notified the DRS office that this occurred. After DRS communicated with Instructors A and B, the Instructors offered to allow the student to retake a slightly different version of the quiz (since the original quiz had already been graded and returned), in the Testing Center with her accommodations. They informed the Complainant that the retake would have to be completed by the next day. The instructors told OCR that they imposed this timeline because they thought it should be completed before the weekend.

The Complainant did not complete the retake. She told OCR that she was not able to make it to campus by the following day (a Friday), because she did not have access to transportation to campus that day, and she was scheduled to work. The student did not normally have classes on Fridays.

On March 31, 2016, the Complainant went to the DRS office with concerns that she would not receive her accommodations on the upcoming final in HUC 114 (a transcription test). At this time, the DRS manager was absent on medical leave, and the office was being covered by his staff members, DRS managers from other campuses in MCCCDC, and the head of the counseling department.

The DRS office manager recognized that the transcription test was excluded from the academic adjustments on the INF form, and attempted to work with the Complainant to identify alternatives. She amended the INF for HUC 114 to permit the use of ear buds (of the type used for listening to music), but not plugged in to anything. She explained to OCR that she wrote ear buds rather than ear plugs because she knew the Complainant already had access to ear buds; she reported the Complainant was already in distress about the exam and she didn't want to require her to go to a store to purchase ear plugs.

What followed was a great deal of confusion involving the Complainant, the Testing Center, DRS, and the instructors over whether the student should use ear buds or ear plugs, and for which exams. While the INF was only amended to add ear buds for HUC 114, the faculty member acting in the place of the DRS director, procured foam ear plugs for the Complainant and believed they were for use in all classes. Instructor A provided directions to the testing center for the HUC 111 final that the Complainant could use ear plugs, which was followed by a message from Instructor B that the Complainant could not use ear plugs when she took the HUC 111 final in the testing center. She told OCR that accommodation was only for when the Complainant took the HUC 114 exam in the classroom.

The Complainant told OCR that she arrived at the testing center for her HUC 111 final expecting to be permitted to use the ear plugs provided to her by DRS, but was informed that Instructor B was not permitting her to use them. She explained to OCR that when she went to her HUC 114 final later that day, she did not attempt to use the ear plugs because she thought it wasn't allowed and she did not want to get in trouble or cause a scene.

The Complainant received a D in HUC 114 after failing the transcription test, and a C in HUC 111. Students are required to complete all HUC courses with a C or better in order to move on to the clinical portion of the program. The Complainant attempted to appeal her grade, but was unsuccessful.

Analysis and conclusions of law

Under Section 504, recipients of Federal financial assistance must provide such academic adjustments as may be necessary to ensure that their academic requirements do not discriminate or have the effect of discriminating, on the basis of disability, against any qualified person with a disability. To establish a violation of this requirement in this case, OCR must determine the following: (1) that the complainant is a “qualified person with a disability”; (2) that the complainant provided adequate notice to recipient that the complainant believed he or she needed academic adjustments; (3) that the requested academic adjustments were necessary; and either (4) that the recipient did not provide the academic adjustments; or (5) that the academic adjustments provided were not of adequate quality and effectiveness.

By admitting the student to the HUC program and approving academic adjustments, the College acknowledged that the first three elements were satisfied. OCR sought to determine whether the College failed to provide the necessary academic adjustments at four times during the semester.

1. Accommodations from January 20, 2016-February 4, 2016

The Complainant’s INF forms were not provided to Instructor B until February 4; as a result, she did not provide the Complainant with the approved academic adjustments until that time. Under some circumstances, that may be reasonable because an instructor may not know what the INF form says. However, given the following circumstances, we find that the delay was not reasonable:

- DRS contacted Instructor B in advance of the INF forms being completed.
- Instructor B had adequate information about the Complainant’s academic adjustments to allow her to email DRS on January 26 objecting to allowing the HUC 114 transcription tests to be taken in the testing center or with extra time. The instructor had notice of the student’s academic adjustments.
- Instructor A, who had the student in HUC 113, began providing quizzes to the testing center with directions allowing time and a half from the beginning of the semester, despite also not receiving the INF forms until later.

In HUC 111, quizzes were given on January 27 and February 3. In HUC 114, quizzes were given on January 25 and January 27. Instructor B had notice of the approved academic adjustments at least by January 26, and the failure to provide them on the quizzes after this date was not reasonable. We find that the College failed to provide necessary academic adjustments for the HUC 111 quizzes on January 27 and February 3, and the HUC 114 quiz on January 27.

2. March 7 quiz

The Complainant was denied the use of the approved academic adjustments for this quiz in HUC 111 when it was not provided to the testing center. While she was not explicitly denied time and a half, under the circumstances, she was effectively denied this accommodation. The Complainant did not have any way to know how long the other students had already been working on the quiz, and she was aware that class would continue after the quiz was over. It is reasonable that she would not have felt comfortable taking extra time under those circumstances. The faculty members attempted to correct this error by offering the chance to retake the quiz by the next day. However, insisting that the Complainant retake the quiz within one day was not reasonable, when the Complainant did not normally have class on that day. We find that the College failed to provide necessary academic adjustments for the HUC 111 quiz on March 7.

3. Ear plugs

The use of ear plugs was approved for the final exam in HUC 114. The Complainant was not specifically prohibited from using the ear plugs on that exam. Under the circumstances, we understand that the Complainant was confused about what was allowed, and that confusion may have prevented her from using the ear plugs as approved. However, there is insufficient evidence for us to determine that this academic adjustment was not provided.

4. Interactive process and “core competencies”

The HUC program has a blanket practice of disallowing academic adjustments for the transcription tests in HUC 114. Specifically, the HUC faculty refused to allow the Complainant to take the tests in the testing center with extra time. The faculty explained to OCR that elements of the test cannot be provided in the testing center, and that the tests are designed to simulate the experience of working in the hospital environment, so extra time is not appropriate. Based on our interviews, it appears that faculty at the College do not believe academic adjustments are required in skills-based tests that measure “core competencies.”

There are some circumstances where an institution may not be required to provide academic adjustments. Recipients are not required to alter requirements they can demonstrate are essential to the program of instruction being pursued by the student, and they are not required to make modifications that would fundamentally alter the nature of the service, program, or activity. 34 C.F.R. § 104.44(a); 28 C.F.R. § 35.130(b)(7).

However, the determination that an academic adjustment is a fundamental alteration or would alter an essential requirement is a decision that must be made based on documented evidence on a case-by-case basis. If an institution believes that a requested accommodation would constitute a fundamental alteration of its program, applicable Section 504 and Title II case law requires the institution to make such a determination through a process that includes the following: 1) the decision is made by relevant officials, including faculty members; 2) the decision makers consider a series of alternatives, their feasibility, cost and effect on the academic program, and 3) after a reasoned deliberation, the decision makers reach a rationally justifiable conclusion that the available alternatives would result either in lowering of academic standards or requiring substantial program alterations.

The College has a policy that provides such a process, Regulation 2.8.1. However, this policy was not implemented in this case. Instead, the faculty members told DRS that they do not provide accommodations on the transcription tests, and DRS notified the student that accommodations would not be provided. There was no reasoned deliberation or consideration of alternatives. Additionally, there was no further interactive process to determine whether other academic adjustments would be appropriate.

A blanket policy to deny academic adjustments with no institutional determination regarding fundamental alteration, and no further interactive process to determine whether other appropriate academic adjustments are possible, is a violation of Section 504 and Title II.

Conclusion

We brought the violation identified during this investigation to the College's attention for resolution. On February 6, 2017, the College entered into a Resolution Agreement to resolve our compliance concerns. We have determined that the Agreement, when fully implemented, will resolve the allegation in this case.

This concludes our investigation of the complaint and should not be interpreted to address the College's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. We are closing the investigation of this complaint effective the date of this letter and will monitor the College's implementation of the Agreement.

Please note that the complainant may have the right to file a private suit in federal court whether or not OCR finds a violation. Additionally, be advised that the College may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the complainant may file another complaint alleging such treatment.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

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, personal information, which if released, could constitute an unwarranted invasion of privacy.

If you have any questions about this letter, please contact me at (303) 844-0434 or rebecca.tanglen@ed.gov.

Sincerely,

/s/
Rebecca Tanglen
Designated Team Leader

cc: Rebecca Currey, Assistant General Counsel (via email)

Enclosure