



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

50 BEALE ST., SUITE 7200
SAN FRANCISCO, CA 94105

REGION IX
CALIFORNIA

December 23, 2014

Wes Bryan
President
Golden West College
15744 Goldenwest Street
Huntington Beach, California 92647

(In reply, please refer to case no. 09-14-2249.)

Dear President Bryan:

In a letter dated April 21, 2014, the U.S. Department of Education, Office for Civil Rights (OCR), notified you of a complaint against Golden West College (College). The Complainant¹ alleged discrimination on the basis of disability. Specifically, the Complainant alleged that the College failed to provide him with communication auxiliary aids and services via communications assistance real time captioning (CART) for his Spring 2014 Deaf Culture, and, during the Fall 2013 and Spring 2014 semesters, failed to provide him with effective note taking services necessary to ensure that he could participate in the education program in a nondiscriminatory manner.

OCR investigated this complaint under the authority of Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, and their implementing regulations. Section 504 prohibits discrimination on the basis of disability in programs and activities operated by recipients of Federal financial assistance. Title II prohibits discrimination on the basis of disability by 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.

OCR gathered evidence through documentation submitted by the Complainant and the College. OCR concluded that there was sufficient evidence to support a conclusion of noncompliance with Section 504, Title II, and their implementing regulations with regard to the College's provision of note taking services. OCR determined that the Complainant's approved note taker services were delayed in at least two Fall 2013 classes and were never provided in one Spring 2014 class. OCR also concluded that the College's general process for assigning note takers was not effective. OCR confirmed that the College denied the Complainant's request for CART Services in Spring 2014, but concluded that this decision was justified under the circumstances. However, OCR found that the College lacked appropriate procedures and notices concerning the

¹ OCR notified the College of the Complainant's identity in OCR's April 21, 2014 notification letter to the College. The Complainant's name is withheld here in order to protect his privacy.

availability of CART services, in general. The attached Resolution Agreement, when fully implemented, will resolve the areas of noncompliance found in this case.

The applicable legal standards, relevant facts gathered during the investigation, and OCR's analysis are set forth below.

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

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.

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.

The Title II regulations, at 28 C.F.R. §35.160(a), require a public college or university to take appropriate steps to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others. The regulations at 28 C.F.R. §35.160(b)(1) further require a public college or university to furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity. In determining what type of auxiliary aid and service is necessary, 28 C.F.R. §35.160(b)(2) requires that the college or university give primary consideration to the requests of the individual with disabilities. The Title II regulations, at 28 CFR §35.104, define auxiliary aids and services to include qualified interpreters, note takers, open and closed captioning, or other effective methods of making aurally delivered materials available to individuals with hearing impairments.

Communication is construed broadly to mean the transfer of information. In determining whether communication is as effective as that provided to non-disabled persons, OCR looks at the timeliness of the delivery, the accuracy of the communication, and whether the manner and medium used are appropriate to the significance of the message and the abilities of the disabled individual.

Under Section 504 and Title II, the College is obligated to provide deaf and hard of hearing (DHH) students with communication that is “equally effective” to that which the hearing students are receiving. American Sign Language (ASL) interpreting and CART Services are two distinct ways of providing effective communication. Note taking services are not provided for effective communication but may be necessary as an auxiliary aid/service in class because a DHH student can generally not effectively focus on the interpreter and take notes at the same time.

The type of appropriate auxiliary aids and services necessary to provide effective communication has to be determined on an individualized basis. The College must give primary consideration to the auxiliary aids and services preferred by the student, but is not generally required to provide more than one method of communication in a particular situation, so long as the method chosen provides equally effective communication. There may be rare situations, based upon the specific nature of a class or assignment, in which both ASL interpreter services and CART Services are necessary to provide the student with effective communication. Generally, however, a student fluent in ASL can receive effective communication through an ASL interpreter or through CART Services, but providing both services would not be required.

By way of investigation, OCR found:

- The College has policies and procedures requiring the provision of academic adjustments and auxiliary aids and services for students with disabilities, including DHH students.
- Note taking services are available for qualified students with disabilities, and students are informed of this service through the College’s website, the College Catalog, and a Disabled Students Programs and Services Office (DSPS)² Handbook. The DSPS website informs students of the procedure to request such services. If approved by DSPS, the student receives a memorandum to inform instructors of the need for a note taker. The instructor is directed to announce in class that a volunteer student note taker is needed, without identifying the disabled student. Student volunteers then sign up with DSPS, which coordinates the note taking assistance.
- DSPS’s note taking procedure and related notices indicate that if a student does not volunteer to take notes within two weeks of the instructor’s announcement, the disabled student’s only options are to: cancel the request for the note taker; have the instructor make another announcement in class; or ask someone to be the note taker.
- Information regarding interpreting services for DHH students is also listed on the DSPS website and in the DSPS Handbook. However, the website information makes no reference to the availability of CART Services, and the

² Previously known as Accessibility Center of Education (ACE).

Handbook merely states that CART Services may be an option if a qualified interpreter is not available. The DSPS Classroom Interpreter Request form also does not reference CART as a possible service. The College Catalog also lists various DSPS services available to students with disabilities; the list includes sign language interpreters and note taking services, but not CART Services.

- The College explained to OCR that, in practice, CART Services are available to students requiring the service; however, a specific request for the service must be made, and the student is required to identify a specific need for the service. Generally, CART Services are available to students who are not fluent in ASL and/or when students are enrolled in highly technical classes that cannot be interpreted by sign language. In addition, CART Services may be made available by direction of the DSPS Office on a case by case basis based on discussion with the student and the College's Interpreter Specialist.
- The Complainant has been recognized as a student with a disability, and registered with the College's DSPS in August 2012 as a student with significant hearing loss requiring related aids and services. The Student is fluent in ASL and has a cochlear implant which moderately improves his hearing.
- In Spring 2013, the Complainant requested an ASL interpreter for two of his classes and the use of CART for one, XXXX XXX. The Complainant met with a DSPS counselor and explained that XXXX XXX was a lecture class in spoken English, whereas the other two classes involved a lot of signing and not much lecturing. The College approved the Complainant's CART request for XXXX XXX, and he subsequently received a grade of C in that class. He received A grades in his other two classes.
- In Fall 2013, the Complainant enrolled in three classes and requested note takers for two of them on August 1, 2013; the semester began on August 26. On September 13, DSPS sent the Complainant an email indicating that no one had volunteered to be a note taker in his classes. The email states that the Complainant had the following options: have the instructor make another announcement; ask a friend or someone in the class to be a note taker; withdraw his note taking requests; or request use of a digital recorder. The Complainant resubmitted his request for note takers on September 19, adding his third class to the request. The Complainant eventually received note taking services in all three classes, after a delay of several weeks. The Complainant received a grade of A in each class.
- In Spring 2014, which began January 27, 2014, the Complainant enrolled in XXXX XXX and XXXX XXX, Deaf Culture. The Complainant initially only requested note taking services for these classes.

- The XXXX XXX, Deaf Culture class was described as an introduction to the American deaf culture experience, including the history and description of deafness, the deaf community, deaf education, and the arts and language of the deaf. The class was taught by an instructor who is deaf, so the instruction was in ASL. The class was also staffed with an interpreter who converted the signed information to voice for hearing students who were enrolled.
- On January 27, 2014, after the first class session, the Complainant also requested CART Services for XXXX XXX, Deaf Culture. His request stated that he needed CART Services for this class because he found the note taker to be cumbersome and ineffective, because the instructor signed very fast, and because there was always a chance that the note taker may be late to class.
- DSPS acknowledged the Complainant's request on January 28, 2014, and offered assistance with any concerns that the Complainant had regarding the note taking service. The counselor explained, however, that providing CART Services as a tool for note taking is not an appropriate request. DSPS noted that CART Services were a communication tool, similar to a sign language interpreter, and should not be necessary given that the class was actually taught in ASL and also provided a voice interpreter. The Complainant replied, stating that he had a bad experience with a note taker in Fall 2013 and found the system ineffective and impractical. The Complainant said that he needed CART Services because he may look away from the instructor and miss essential information.
- The College requested more information on why the Complainant believed that he required both CART Services and ASL interpretation for this class, including detail about his previous negative experience with a note taker; however, the Complainant failed to provide any further clarification.
- The College reported that a note taker was assigned for the XXXX XXX, Deaf Culture class, but acknowledged that the Complainant did not receive this service for his other class, XXXX XXX. DSPS sent him an email, similar to the email sent in Fall 2013, outlining his options as: canceling the request; having the instructor make another announcement; or asking someone in the class to be a note taker.
- The College DSPS consulted with other DSPS offices in the area and engaged in internal discussions regarding the Complainant's request for CART Services in addition to ASL interpretation.
- On February 12, 2014, the College's DSPS Director responded to the Complainant's request for CART Services, denying the service, but leaving the Complainant with the option of providing further information if he desires. The Director indicated that the request was denied because: the professor was himself deaf and used ASL as his form of communication and lecturing; there

was also an ASL interpreter in the class who was voicing for the professor; and in the past the Complainant had been successful in classes with an interpreter. The Director again clarified that CART Services were not an approved substitute for note taking services or needs.

- The College indicated to OCR that the Complainant was fluent in ASL and had partial hearing through his cochlear implant, so he could receive information in class through both the ASL instruction and the voice interpreter. The College also noted that the Complainant had received A grades in past classes taken with an ASL interpreter and note taker, and had received a C grade in the only class in which CART Services were used.
- The College reported to OCR that the Complainant did not engage in the interactive process during spring 2014 semester and failed to respond to questions from DSPS, to discuss any concerns or issues, or to further clarify his needs. Because the Complainant decided not to participate in the interactive process, the College was not clear on the difference between this particular class and all previous classes that he had successfully completed using ASL interpreting and a note taker.
- The Complainant received A grades in his Spring 2014 XXXX XXX course and Spring 2014 XXXX XXX course.

OCR found that the Complainant was denied CART Services in his Spring 2014 XXXX XXX, Deaf Culture course, but determined that the College adhered to Section 504 and Title II requirements in reaching this decision. The College confirmed that CART Services are available to DHH students who demonstrate a need for this method of communication. Generally, CART Services are approved for students who were not fluent in ASL, or when the course in question is highly technical and cannot be interpreted effectively through ASL. In addition, the College reviews student requests on a case-by-case basis and may approve CART Services in other instances based upon the individualized need of the student.

Here, the Complainant requested CART Services as a preferred method of communication for a course that was not highly technical and that already provided ASL interpretation and sign to voice interpretation. The evidence indicates that the College carefully considered his request, engaged in internal discussions, and consulted other resources. The College considered factors such as the Complainant's fluency in ASL, the fact that he had a cochlear implant, the nature of the course in question, and the Complainant's prior success in classes where only ASL interpretation was provided. OCR found that the College ultimately made a reasoned determination that CART Services were not required, and that ASL interpretation and sign to voice interpretation were sufficient to provide the Complainant with equally effective communication in this particular class.

OCR notes that the Complainant did not fully engage in the interactive process for the provision of CART Services after the DSPS office requested further information. The Complainant failed to articulate a particular need for CART Services in addition to ASL interpretation and sign to voice interpretation and thus, the service was denied. The College invited the Complainant to meet with the DSPS Director to discuss the issue; thus, the decision was not final, and the Complainant was given an opportunity to reengage in the interactive process. The Complainant chose not to. Under this specific set of circumstances, OCR found that the College did not violate Section 504 or Title II with respect to the decision to not provide CART Services to the Complainant for his Spring 2014 XXXX XXX, Deaf Culture class.

However, OCR found that the College's policies, procedures, and notices regarding the provision of CART Services are inadequate in that they do not clearly reflect its current practice. The College's policy on the availability of CART Services is not clearly defined in most materials provided by the College to DHH students. In addition, the factors taken into account by the College in reviewing a request for the provision of CART Services are not defined.

With regard to note taker services, OCR found that the College failed to meet Section 504 and Title II requirements concerning the provision of this auxiliary service for the Complainant in Fall 2013 and Spring 2014. The Complainant's note taker services were delayed for several weeks in at least two classes during Fall 2013 and the College also failed to provide the Complainant with a note taker in his Spring 2014 XXXX XXX course, despite DSPS approval for the services in both semesters. OCR further found the College's process for the provision of note takers to be inadequate. OCR reviewed the College's note taking policies and procedures, and found that the College does not have an adequate plan for the timely provision of note takers when a student does not volunteer in a course where a note taker is required. It is acceptable in most instances for the College to depend upon student volunteers to serve as note takers.³ However, such a system must be set up to ensure that the required note taker is provided, and is provided in a timely fashion. If the service is timely requested, a disabled student should not be required to wait two weeks or more in order for the service to be provided. In addition, if a student does not volunteer to serve as a note taker in a particular course the College is obligated to provide the service through alternate means including a paid note taker, if necessary.

The College agreed to address the outstanding issue through signing a Resolution Agreement,⁴ a copy of which is attached. Based on the commitments made in the Resolution Agreement, OCR is closing the investigation of this complaint as of the date

³ There may be instances in which student volunteers are not an appropriate means of providing note taker services given, for example, the nature of the disabled student's individual needs and/or the type of information being conveyed in a particular course.

⁴ OCR did not require an individual remedy with respect to the College's failure to provide the Complainant with timely note taker services, in that he received a grade of A in each class in which the services were delayed or not provided.

of this letter. OCR will monitor the College's implementation of the Resolution Agreement.

This concludes OCR's 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. OCR is informing the Complainant of the complaint resolution by concurrent letter. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

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.

Please 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 individual may file a complaint with OCR alleging such treatment.

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.

OCR would like to thank the College for its cooperation and efforts to resolve this case. Specifically, OCR thanks Janet Houlihan, Vice President of Student Life & Administrative Services, and her Executive Assistant, XXXXXX XXXXXX.

If you have any questions about this letter, please contact David Howard, Equal Opportunity Specialist, at (415) 486-5523 or via email at david.howard@ed.gov, or me, at (415) 486-5555.

Sincerely,

/s/

MaryBeth McLeod
Team Leader
Office for Civil Rights
San Francisco

Enclosure

Cc: Janet Houlihan
Vice President of Student Life & Administrative Services