



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

REGION IX
CALIFORNIA

50 UNITED NATIONS PLAZA
MAIL BOX 1200, SUITE 1545
SAN FRANCISCO, CA 94102

August 25, 2016

President G.H. Javaheripour, Ed. D.
Yuba College
2088 North Beale Road
Marysville, California 95901

(In reply, please refer to Docket Number 09-15-2477.)

Dear President Javaheripour:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against Yuba College (the College). The Complainant alleged that the College discriminated against her on the basis of disability.¹ OCR investigated whether the College failed to provide the Complainant with the necessary academic adjustments or auxiliary aids needed to ensure that she could participate in the education program in a nondiscriminatory manner. Specifically, OCR investigated whether the Complainant received the following agreed-upon, approved academic adjustments and modifications during the 2014-2015 school year: (1) 150% time on exams in Intermediate Algebra (Math 52), taken during spring 2015 and in Elementary Algebra (Math 50), taken during summer 2015; (2) alternate media and tape recorded lectures for Math 52 and Math 50; and (3) tutoring for Math 52.

OCR investigated this complaint pursuant to its authority under Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990, as amended. Section 504 and its implementing regulation prohibit discrimination on the basis of disability in programs and activities operated by recipients of Federal financial assistance. Title II and its implementing regulation prohibit discrimination on the basis of disability by public entities. The College receives Department funds, is a public entity, and is therefore subject to the requirements of Section 504, Title II, and their implementing regulations.

To investigate this complaint, OCR conducted interviews and reviewed documents and other information provided by the Complainant and the College. After careful review of the information gathered in the investigation, OCR concluded that the College did violate Section 504 and Title II with regard to the provision of 150% extended time on exams in Math 52 during spring 2015. OCR's investigation also identified concerns with regard to the provision of 150% time on exams in Math 50, alternate media and tape recorded lectures for Math 52 and Math 50, and tutoring for Math 52. Prior to completing the investigation as to whether the Complainant was denied these approved accommodations, the College expressed an interest in entering into a Resolution Agreement (Agreement) pursuant to section 302 of OCR's Case Processing Manual. The legal standards, facts gathered to date, and the reasons for our determinations and the terms of the resolution agreed to by the College are summarized below.

¹ OCR previously provided the College with the identity of the Complainant. We are withholding the Complainant's name from this letter to protect the individual's privacy.

Legal Standards

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), contain a similar prohibition applicable to public postsecondary educational institutions.

The Section 504 regulations, at 34 C.F.R. §104.44(a), require recipient colleges and universities to make modifications to their academic requirements that are necessary to ensure that such requirements do not discriminate, or have the effect of discriminating, against qualified individuals with disabilities. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific required courses, and adaptation of the manner in which courses are conducted. However, academic requirements that recipient colleges and universities can demonstrate are essential to the program of instruction being pursued or to any directly related licensing requirement will not be regarded as discriminatory.

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 as 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. 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 academic adjustments to the same extent as is required under the Section 504 regulations.

Factual Findings

The following facts are relevant to OCR's analysis:

Background

- The Complainant enrolled at the College in the fall of 2014. On November X, 2014, the Complainant signed an Academic Accommodations Agreement/Student Educational Contract (Accommodations Agreement) with the College. The College approved this Accommodations Agreement, which stated that the Complainant was to receive the following adjustments and modifications applicable to OCR's investigation:
 - 150% extended time on all exams;
 - Alternate media and tape recorded lectures; and
 - Access to tutoring through the College Success Center, an on-campus resource that offers tutoring services.

- The Accommodations Agreement required the Complainant to certify that she “understood that it is [the Complainant’s] responsibly to inform DSPS of the authorized accommodations [the Complainant] choose[s] to use by completing the appropriate request forms, and to present authorization from DSPS to each of [the Complainant’s] instructors in a timely manner.”
- The Complainant submitted verification of her disability to DSPS on February X, 2015 and scheduled an intake appointment with DSPS later in February 2015, in accordance with the DSPS Intake Process.

150% time on Math 52 and Math 50 exams:

- In the spring of 2015, the Complainant enrolled in Math 52, among other courses.
- The Complainant submitted multiple written requests for 150% extended time on all Math 52 exams to DSPS and her Math 52 instructor.
- The Complainant did not receive extended time on multiple Math 52 quizzes. The Math 52 instructor stated the following in a series of emails to the Complainant and DSPS:
 - The instructor did not know what to do to provide the Complainant with extended time because Math 52 is an online course;
 - The instructor did not manually extend time on all the Complainant’s online quizzes because she forgot to do so; and
 - The Complainant’s DSPS testing form was “not properly processed” as the Math 52 instructor “never received confirmation of [Complainant’s] accommodations” and did not follow through to confirm Complainant’s eligibility for extended time.
- The College stated that the Complainant did not request accommodations for Math 52 using an Online Test Proctoring Form. However, the College did not require a completed Online Test Proctoring Form for Complainant to receive extended time on exams in English 1 A, another course in which the Complainant was enrolled during spring 2015.
- The Complainant withdrew from Math 52 in spring 2015 to avoid an “F” grade on her transcript. A “W” is reflected on the Complainant’s transcript for Math 52.
- In the summer of 2015, Complainant enrolled in Math 50, among other courses.
- The Complainant requested 150% extended time on all Math 50 exams. The College provided OCR with an Online Test Proctoring Request Form signed by Complainant and DSPS on June XX and XX, 2015, stating that, among other academic adjustments and modifications, Complainant was to receive 150% extended time on all Math 50 exams.
- The Complainant stated that she did not receive extended time on all Math 50 exams. The Complainant’s Online Test Proctoring Form for Math 50 was not signed by the Complainant’s Math 50 instructor until June XX, 2015. On June XX, 2015, the Complainant emailed DSPS requesting information on the last date to withdraw from Math 50 because she was failing the course, the summer 2015 semester was already half over, and the Complainant was concerned about whether it would still be possible to pass.

- The College's narrative does not address whether the Complainant received extended time on exams in this course.
- The complainant failed Math 50 in summer 2015, and this grade is reflected on her transcript.

Alternate media and tape recorded lectures for Math 52 and Math 50:

- The Complainant stated that she made multiple written and verbal requests for alternate media and tape recorded lectures for Math 52 and Math 50 and did not receive them. The College did not respond to this statement, produce any documents, or dispute the Complainant's assertions.

Access to tutoring for Math 52:

- The Complainant and DSPS emailed back and forth between March XX and March XX, 2015 about the Complainant's request for tutoring to help her with her Math 52 class. The Complainant requested to receive the math tutoring at the College's Sutter County Center in Yuba City or in Colusa.
- In response to the Complainant's requests, DSPS contacted the College Success Center to determine whether tutoring was available at Sutter County Center. DSPS also informed the Complainant that tutoring in Colusa might be an option, but the tutoring location in Colusa did "not fall under Yuba College but [is] associated with Woodland Community College". DSPS told the Complainant that she could access drop-in math tutoring between 10 a.m. and 5 p.m., Monday through Thursdays, at Sutter County Center. In a reply email, the Complainant stated that she would utilize these services.
- The Complainant used math tutoring services at Sutter County Center. However, the Complainant stated that tutoring provided at Sutter County Center was inadequate because instructors could not help her with Math 52 coursework. The Complainant stated that tutors at Sutter County Center could not answer the Complainant's questions and often had to go online to get assistance themselves in order to help the Complainant with her Math 52 coursework. As a result, the Complainant felt that the tutoring she received at Sutter County Center was not effective and did not help her improve her performance on Math 52 quizzes.
- In its narrative response, the College confirmed that the Complainant requested tutoring in March 2015 and stated that DSPS responded the following day by confirming availability of math tutoring at the Sutter campus in Yuba City.

Analysis

The Complainant is a qualified individual with a disability who registered with DSPS, provided documentation of her disability, and followed DSPS Intake Procedures. DSPS approved several academic adjustments/modifications for the Complainant during the 2014-2015 school year, including (1) 150% time on exams, (2) alternate media and tape recorded lectures, and (3) math tutoring.

In the spring of 2015, the Complainant made multiple requests to receive 150% time on online Math 52 exams. The Math 52 instructor admitted to the Complainant and DSPS Director that she (1) did not know how to provide extended time on online exams, (2) did not provide the

Complainant with extended time on Math 52 exams, and (3) that the Complainant's DSPS testing form was not properly processed and the instructor never received confirmation of the Complainant's approved accommodations. The Complainant withdrew from this course to avoid an "F" grade on her transcript. For these reasons, OCR found that the College failed to provide the approved adjustment/modification in Math 52 and was in violation of Section 504 and Title II and their implementing regulations.

With respect to 150% time on Math 50 exams, the College provided a signed Online Test Proctoring Form (Form), which provided for the Complainant to receive 150% time on Math 50 exams in the summer of 2015. The Complainant signed the Form on June XX and told OCR that she did not receive 150% time on these exams throughout the period that she was enrolled in the class; she ultimately failed Math 50. Other than the Complainant's math instructor's June XXXX signed Form, OCR did not receive any documentation from the College that would show that extended time was provided. To complete the investigation of this allegation, OCR would need to conduct additional interviews with the Complainant's Math 50 instructor and review additional documentation.

With respect to alternate media and tape recorded lectures, the Complainant told OCR that she made multiple requests for alternate media and tape recorded lectures for her Math 52 and Math 50 courses but did not receive taped lectures. However, OCR did not receive documentation of these requests or the College's response, if any. To complete the investigation of this allegation, OCR would have to interview DSPS staff to determine whether such requests were made and what response was provided.

With respect to tutoring, DSPS responded to the Complainant's request for tutoring for Math 52 within 24 hours and arranged for her to receive Math tutoring at the Sutter County Center. The Complainant told OCR that this tutoring was not helpful because tutors at Sutter County Center could not answer the Complainant's questions and often had to go online to get assistance in order to help the Complainant with her Math 52 coursework. To complete the investigation, OCR would need to interview staff at the tutoring center to determine the qualifications of such staff and whether the Complainant utilized the services as described.

Based on the facts gathered to date, OCR has concerns about whether the Complainant received approved academic adjustments/modifications for (1) 150% time on exams in Math 50; (2) alternate media and tape recorded lectures for her Math 52 and Math 50 courses; and (3) whether staff at the tutoring center were qualified to provide Complainant with the support she needed to access the Math course at issue. The facts gathered to date also raise concerns regarding DSPS' policies and procedures concerning the provision of approved, agreed-upon academic adjustments/modifications because: (1) at least one instructor did not have needed information about the College's process to implement approved academic adjustments/modifications and appeared not to have received training about the process; (2) the College did not provide OCR with a readable copy of DSPS' process describing how approved adjustments/modifications are implemented; and (3) DSPS does not appear to employ a consistent process to implement approved adjustments / modifications across courses. With respect to the last concern, in this matter DSPS did not require an Online Test Proctoring Form for the Complainant to receive approved adjustments/modifications in English 1A but did require this Form to implement approved adjustments/ modifications in Math 52.

Conclusion

To address the concerns raised and violation identified in the investigation of this complaint, the College, without admitting to any violation of law, entered into the enclosed Agreement which is aligned with the complaint allegations, findings, and information obtained by OCR during its investigation. This Agreement requires the College to: (1) reimburse the Complainant for expenses incurred pursuant to her enrollment in Math 52 and 50; (2) remove all evaluative grades on the student's transcript for Math 52 and Math 50; (3) revise its DSPS policies and procedures; (4) create a guidance memorandum notifying all students registered with DSPS and College staff of these revisions; and (5) provide training to College staff regarding these revised policies and procedures.

Based on the commitments made in the enclosed resolution agreement, OCR is closing the investigation of this complaint as of the date of this letter. When fully implemented, the Agreement is intended to address all of OCR's compliance concerns and violations identified in this investigation. OCR will monitor the implementation of this Agreement until the College is in compliance with the statutes and regulations, which were at issue in this case.

OCR's determination in this matter 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 notifying the Complainant simultaneously of OCR's determination. 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 Complainant may file another complaint 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, it will seek to protect, to the extent provided by the law, personal information that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact Alexis Turzan, Civil Rights Attorney, at (415) 486-5572 or alexis.turzan@ed.gov.

Sincerely,

/s/

Sara Berman
Team Leader

Enclosure