



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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September 19, 2014

Via U.S. Mail and E-Mail (conniegreen@tillamookbaycc.edu)

Dr. Connie Green  
President  
Tillamook Bay Community College  
4301 Third Street  
Tillamook, Oregon 97141

Re: Tillamook Bay Community College  
OCR Reference No. 10142236

Dear President Green:

The Office for Civil Rights (OCR) of the U.S. Department of Education is discontinuing its investigation of the above-referenced complaint filed against Tillamook Bay Community College. The complaint alleged that the college discriminated against a student on the basis of disability in XXXXX 2014 by failing to provide him with the academic adjustments and auxiliary aids the college had approved for his XXXX and XXXXXXXXXX classes. As described below, prior to completion of OCR's investigation, the college expressed an interest in voluntarily resolving the complaint and entered into the enclosed Voluntary Resolution Agreement (agreement).

OCR accepted this complaint for resolution under the authority of section 504 of the Rehabilitation Act of 1973 and title II of the Americans with Disabilities Act of 1990 (Title II) and those statutes' implementing regulations at 34 CFR Part 104 and 28 CFR Part 35. Section 504 and its implementing regulations prohibit recipients of financial assistance from the U.S. Department of Education from discriminating against individuals on the basis of disability, and Title II prohibits public entities from perpetrating such discrimination. The college is a recipient of federal financial assistance from this Department and is a public entity; therefore, it is subject to these laws.

The Section 504 regulations at 34 CFR 104.43(a) and (c) specifically applicable to postsecondary education institutions state in part that no qualified disabled student shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in academic, research, occupational training,

or other postsecondary education aids, benefits, or services, and prohibit such institutions from excluding any qualified disabled student from any course, course of study, or other part of an education program or activity on the basis of disability.

The Section 504 regulation at 34 CFR 104.44(a) requires postsecondary education institutions to make such modifications to academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating, on the basis of disability, against a qualified disabled student. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted. (Academic requirements that the institution can demonstrate are essential to the instruction being pursued by a student or to any directly related licensing requirement will not be regarded as discriminatory within the meaning of the regulation.)

The Section 504 regulation at 34 CFR 104.44(c) requires that in course examinations or other procedures for evaluating students' academic achievement, postsecondary education institutions provide such methods for evaluating the achievement of students who have a disability that impairs sensory, manual, or speaking skills as will best ensure that the results of the evaluation represents the student's achievement in the course, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where such skills are the factors that the test purports to measure).

Moreover, the Section 504 regulation at 34 CFR 104.44(d) requires postsecondary education institutions to take such steps as are necessary 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.

The Title II regulation at 28 CFR 35.130(a) prohibits public entities from excluding qualified individuals with disabilities from participation in or denying them the benefits of the services, programs, or activities of those entities, or otherwise subjecting them to discrimination on the basis of disability. The Title II regulation at 28 CFR 35.130(b)(7) requires public entities to make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

The student in this case alleged that the college did not fully implement the academic adjustments and auxiliary aids the college had approved for two of his XXXXX 2014 quarter classes needed to complete his degree requirements, XXXX (XXX XXX) and XXXXXXXXXXXX (XX XXX). According to the student, as a consequence, he fell behind in his classes and performed poorly on testing. After unsuccessfully attempting to

address his concerns with the college, the student withdrew from the two classes on XXXXX, 2014 and did not receive a degree.

In accordance with Section 302 of OCR's Case Processing Manual, a complaint may be resolved at any time when, before the conclusion of an investigation, the institution expresses an interest in resolving the complaint. In such a case, the provisions of an agreement to resolve the complaint must be aligned with the complaint allegations or any information obtained during the discontinued investigation and be consistent with applicable regulations. Here, the college requested to resolve the complaint prior to the conclusion of OCR's investigation. Subsequent discussions with the college resulted in the college entering into the enclosed agreement.

The action the college will take under the agreement is to provide the student the opportunity to complete his math and science requirements, tuition and cost free, and fully implement the academic adjustments and auxiliary aids the college had previously approved for him. Other remedial actions OCR would typically require the college to take under such an agreement—revisions of policies and procedures, training of employees, notice to college employees, contractors, students, and others about the college's obligations regarding the provision of academic adjustments and auxiliary aids—are already being implemented by the college under an agreement resolving an earlier complaint (OCR Reference No. 10142011).

OCR will monitor the college's implementation of the agreement, and will close the complaint when OCR determines that the terms of the agreement have been satisfied. The college's report to OCR required by the agreement is due by January 5, 2015.

Thank you for the assistance the college and its attorney extended to OCR in resolving this complaint. If you have any questions, please contact Noel Nightingale, lead attorney, by telephone at (206) 607-1632 or by e-mail at [noel.nightingale@ed.gov](mailto:noel.nightingale@ed.gov).

Sincerely,

/ s /

Kelli Lydon Medak  
Team Leader

Enclosure: Agreement

cc: Garrett Hemann Robertson PC