



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVENUE, SW
WASHINGTON, DC 20202-1475

REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, DC

March 17, 2017

Dr. Alfred A. Roberts
President
Southside Virginia Community College
109 Campus Drive
Alberta, Virginia 23821

Re: OCR Complaint No. 11-15-2206
Letter of Findings

Dear Dr. Roberts:

The Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) has completed its investigation of the complaint we received on XXXX against Southside Virginia Community College (the College). The Complainant alleged that the College discriminated against him on the basis of disability. Specifically, the complaint alleged that the College:

1. Failed to properly consider and approve appropriate academic adjustments and auxiliary aids and services for the Complainant when it denied him a XXXX tutor during the XXXX academic year;
2. Failed to implement approved adjustments for the Complainant during the XXXX academic year, including: XXXX
3. Failed to notify the Complainant of approved adjustments in a timely manner when it provided his accommodations letter for the XXXX semester in XXXX.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive Federal financial assistance from the Department. Because the College receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

In reaching a determination, OCR reviewed documents provided by the Complainant and the College and interviewed the Complainant and College faculty and staff.

After carefully considering all of the information obtained during the investigation, OCR concluded that there was sufficient evidence of a violation with respect to allegation 2, which the College agreed to resolve through the enclosed resolution agreement. However, OCR did not find sufficient evidence to support allegations 1 and 3.

OCR’s findings and conclusions are discussed below.

XXXX 8 PARAGRAPHS REDACTED XXXX

Legal Standards

The Section 504 regulation, at 34 C.F.R. § 104.43(a), provides that a qualified person with a disability may not be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in any postsecondary aids, benefits, or services on the basis of disability. The regulation at § 104.44(a) requires a college to modify its academic requirements as necessary to ensure that such requirements do not discriminate or have the effect of discriminating on the basis of disability against a qualified student with a disability. The regulation at § 104.44(d) requires a college to ensure that no qualified individual with a disability 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. OCR interprets the Title II regulation to require public colleges to provide academic adjustments and auxiliary aids to the same extent as required under Section 504.

Colleges may establish reasonable requirements and procedures for students to provide documentation of their disability and request academic adjustments and auxiliary aids and services.¹ Students are responsible for obtaining disability documentation and for knowing and following the procedures established by the college. Once the student has provided adequate notice and documentation of his/her disability and the need for modifications due to the disability, the college must provide the student with appropriate academic adjustments and auxiliary aids and services that are necessary to afford the student an equal opportunity to participate in a school’s program. However, the college is not required to make adjustments or provide aids or services that would result in a fundamental alteration of the college program or impose an undue burden.

In determining what modifications are appropriate for a student with a disability, the college should familiarize itself with the student’s disability and documentation, explore potential modifications, and exercise professional judgment. The question of whether a college has to make modifications to its academic requirements or provide auxiliary aids is determined on a

¹ The College and the Complainant frequently refer to academic adjustments and auxiliary aids as “accommodations.” The Section 504 regulation addressing post-secondary education refers to “academic adjustments and auxiliary aids,” while the Title II regulation refers to “reasonable modifications.” When the term “accommodations” is used in this document, it refers to academic adjustments and auxiliary aids as those terms are used in 34 C.F.R. § 104.44 and reasonable modifications as that term is used in 28 C.F.R. § 35.130(b)(7).

case-by-case basis. OCR generally does not substitute its judgment for that of qualified educators and professionals regarding modifications. Instead, OCR reviews relevant factual evidence to determine whether a college acted in a reasonable manner and whether it took appropriate steps consistent with Section 504 and Title II in making decisions regarding a student's eligibility for academic adjustments. Both Section 504 and Title II envision a meaningful and informed process with respect to the provision of modifications, e.g., through an interactive and collaborative process between the college and the student. If a college denies a request for a modification, it should clearly communicate the reasons for its decision to the student so that the student has a reasonable opportunity to respond and provide additional documentation that would address the college's objections.

Analysis

Allegation 1

The Complainant alleged that the College inappropriately denied his request for a tutor during the XXXX academic year. In his request for academic adjustments in XXXX, he wrote that he needed tutoring. XXXX 3 SENTENCES REDACTED XXXX. OCR finds insufficient evidence to support that the College discriminated against the Complainant when it denied this request.

Among the data OCR received was significant correspondence from the XXXX semester when the Complainant XXXX. At that time, the College explained that such a service was not appropriate and that the College was not required to provide it. During the XXXX semester and again during the XXXX semester, the Complainant renewed his request for a XXXX tutor.

The parties do not dispute that the College denied this request for a XXXX tutor, and correspondence from the XXXX and XXXX semesters is clear that the College had not approved such tutoring as accommodation for the Complainant. The Complainant's XXXX accommodations letter states, XXXX. The College sent an email to the Complainant XXXX in response to concerns raised by the Complainant's XXXX, stating that tutoring was available to the Complainant, as it was to all students at the College, through the tutoring center; the College has a tutoring center on its campus, and another tutoring center was available to the Complainant through XXXX. The College also clarified in the email that it was not granting tutoring as an accommodation for XXXX. Again, on XXXX, the XXXX sent an email to the Complainant XXXX, stating this time that the College was not required to provide XXXX such as tutoring.

Section 504 does not require colleges to provide personal services such as the XXXX tutoring for XXXX requested by the Complainant. "Recipients need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature." 34 C.F.R. § 104.42(d)(2). XXXX SENTENCE REDACTED XXXX. OCR considers such a request for a personalized tutor during individual study time to be a service of a personal nature. In the context of postsecondary education, Section 504 emphasizes making educational programs for which a student is qualified accessible to the student. It does not, however, provide for specialized instruction of the nature that the Complainant sought as would be required under Section 504 in the elementary and secondary education context.

As a result, OCR determined there is insufficient evidence to support a finding of a violation of Section 504 or Title II with respect to allegation 1. We do note, however, that the College should engage in the interactive process with the Complainant when determining appropriate academic adjustments. This process involves dialogue in determining what a student needs and communicating clearly whether the college agrees to provide it and, if not, why. Here, based on the data and interviews with College faculty, the College responded to the Complainant’s request for services by issuing a letter of accommodations without intermediate discussion or any explanation of the requests that were granted or denied.² It only explained after the Complainant raised concerns XXXX. OCR encourages the College to engage in dialogue as part of the decision-making process and to inform students immediately of their rationale.

Allegation 2

During the XXXX semester and again during the XXXX semester, the Complainant’s approved accommodations included extended time on tests and assignments, use of a tape recorder, XXXX notes, in addition to XXXX. The Complainant raised concerns about the College’s implementation of these adjustments and aids in particular during XXXX semesters.

OCR reviewed the evidence submitted by the College and by the Complainant as well as interviewed the instructors XXXX.

XXXX PARAGRAPH REDACTED XXXX

As to XXXX the instructor XXXX emailed the XXXX stating that the Complainant did not have a note taker in class but was using a recording device and received printed handouts. He confirmed as much when he told OCR that no one took notes for the Complainant in class. He said that he supplied notes to the Complainant and distributed summaries of concepts discussed. He noted that the class XXXX.

As to XXXX data indicates that the XXXX Instructor provided copies of notes and PowerPoint presentations during class. OCR reviewed the PowerPoint notes and observed that the notes contain class exercises such as, “XXXX”; or questions such as XXXX. These lecture notes contain no information about any ensuing class discussion of these topics. OCR asked the XXXX Instructor how she used the projected lecture notes during class, and she said that the class “XXXX.” XXXX 3 SENTENCES REDACTED XXXX.

With respect to the XXXX semester, OCR finds that the College failed to provide the Complainant with the approved academic adjustment of a note taker. Both instructors confirmed that their classes covered the content of prepared handouts and presentations and discussed these materials during class. By providing printed handouts and presentation notes, the instructors ensured the Complainant access to the prepared materials. But the handouts and notes did not reflect in-class discussions, questions from fellow classmates, or instructor explanations

² In an interview with the XXXX OCR asked what discussion she had with the Complainant between the time he submitted his request for accommodations and the time she issued the letter, and she said XXXX.

clarifying the materials. As such, the Complainant, by virtue of the College's provision of handouts and presentation notes alone, was deprived of a record of any in-class discussion, which could have served to further his understanding of course concepts. While the Complainant received copies of lecture notes XXXX, the instructors' lecture notes did not adequately replace notes that would have captured class discussion elaborating on topics highlighted by the lectures.

OCR next considered the College's provision of a note taker during the XXXX semester when the Complainant took XXXX. In XXXX which was also taught by the XXXX Instructor, the Instructor told OCR that the course was made up of instructional time and time working on using XXXX to complete projects. He said that he passed out notes or summaries about topics to the Complainant, but he did not have someone sitting to take notes for him during class. He further said that sometimes he would stop the students while they were working XXXX he said there were no notes taken during these class XXXX.

Next, OCR turned to the Complainant's XXXX class for which evidence shows that the Complainant did not have a note taker during the majority of the semester. During an interview, the XXXX Instructor told OCR that she XXXX.

OCR reviewed the class materials and noted that the lecture notes included questions and visual aids around which the class centered discussion. For example, the notes include the question, XXXX 2 SENTENCES REDACTED XXXX. These explanations and discussions were not captured by the XXXX Instructor's lecture notes.

XXXX PARAGRAPH REDACTED XXXX

During a protracted email discussion, the XXXX noted that the Complainant was entitled to a note taker, explained that a note taker was not superfluous, and agreed to provide a student note taker for the Complainant. During a period of approximately three weeks in XXXX; however, the Complainant did not regularly or reliably receive written notes from XXXX, receiving notes on XXXX occasions, and raised concerns about the adequacy of the notes.³ On XXXX, the XXXX terminated the XXXX note taker position and assumed the role of the Complainant's note taker for the remainder of the semester.

OCR finds that the College failed to provide a note taker, a necessary academic adjustment, in each of the Complainant's XXXX classes during the XXXX semesters in violation of Section 504 and Title II. Once the College approved the Complainant's need for a XXXX note taker, it needed to make arrangements for the Complainant to receive that adjustment. The process for doing so must be clear to the instructor and Complainant alike, but implementation of the adjustment is not the responsibility of the Complainant. Moreover, the College must ensure that instructors do not question a student's accommodations as the XXXX did here by XXXX. OCR concludes that there is sufficient evidence to support a finding of a failure to provide a note taker during the XXXX semesters. As a result of the College's failure to appropriately implement this adjustment, the College has signed a resolution agreement, which when fully implemented will resolve this violation of Section 504 and Title II.

³ According to documentation from the College the Complainant's XXXX.

Extended Time

The Complainant's academic adjustments included extended time XXXX to complete tests and assignments for the XXXX semesters. Turning first to XXXX, the XXXX Instructor told OCR that the course grade for XXXX was based on a project that required a report and oral presentation that were, in turn, based on instructional activities. The XXXX Instructor told OCR that he gave a mid-term essay and corresponding presentation for which extended time was available to the Complainant. However, he noted that the Complainant was always XXXX to have his assignments done and never made use of the available extended time.

With respect to extended time on tests in XXXX the Complainant raised concerns that he did not receive the adjustment in the course. XXXX 5 SENTENCES REDACTED XXXX.

The Complainant did not provide OCR with specific information about instances in which the College failed to offer extended time on tests and assignments in the XXXX courses he took at the College during the XXXX semester. During a telephone call on XXXX, the Complainant XXXX. XXXX SENTENCE REDACTED XXXX. Absent information to the contrary, OCR accepts the College's information as true and concludes that the College provided the Complainant with opportunities for extended time on tests and assignments during the XXXX semester. Therefore, OCR has insufficient evidence to support the finding of a violation with respect to extended time.

OCR next considered data regarding the provision of extended time on tests and assignments during the XXXX semester. The XXXX Instructor said that there were XXXX.

With respect to having extended time to complete assignments and tests in XXXX, the Complainant XXXX.

OCR reviewed evidence that receiving extended time was a concern in XXXX instances: XXXX 2 PARAGRAPHS REDACTED XXXX.

OCR finds insufficient evidence to support a violation of Section 504 with respect to the Complainant's receipt of extended time to complete tests and assignments during the XXXX semesters, based on the totality of the evidence OCR reviewed. OCR notes that the Complainant was afforded extended time in XXXX courses, XXXX. As for the availability of extended time for XXXX exam in XXXX outside of the proctoring center, OCR notes that generally a student may not dictate the manner in which extended time is provided. We do, however, note some concern with the XXXX Instructor's insistence that the Complainant could only receive extended time by using the proctoring center, given that the Complainant had received extended time on tests without using the proctoring center in other classes and that the College did not have a policy that requires use of the proctoring center for extended time. The XXXX Instructor acknowledged to OCR that, at the time, she had not considered alternatives XXXX. OCR recommends that the College clarify its policy as to how it will provide testing accommodations to students.

Recording Device

Finally, the XXXX Instructor told OCR that the Complainant used a recording device in the XXXX class, that he never stopped the Complainant from doing so, XXXX.

The XXXX Instructor told OCR that the Complainant used a recording device during class and XXXX.

For the XXXX semester, the XXXX Instructor told OCR that the Complainant used a digital recording device during instructional time XXXX. XXXX SENTENCE REDACTED XXXX.

In XXXX, the XXXX Instructor told OCR that the Complainant used a recording device XXXX.

OCR finds insufficient evidence to support a violation of Section 504 with respect to the Complainant's use of a recording device. XXXX 3 SENTENCES REDACTED XXXX.

Allegation 3

OCR next reviewed documentation regarding when the College notified the Complainant of the adjustments and aids it approved. As to the XXXX semester, documentation shows that the XXXX sent an email to the Complainant on XXXX, telling him XXXX. Documentation also shows she directed an assistant to create a folder containing the letter for the Complainant's instructors and sent a message to the Complainant's instructors on the same date, notifying them that the Complainant was to receive accommodations.

OCR interviewed the Complainant's XXXX instructors, and they each confirmed that they received letters describing the accommodations in staff mailboxes during the first week of the semester. XXXX 2 SENTENCES REDACTED XXXX. OCR finds that, with respect to XXXX, there is insufficient evidence to support the finding that the College failed to timely provide the Complainant notice of his accommodations in violation of Section 504 or Title II.

As to the XXXX semester, the College did not provide comparable documentation that it distributed the letter to the Complainant. The Complainant submitted his request for accommodations on XXXX. On XXXX, the Complainant's XXXX. No further documentation exists regarding the Complainant's accommodations until the XXXX asked for a copy of the accommodations letter on XXXX because she said the Complainant never received one. Ultimately, on XXXX, the XXXX responded to the Complainant XXXX, providing the accommodations letter and reaffirming that the letter was mailed XXXX.

OCR cannot confirm whether the Complainant received a letter prior to the XXXX email response on XXXX. During interviews, the XXXX said that she placed hard copies in the Complainant's folder and those of his instructors. She said she did so very early in the semester, XXXX. She further said that she usually responds to requests for adjustments in three weeks, XXXX. Unlike XXXX, there is no email documentation to support that she had done so. Yet,

the XXXX told OCR that she does not typically email individuals to notify them when she has delivered their letter. The XXXX Instructor's statement on the receipt of the letter is likewise inconclusive. On one hand, the XXXX Instructor acknowledged not recalling that the Complainant's accommodations included a note taker on XXXX, suggesting that she may not have received a copy of his list of accommodations. However, in an interview with OCR, the XXXX Instructor also stated that she believed she had received the accommodation letter XXXX. She added that her records reflect that it was received by XXXX.

To make a finding of a violation of one of the laws OCR enforces, OCR must conclude that a preponderance of the evidence supports the finding; that is, OCR must have sufficient evidence to prove that it is more likely than not that unlawful discrimination occurred. When there is a significant conflict in the evidence and OCR is not able to resolve that conflict, for example due to contradictory evidence, OCR generally must conclude that there is insufficient evidence to establish a violation of law. Here, the Complainant said he did not receive a copy of his accommodations letter, while the XXXX said she provided one. Notably, if receipt of the letter was delayed, the evidence regarding implementation of the Complainant's accommodations for the XXXX semester does not suggest that he was denied accommodations because of any delay in the letter's receipt. Instead, the accommodations that were provided throughout the semester started at the beginning of the semester: use of the recording device was permitted from the start of the semester per the XXXX Instructor and no evidence suggests its use was delayed in the XXXX course; the College failed to provide a note taker throughout the XXXX semester XXXX. but not as a result of a delay in receiving notice of academic adjustments; and the Complainant's concern about receipt of extended time was raised for exams later in the semester. While OCR finds insufficient evidence with respect to this allegation because we cannot resolve the contradictory documentation and statements, OCR recommends that the College develop a system to ensure that it promptly and clearly notifies a student of adjustments, aids, or services he should receive.

Conclusion

On March 14, 2017, the College agreed to implement the enclosed Resolution Agreement (Agreement), which commits the College to take specific steps to address the identified areas of noncompliance. The Agreement entered into by the College is designed to resolve the issues of noncompliance. Under Section 303(b) of OCR's *Case Processing Manual*, a complaint will be considered resolved and the College deemed compliant if the College enters into an agreement that, fully performed, will remedy the identified areas of noncompliance (pursuant to Section 303(b)). OCR will monitor closely the College's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively. OCR may conduct additional visits and may request additional information as necessary to determine whether the College has fulfilled the terms of the Agreement and is in compliance with Section 504 and Title II with regard to the issues raised. As stated in the Agreement entered into by the College on March 14, 2017, if the College fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings, including to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10) or judicial proceedings, including to enforce the Agreement, OCR shall give the College written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

This concludes OCR’s investigation of the complaint. This letter 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. 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. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the College must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, or participates in an OCR proceeding. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

We appreciate the College’s cooperation in the resolution of this complaint. If you have any questions regarding this letter, please contact Amy S. Williams, the OCR attorney assigned to this complaint, 202-453-5933 or amy.williams2@ed.gov.

Sincerely,

/s/

Letisha Morgan
Supervisory Investigator, Team II
Office for Civil Rights
District of Columbia Office

Enclosure

cc: Noelle Shaw-Bell, Esq., by email