

Mr. J.R. Beauboeuf
Director
Risk Management and Legal Services
Lansing Community College
P.O. Box 40010
Lansing, Michigan 48901-7210

Re: OCR Docket # 15-13-2192

Dear Mr. Beauboeuf:

This letter is to notify you of the disposition of the complaint filed on July 10, 2013, with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Lansing Community College (the College), alleging discrimination against a student (Student) on the basis of disability. The complaint alleged the College discriminated the Student by denying her request that the College xxxxxx based on the Student's disability. According to the complaint, the Student appealed the College's decision to deny her request and the College issued a formal decision denying her appeal on xxxxxx.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance from the Department. In addition, OCR is responsible for enforcing Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance from the Department and as a public institution, the College is subject to these laws. Therefore, OCR had jurisdiction to investigate this complaint.

Based on the complaint allegations, OCR opened an investigation into the legal issues of whether the College failed to make modifications to its academic requirements as were necessary to ensure that such requirements did not discriminate or have the effect of discriminating, on the basis of disability, against an otherwise qualified student with a disability, in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.44(a) and whether the College excluded a student with a disability from participation in, denied her the benefits of, or otherwise subjected a student to discrimination under its academic program in violation of Section 504's implementing regulation at 34 C.F.R. § 104.43.

Background

The Student began attending the College in spring 2012. The Student suffers from xxxxxx. According to the complaint, when xxxxxx.

According to the Complainant, the Student first requested disability-related services from the College in xxxxxx, 2012. She stated that the Student requested that her instructors xxxxxx. According to the Complainant, this request was denied by the College's Office of Disability Support Services (ODSS). The Complainant stated that she was told at the ODSS that if there were a xxxxxx.

OCR's Investigation

The College advised OCR that on February 20, 2013, the Complainant and the Student met with xxxxxx to discuss the Student's accommodation request. According to the College, the xxxxxx advised the Student that she would receive all of her requested academic adjustments with xxxxxx. Between xxxxxx and xxxxxx, e-mails were exchanged between the xxxxxx and the Complainant concerning the Complainant's request for a xxxxxx. On xxxxxx, you provided xxxxxx. The following day, the Complainant filed a grievance with the College. xxxxxx. The College advised OCR that on xxxxxx. The xxxxxx stated that all of these requests were granted. The College provided a copy of the "Approved Accommodations" form, dated XXXXXX. The Student did not renew her request that the College xxxxxx at that time, as she had done previously.

X-paragraph redacted-X.

Prior to OCR's completion of its investigation, the College expressed interest in resolving this complaint pursuant to Section 302 of OCR's Case Processing Manual.

Applicable Legal and Policy Standards

The regulation implementing Section 504, at 34 C.F.R. § 104.44(a), provides that a recipient shall make such modifications to its academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating against a qualified student with a disability. The regulation further provides, at 34 C.F.R. § 104.44(d), that recipients shall take such steps as are necessary to ensure that no student 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.

The regulation implementing Title II, at 28 C.F.R. § 35.130(b)(7), provides that a public entity shall 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.

Academic requirements that the recipient can demonstrate are essential to the instruction being pursued by such student or to any directly related licensing requirement will not be regarded as discriminatory. 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.

Students who are attending a postsecondary institution and seek academic adjustments, modifications or auxiliary aids are responsible for letting the recipient know that they need an academic adjustment for a reason related to a mental or physical impairment that could constitute a disability and to assist in identifying appropriate and effective adjustments or auxiliary aids. Institutions may also establish reasonable procedures for requesting academic adjustments, and students can be required to know about and follow reasonable procedures when requesting academic adjustments. It is up to the student to notify the institution if the accommodations being provided are ineffective. Although students may request academic adjustments at any time, students needing services should be advised to notify the institution as early as possible to ensure that the institution has enough time to review their request and provide an appropriate academic adjustment.

Once a postsecondary institution receives documentation of a student's disability and a request for services, the institution and the student should work together in an interactive process to identify appropriate academic adjustments. With regard to whether a requested academic adjustment or auxiliary aid would fundamentally alter an essential program requirement, OCR gives great deference to an institution's academic decision-making. However, in order to receive such deference, relevant officials within the institution are required to have engaged in a reasoned deliberation, including a diligent assessment of available options. It is the institution's burden to prove that a proposed academic adjustment would fundamentally alter the nature of the service, program, or activity. An appropriate deliberative process should include a group of people making the decision who are trained, knowledgeable, and experienced in the relevant areas. Further, while it may be reasonable to expect that a course instructor would be included in the process of determining what requirements are essential to participation in their program of instruction, allowing an individual professor to have ultimate decision-making authority would not be in keeping with the diligent, well-reasoned collaborative process that warrants the accordance of deference by OCR to the judgments of academic institutions. Finally, the decision makers must consider a series of alternatives, and the decision should be a careful, thoughtful, and rational review of the academic program and its requirements.

Voluntary Resolution Prior to Conclusion of Investigation

As noted above, prior to the completion of this complaint investigation, the College expressed interest in resolving this complaint under Section 302 of OCR's Case Processing Manual (CPM) by signing a voluntary resolution agreement. The CPM provides that a complaint may be resolved before the conclusion of an OCR investigation if a recipient asks to resolve the complaint and signs a resolution agreement that

addresses the complaint allegation(s). Such a request does not constitute an admission of liability on the part of the College, nor does it constitute a determination by OCR that the College has violated any of the laws that OCR enforces. The provisions of the resolution agreement are to be aligned with the complaint allegation(s) or the information obtained during the investigation and consistent with applicable regulations. The College signed the enclosed resolution agreement (Agreement), which, once implemented, will fully address the complaint allegations in accordance with the requirements of Section 504 and Title II.

Under the terms of the Agreement, should the Student xxxxxx, the College is required, through its Center for Student Access (CSA) (formerly, ODSS), to review and respond to any request made by the Student for academic adjustments, modifications and/or auxiliary aids and services to address her disability/disabilities that are supported by medical documentation provided by the Student to the College, pursuant to the College's process for making such requests.

The Agreement also requires that, should the Student return to the College, and upon notification to the CSA of the need for academic adjustments, modifications and/or auxiliary aids and services to address her documented disability/disabilities, the College, through an interactive process to be engaged in by both the College and the Student, identify academic adjustments, and/or modifications and/or auxiliary aids and services to be implemented or provided to address the Student's disability/disabilities, and that the interactive process will include identification of academic adjustments and/or modifications to address any documented disability-related need by the Student for her xxxxxx that do not require a substantial change in the curriculum or alteration of any essential elements or functions of the course, program, service, or activity in which the Student wishes to participate.

Finally, the Agreement provides that, should the Student experience difficulty receiving any of the approved academic adjustments and/or modifications and/or auxiliary aids and services, the Student is encouraged to notify the CSA so that the CSA can attempt to remediate the problem, or so that the CSA and the Student may continue to engage in the interactive process to identify other academic adjustments and/or modifications and/or auxiliary aids and services to address the Student's disability or disabilities.

In light of the signed Agreement, OCR finds that this complaint is resolved, and we are closing our investigation as of the date of this letter. OCR will, however, monitor the College's implementation of the Agreement. Should the College fail to fully implement the Agreement, OCR will reopen the complaint and take further appropriate action.

Conclusion

Prior to the conclusion of this investigation, the College implemented Action Step 1 of the Agreement, and submitted documentation demonstrating its implementation of Reporting Requirement A of the Agreement. The College also provided documentation demonstrating that the Student xxxxxx, as contemplated by Reporting Requirement B of

the Agreement. Should the Student request academic adjustments, modifications, and/or auxiliary aids and services for the 2014-2015 academic year, the College will, in accordance with Reporting Requirement B, submit documentation demonstrating that it evaluated the Student's request(s) based on the CSA's process for receiving and evaluating such requests. Additionally, the documentation should include the results of the CSA's evaluation, and describe any academic adjustments, modifications, and/or auxiliary aids and services approved for the Student, and verify the use of an interactive process between the Student and the College to identify the academic adjustments, modifications, and/or auxiliary aids and services. This documentation will be provided to OCR as a monitoring report no later than 30 days after the Student's request has been evaluated.

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. 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 harmed individual 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, 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.

The Complainant may file a private suit in federal court, whether or not OCR finds a violation.

Please send any electronic monitoring correspondence to OCRCleMonitoringReports@ed.gov. Any monitoring reports submitted by regular mail may be addressed to me. If you have any questions about this letter, you may contact me at (216) 522-xxxxxx or at xxxxxx@ed.gov.

Sincerely,

Kelly M. Johnson
Supervisory Attorney/Team Leader

Enclosure