



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION XV

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CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

April 30, 2015

Lisa Stich
Vice President of Academic & Student Services
West Shore Community College
3000 North Stiles Road
Scottville, MI 49454

Re: OCR Docket #15-15-2009

Dear Ms. Stich:

This is to notify you of the disposition of the above-referenced complaint against West Shore Community College (the College), which was filed on October 22, 2014, with the U.S. Department of Education's Office for Civil Rights (OCR). The complaint alleged discrimination on the basis of disability. Specifically, the complaint alleged that during the 2014-2015 academic school year, the College failed to provide a student (Student) with a disability (XXXXXXXXXX), with academic adjustments to which she was entitled.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104 (Section 504). Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance from the U.S. Department of Education (the Department). OCR also 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). 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 entity, the College is subject to Section 504 and Title II.

Because the regulation implementing Title II provides no greater protection than the Section 504 implementing regulation with respect to this case, OCR applied Section 504 standards. Based on the complaint allegations, OCR investigated the following legal issues:

- 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 the student to discrimination under its academic program in violation of Section 504's implementing regulation at 34 C.F.R. § 104.43.

During its investigation, OCR interviewed the Student and reviewed documentation submitted by the College. Based on our review, OCR finds that the College did not engage in a deliberative process when considering the Student's request for academic adjustments. Accordingly, the College's actions did not comport with the requirements of Section 504. We set forth below the basis for OCR's determination.

Applicable Legal and Policy Standards

The Section 504 regulation provides, at 34 C.F.R. § 104.44(a), 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 person with a disability on the basis of disability. The Section 504 regulation defines a person with a disability, at 34 C.F.R. § 104.3(j)(1)(i), as any person who has a physical or mental impairment which substantially limits one or more major life activities. With respect to postsecondary education services, pursuant to 34 C.F.R. § 104.3(l)(3), a qualified person with a disability is a person with a disability who meets the academic and technical standards requisite to admission or continued participation in the recipient's educational program or activity.

With appropriate notice to students, postsecondary institutions such as the College may require students with disabilities to follow reasonable procedures to request academic adjustments. Students are responsible for knowing and following these procedures. Students who want a college to provide such services must let the college know that they need an academic adjustment related to a mental or physical impairment that could constitute a disability.

Furthermore, a college may generally require a student to provide documentation that permits the institution to determine that the student currently has a disability, that is, an impairment that substantially limits a major life activity, and that supports the need for an academic adjustment so that the institution may work with the student to identify appropriate services. Institutions may set their own requirements for documentation so long as they are reasonable and comply with Section 504. A college may, for example, require that a student's documentation be prepared by an appropriate professional, such as a medical doctor, psychologist, or other qualified diagnostician. The kind of documentation necessary to evidence that a student possesses a disability varies depending on the nature of the disability. A diagnosis of impairment alone does not establish that an individual has a disability within the meaning of Section 504.

A college is not required to conduct or pay for an evaluation to document a student's

disability and to support the need for an academic adjustment. Should a student provide documentation that does not contain information sufficient to establish whether the student currently has a disability and to support the need for services, a college should inform the student in a timely manner specifically what additional documentation is needed.

A college is required to afford people with disabilities an equal opportunity to obtain the same results, gain the same benefits of the college's program, and reach the same levels of achievement as people without disabilities, but a college is not required to guarantee identical results or certain levels of achievement, such as a passing grade.

Although students may request academic adjustments at any time, students needing services should 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. Students should not wait until after completing a course or activity or receiving a poor grade to request services and then expect the grade to be changed or to be able to retake the course. Although recipients may choose to provide students with retroactive academic adjustments, doing so is not a requirement of Section 504.

In providing an academic adjustment, a postsecondary institution is not required to lower or waive essential requirements or to fundamentally alter the nature of a service, program, or activity. An institution also does not have to provide an academic adjustment that would result in undue financial or administrative burdens, considering the institution's resources as a whole.

Prior to refusing any requested academic adjustment on the basis that it would lower or waive an essential requirement of a program, the institution should convene a committee comprised of persons knowledgeable about the student's disability, and about the program, such as faculty and department chairs, to engage in a careful, thoughtful deliberation of: the program/course requirements at issue; whether such requirements are essential; the feasibility, cost, and effect on the program of the requested academic adjustment(s); and any available alternatives. The committee, after engaging in such a deliberative process, should reach a rationally justifiable conclusion as to whether the requested academic adjustment would fundamentally alter the program or lower essential academic standards and should document the conclusions reached and the reasons for them. The institution should still provide adjustments or services that do not reach that level.

Summary of Investigation

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Analysis and Conclusion

Based on the above, OCR finds that the College did not engage in the deliberative process prior to denying the Student's requests for additional academic adjustments. The College made the determination to deny the Student's request without convening a committee of persons knowledgeable about the Student's disability, and about the program to engage in a careful, thoughtful deliberation regarding the course requirements; whether such requirements are essential; the feasibility, cost, and effect on the program of the requested academic adjustments; and any available alternatives. Only after engaging in a deliberative process could the College reach a rationally justifiable conclusion as to whether the requested academic adjustment would fundamentally alter the XXXXXXXXXXXX course or lower essential academic standards. Instead, the College relied on an established uniform practice that the types of academic adjustments the Student requested were not allowable in a XXXXXXXXXXXXXXXX XXXX class, such a XXXXXXXXXXXXXXXX, thereby skipping a critical step in process. Accordingly, OCR finds that the College's actions did not comport with the Section 504 regulation at 34 C.F.R. § § 104.43-104.44. To resolve these compliance concerns, the College submitted the enclosed agreement on April 30, 2015.

The agreement provides that the College will review the academic adjustments that the Student previously requested October 2014. The College will determine whether it needs additional documentation, beyond that already submitted to the College by the Student, to respond to the Student's request and engage in an interactive discussion with the Student to clarify the functional effects of the Student's disability in relation to the barriers posed to her participation in the College's XXXXXXXXXXXXXXXX XXXX class. The College will grant the Student's requested academic adjustments unless, after engaging in a deliberative process, the College determines that the requested adjustments, and any alternatives, would fundamentally alter the program or lower essential academic standards. The agreement also requires the College to develop appropriate written policies on the interactive/deliberative processes as they apply to the provision of academic adjustments.

In light of the signed Agreement, OCR finds that this complaint is resolved, and OCR is closing its 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 resume its investigation of the complaint allegation.

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 another complaint alleging such treatment.

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 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.

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.

We appreciate the cooperation of the College during the investigation and resolution of this complaint. If you have any questions about this letter or OCR's resolution of this case, you may contact Chandra Baldwin at (216) 522-2669 or at Chandra.Baldwin@ed.gov. We look forward to receiving the College's monitoring report by July 1, 2015. The report should be directed to Chandra Baldwin's attention.

Sincerely,

/s/

Donald S. Yarab
Supervising Attorney/Team Leader

Enclosure