



**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS**

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July 30, 2013

Dr. Dean Kempter
Chief Academic Officer
ITT Technical Institute
9511 Angola Court
Indianapolis, IN 46268-1119

Re: Case #05-13-2092

Dear Dr. Kempter:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against ITT Technical Institute (Institute). The complaint alleges that the Institute subjected an applicant with a XXXXXX disability (Applicant A) to discrimination based on disability in January 2013 when it revoked her admission to the Institute.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 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. As a recipient of Federal financial assistance from the Department, the Institute is subject to this law.

In the course of its investigation, OCR interviewed Applicant A and current and former Institute employees. OCR also reviewed documents that Applicant A and the Institute provided to OCR. Based on its investigation, OCR determined that the Institute violated Section 504 by revoking Applicant A's admission to the Institute based on disability. The reasons for this decision are set out below.

Policies and Procedures

The Institute offers undergraduate, graduate, and continuing education courses at over 140 campuses and online. The Institute has an electronic catalog (Catalog)¹ that lists its course offerings and its policies, including nondiscrimination and grievance policies.

¹ <http://www.itt-tech.edu/campus/download/011.pdf>

The Institute's nondiscrimination policy for "Disabled Applicants and Students" states:

The school is committed to compliance with Section 504 of the Rehabilitation Act of 1973 and its regulations. The school does not discriminate on the basis of disability in admission or access to, or treatment or employment in, its programs and activities. The school Director is designated the school's Student Disability Coordinator and coordinates Section 504 compliance. Applicants or students with a disability may request an accommodation by contacting the school Director.

The Institute's "Student Complaint/Grievance Procedure" policy (Grievance Policy) provides that a student may file a complaint alleging discrimination or harassment based on any protected status with the school Director. The school Director will meet with the student and respond to the complaint. Within 3 days of any such discussion, the school Director will prepare a written summary including any agreed upon or proposed solution to the complaint. The Grievance Policy also includes an appeal process.

The Institute's Manager of Student Services told OCR that he is the first point of contact when a student makes a request for a disability-related modification. He stated that he obtains documentation of the disability and a request for modification, and then forwards the documents to the Disability Coordinator, who determines whether to grant the modification.

Facts

Applicant A is an individual with a disability, which she characterized to OCR as a "XXXXXX disability." In December 2012, Applicant A applied to the Institute's Criminology and Forensic Technology Online Program (Program) for the February 2013 quarter.

The Institute's Catalog sets forth the admissions requirements for the Program (Admissions Policy). The Admissions Policy states that students must be 16 years of age and have a high school diploma or its equivalent. The Admissions Policy also specifies that an applicant may be required to complete a "readiness offering" at the discretion of the Registrar and/or may be required to undertake an individual interview with the Registrar. The Institute's admissions office makes the final admission decisions unless the Registrar conducts an individual interview; in those cases, the Registrar makes the final admission decision.

The Institute assigns an educational recruiter to each online applicant to assist with the application, financial aid, and any other issue that arises. Applicant A's Educational Recruiter told OCR that she spoke to and emailed with Applicant A several times as she assisted Applicant A with the application and financial aid process.

Applicant A was admitted into the Program in early January 2013. On January 7, 2013, after Applicant A completed the application and financial aid documents, Applicant A and the Institute executed an enrollment agreement (Enrollment Agreement). The Enrollment Agreement provided that Applicant A was enrolled into the Program effective with the quarter beginning on February 4, 2013.

Applicant A explained to OCR that, in January 2013, she contacted the Educational Recruiter to request a modification for the Program based on her disability. This was the first time Applicant A disclosed her disability status to the Institute. The Educational Recruiter stated that, on January 7, 2013, Applicant A advised her that she could not use e-books and needed books to download to her iPad because of her disability. The Educational Recruiter stated that she contacted the Manager of Student Services for the online division on January 8, 2013, to notify him of Applicant A's request.

The Manager of Student Services stated that he emailed Applicant A with two documents to complete: an assessment form, which asks about the modifications the student is seeking and why, and a form for the physician to complete to document the disability and recommendations for modifications.

On January 12, 2013, Applicant A emailed two documents to the Manager of Student Services with the subject "My XXXXXX Disability." The Manager of Student Services stated that the two documents were not the documents he forwarded to her, but were documents related to her disability. He stated that they were difficult to read, but that one document noted her XXXXXX. The documents also characterized her disability as "XXXXXX." The Manager of Student Services stated that he forwarded this documentation to the Disability Coordinator on January 15, 2013, consistent with the Institute's procedures.

The Disability Coordinator told OCR that, on January 16, 2013, she notified Applicant A by phone that the Institute required full documentation of her disability in order to provide her with the requested modification, and requested that she fill out the documents that the Manager of Student Services forwarded her. The Disability Coordinator stated that Applicant A did not provide the requested documentation. On January 21, 2013, the Disability Coordinator emailed the Chief Academic Officer at the time (Former Chief Academic Officer) and Registrar and forwarded the documents that Applicant A submitted to solicit advice as to how to proceed with Applicant A regarding her modifications or to "cancel her registration per her XXXXXX documentation." The Disability Coordinator stated that she did not often reach out to the Former Chief Academic Officer regarding modifications, but she did if she needed confirmation on how to move forward; she did not specifically state why she felt this was necessary in the case of Applicant A.

On January 22, 2013, the Former Chief Academic Officer responded to the Disability Coordinator by email, with a copy to the Registrar, as follows:

It does not seem appropriate to admit [Applicant A] into one of our programs. We cannot admit a student with XXXXXX. Based on the XXXXXX and that she listed XXXXXX as [her] disability she suffers from XXXXXX.

We do have a clause in the catalog indicating an interview with the Registrar may be required for admission. It would be best [if] both [Registrar] or [Disability Coordinator] ... conducted an interview with her prior to making a final decision on admissions.

The Disability Coordinator stated that, based on the Former Chief Academic Officer's directive, she called and emailed Applicant A on January 22, 2013, to inform her that the Registrar wanted to speak with her regarding the documentation she submitted. The Registrar stated that he interviewed Applicant A on January 31, 2013, by telephone based on the same directive. He stated that during the interview he explained how e-books work and she agreed to use them; he said they also discussed whether, in order to enhance her chance of success, Applicant A could take classes at one of the Institute's campuses instead of taking online courses, an option Applicant A rejected because she did not have a vehicle. According to the Registrar, he did not have any concerns after the interview about Applicant A's ability to participate in the Program.

The Registrar stated that, after the telephone interview, the Disability Coordinator came to his office. The Disability Coordinator told OCR that the Registrar stated that, based on her XXXXXX and the documentation, he did not think Applicant A could benefit from the Program. The Registrar denied saying this; he said he believed Applicant A could be successful in the Program. He said that the Disability Coordinator informed him that the email from the Former Chief Academic Officer stated that they should not admit Applicant A.

After the interview with the Registrar, the Disability Coordinator subsequently informed Applicant A that, based on the documentation she submitted, the Institute did not think she could meet the Institute's standards and the Institute would be setting her up for failure if it admitted her; therefore, the Institute revoked her admission. The Disability Coordinator stated that Applicant A was very upset and asked why the school was discriminating against her based on disability.

The Registrar stated that, even though he conducted the interview of Applicant A, the Former Chief Academic Officer actually made the ultimate decision to revoke Applicant A's admission. He stated that, if not for the Former Chief Academic Officer's January 22 email, Applicant A would not have had her admission to the Program revoked because he believed she would have succeeded in the Program even after the interview. Applicant A's Educational Recruiter also stated that, based on her experience with Applicant A, she believed Applicant A would have succeeded in the Program. The Former Chief Academic Officer, however, told OCR that the Registrar made the ultimate decision to revoke her

admission based on the interview. He stated that he was not consulted on the final decision, which was made after he sent his January 22 email.

The Educational Recruiter, Manager of Student Services, Disability Coordinator, Registrar, and Former Chief Academic Officer told OCR that they were not aware of any other student, disabled or nondisabled, whose admission was revoked. In addition, the Registrar stated that, prior to the interview of Applicant A, he has not interviewed any applicant for the Program and has not been asked to do an interview of any student for the Program.

Applicable Legal Standards

The Section 504 regulation, at 34 C.F.R. § 104.4(a), provides, in part, that no qualified person with a disability shall, on the basis of disability, be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department. The Section 504 regulation, at 34 C.F.R. § 104.42(a), provides that a qualified person with a disability may not, on the basis of disability, be denied admission or be subjected to discrimination in admission or recruitment.

In order to be subject to the protections of Section 504, an individual must be a qualified person with a disability. The Section 504 regulation, at 34 C.F.R. § 104.3(j)(1), defines an individual with a disability as a person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. Pursuant to 34 C.F.R. § 104.3(k)(3), a qualified individual with a disability, with respect to post-secondary education, is one who meets the academic and technical standards requisite to participation in the recipient's education program. A college may adopt neutral, consistently applied rules and criteria to ensure that students with and without disabilities meet the academic and technical requirements for participation in their educational program with or without academic adjustments and reasonable modifications.

To establish that a student has been discriminated against on the basis of disability under Section 504, OCR must find that the recipient's actions were taken against the student on the basis of disability. To establish a violation, OCR considers whether there is evidence of intentional discrimination on the basis of disability. Evidence of discriminatory intent may be direct or circumstantial. OCR initially examines whether there is direct evidence of discriminatory bias by a recipient based on a student's disability. Direct evidence includes conduct or statements by persons involved in the decision-making process that may be viewed as directly reflecting the alleged discriminatory attitude. Any direct evidence of discrimination must show that discrimination motivated the denial of an educational benefit or other adverse action.

Analysis and Conclusion

OCR determined that Applicant A is a qualified person with a disability within the meaning of Section 504. The evidence established that Applicant A produced documentation to the Institute noting deficits in XXXXXX; the Institute does not dispute that Student A is a student with a disability. The evidence also established that Applicant A met the academic and technical standards set forth in the Admissions Policy, as she was admitted as a student for the February 2013 quarter.

The evidence established that the Institute revoked Applicant's admission in January 2013 only after she submitted documentation of her disability in an effort to obtain modifications for her disability. After she submitted this documentation, the Former Chief Academic Officer referenced her XXXXXX and explicitly stated that the Institute "cannot admit a student with XXXXXX" in email correspondence with the Disability Coordinator. The documentation clearly suggested that the Institute impose an additional admission requirement on Applicant A, namely requiring that she be interviewed by the Registrar prior to making the final decision on admissions, which is not regularly imposed on other applicants. The evidence suggests that none of the witnesses interviewed by OCR recalled any other admitted student being required to participate in an interview. The Registrar and the Educational Recruiter, who had direct dealings with Applicant A during the admissions process, both said they believed Applicant A would have succeeded in the Program. Based in part on the inconsistent treatment of Applicant A in the admission process, OCR finds credible the Registrar's assertion that Applicant A's admission would not have been revoked but for the Former Chief Academic Officer's January 22 email. OCR found no other instances when a student's admission was revoked and there is no Institute policy that permits an interview to result in revocation of a student's admission.

OCR concludes that the Institute, therefore, violated Section 504 in revoking Applicant A's admission to the Institute based on a disability. The Institute has provided the enclosed agreement to OCR, which, when fully implemented, will correct the compliance problems found in this investigation. OCR will monitor the agreement to ensure compliance.

This concludes OCR's investigation of the complaint and should not be interpreted to address the Institute'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.

Please be advised that the Institute 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 received such a

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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 privacy.

The Complainant may file a private suit in federal court whether or not OCR finds a violation. If you have any questions, please contact Sunita Kini-Tandon, OCR Attorney, at (312) 730-1452 or Sunita.Kini-Tandon@ed.gov.

Sincerely,

/s/

Jeffrey Turnbull
Team Leader

Enclosure

cc: Ms. Jill Jones