



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

5 POST OFFICE SQUARE, 8TH FLOOR
BOSTON, MASSACHUSETTS 02109-3921

September 10, 2014

Wilfredo Nieves, Ed.D
President
Capital Community College
950 Main St.
Hartford, CT 06103

Re: OCR Complaint No. 01-11-2052

Dear President Nieves:

The Office for Civil Rights (OCR) in the U.S. Department of Education (Department) has completed its investigation of the above-referenced complaint which involved an allegation that Capital Community College (College) failed to provide timely access to a sign language interpreter for a student with hearing impairments in its XXXXXXXXXXXXXXXXXXXXXXX program. The College has agreed to resolve this matter by implementing the enclosed resolution agreement (Agreement) which, when fully implemented, will be sufficient to resolve this complaint. OCR's investigation is detailed below.

OCR has jurisdiction over this complaint under Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (Title II). As a recipient of Federal financial assistance and a public entity, the College is required to comply with Section 504 and Title II.

Legal Standard

The Section 504 regulation at 34 C.F.R. Section 104.44(a) and the Title II regulation at 28 C.F.R. Section 35.130 have been interpreted to require recipients to provide academic adjustments to qualified college students with disabilities who request them and provide appropriate documentation in support of their request, to the extent such adjustments are necessary to avoid discrimination on the basis of disability. In addition, the Section 504 regulation at 34 C.F.R. Section 104.44(d) and the Title II regulation at 28 C.F.R. Section 35.160(b)(1) require recipients of federal financial assistance from the Department and public entities, respectively, such as the College, to furnish appropriate auxiliary aids and services where necessary to afford qualified individuals with disabilities – including, under Title II, applicants, participants, companions, and members of the public – an equal opportunity to participate in, and enjoy the benefits of, the public entity's services, programs, and activities.

To be entitled to academic adjustments or auxiliary aids and services (sometimes referred to as reasonable accommodations), a postsecondary student with a disability must provide adequate notice that the accommodations are needed, by informing the postsecondary institution of his or her disability and identifying needed accommodations. An institution may develop reasonable procedures for students to follow in requesting accommodations, including reasonable requests that the student provide the results of medical, psychological or education diagnostic tests and professional prescriptions that support the existence of a disability and the need for the requested supports, but it must provide adequate notice of any such procedures to students seeking accommodations. The institution must also

provide fair notice to a student of any deficiencies that the institution has found in the documentation, in order to give the student a chance to cure them.

Once a student has notified a postsecondary institution of the need for reasonable accommodations, the institution has an obligation to engage the student in an interactive process to determine the appropriate accommodations to be provided. The institution should do so in consultation with the student; additionally, although institutions have flexibility in choosing the specific accommodations they will provide, they must nonetheless ensure that the accommodation selected is effective.

Beyond engaging in the initial process of establishing the appropriate accommodations, the postsecondary institution is obligated to ensure that these accommodations are made available and to respond to problems that arise after the initial accommodations process. Similarly, the student must remain engaged in an interactive process with the institution beyond the initial stage of determining what accommodations are appropriate. If the accommodations are not provided, or are not effective in meeting the student's needs, the student should notify the institution as soon as possible. The student and the institution should work together to resolve the problem, including by, as appropriate, modifying the accommodations or identifying other effective accommodations to be provided.

In disputes over the need for accommodations, OCR considers whether the institution's process for addressing such circumstances complies with the requirements of Section 504/Title II. If a requested accommodation is refused, OCR examines whether the institution took reasonable steps to obtain a professional determination of whether the requested accommodation is necessary for the student to effectively participate in the recipient's program, and whether the institution offered an effective alternative for the accommodation it refused.

Facts and Analysis

The Student clearly notified the College of her need for a sign language interpreter on November 19, 2010. Her program orientation began on January 4, 2011, but she did not receive any interpreter services until the latter part of February. The key question under consideration in this case was whether the Student fully followed the College's procedures for requesting accommodations, or whether some failure to do so on her part mitigated the College's delay in providing the accommodations.

The College's procedures, at the time of the Student's admission, stated,

To request reasonable accommodations the student should voluntarily disclose a documented disability. The student should contact the Learning Disabilities Specialist to make an appointment. The student should provide appropriate documentation to determine eligibility for reasonable accommodations at least thirty (30) days prior [to] the beginning of the semester; and once the student is registered for courses at CCC.

If a student has been approved for accommodations, he or she must request a Letter of Accommodation from the Learning Disabilities Specialist each semester.

As required by these procedures, the Student made a timely request for accommodations and complied with the procedures described by the College when she met with the Learning Disabilities Specialist and requested accommodations on November 19, 2010, more than 30 days before the XXX program began on January 4, 2011. There has never been any dispute about whether the Student needed accommodations or further clinical documentation to support her request. The only question is whether the Student had notice that there were any requirements other than contacting the Learning Disabilities Specialist that she needed to comply with in order to receive accommodations and, in particular, whether it is more

likely than not that the Student had notice that she also had to bring in her admissions letter before she could receive accommodations, as the College asserted.

We have considered the interviews and the documentary evidence and conclude that it is more likely than not that the Student followed the procedures about which she had adequate notice. Throughout the admissions process, she acted in a very timely fashion. She applied for the January 2011 program back in July 2010. She clearly complied with the stated requirement that she ask for accommodations 30 days before the semester began. There are no other clearly-stated requirements in the College's procedures. While there is conflicting evidence concerning whether and how many times the Student renewed the request for accommodations between November 19, 2010 and January 6, 2011, OCR concluded that it is more likely than not that, if the Student had clearly been informed that her accommodations request would not go forward unless she brought in an admissions letter or took other steps, she would not have waited until 2 days after the January 4, 2011 orientation to do so. When asked whether she thought that the Student had procrastinated in requesting accommodations, the College's Dean said that she did not think so, but she thought the Student may not have understood the process. In these circumstances, we conclude that it is more likely than not that the Student complied with the College's procedures about which she had been aware.

In addition, even if the Student had not appropriately requested accommodations until January 6, 2011, as the College claimed, the College still did not provide accommodations in a timely manner. The Student did not receive interpreter services until at least February 15, 2011. She attended over 40 hours of classes without an interpreter. The College had argued that they are not to blame for the delay in interpreter services. The Learning Disabilities Specialist's March 24, 2011 memo places responsibility on the Connecticut Commission on the Deaf, stating that the Commission was confused about the start date for the Program because it was different from other academic programs at the College, and that the Commission found it difficult to find an interpreter because of the unusual class schedule. The issues with the Commission would not excuse the College's failure to provide interpreters once they were aware of the problem, however; ultimately, the responsibility for ensuring that interpreter services were provided rested with the College. The Dean's email of February 24, 2011 stated that the College could not, under state law, hire interpreters directly and that it was therefore necessary to rely on the Commission to provide interpreters. Even if correct, this statement would not absolve the College from responsibility, as the requirements of Section 504 and Title II would take precedence over state law. There is no conflict between state and federal law here, though -- Connecticut law requires that interpreters be registered, but it does not require schools to obtain interpreters through the Commission. Conn. Gen. Stat. Section 46a-33a. In these circumstances, we find that the College did not comply with its obligation to provide timely accommodations to the Student.

Under the enclosed Agreement, the College will allow the student to retake the XXX 111 class, to take the XXX 112 class free of tuition and fees in lieu of reimbursement for the student's payment for sign language interpreter services, to remove the negative grade in the XXX 111 class and the probationary status that resulted from that grade, and to clarify its procedures for requesting academic adjustments. As is our standard practice, OCR will monitor the College's compliance with this Agreement. The College's first monitoring report is due on October 1, 2014 and the final monitoring report is due June 30, 2015.

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. 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 Complainant may file another complaint alleging such treatment. Please also note that the complainant may file a private suit in federal court, whether or not OCR finds a violation in this case.

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.

We would like to thank you and your staff for your assistance and cooperation with OCR. We would also like to extend a special thanks to Attorney Thomas Clark, Assistant Counsel for the Board of Regents for Higher Education, for his assistance bringing this complaint to resolution on behalf of the College. If you have any questions about this letter you may contact Ms. Jane López by phone at 617-289-0083, or by email at Jane.Lopez@ed.gov. You may also contact me directly at 617-289-0004.

Sincerely,

Trina Ingelfinger
Acting Regional Director

Cc: Thomas Clark

Enclosure