



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION I
5 POST OFFICE SQUARE, 8th FLOOR
BOSTON, MASSACHUSETTS 02109-3921

June 25, 2019

Dr. Joseph Chillo
President
Newbury College
129 Fisher Avenue
Brookline, MA 02445
Joseph.Chillo@Newbury.edu

Re: Complaint No. 01-19-2082
Newbury College

Dear Dr. Chillo:

This letter is to advise you of the outcome of the complaint that the U.S. Department of Education (Department), Office for Civil Rights (OCR) received against Newbury College (the College). The Complainant alleges that the College discriminated against him on the basis of disability. Specifically, the complaint alleges that the College failed to provide Complainant with appropriate academic adjustments to accommodate his disability during the Spring 2019 semester. As explained further below, before OCR completed its investigation, the College expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement (Agreement).

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 any program or activity receiving federal financial assistance from the Department. Because the College receives federal financial assistance from the Department, OCR has jurisdiction over it pursuant to Section 504.

Because OCR determined that it has jurisdiction and that the complaint was timely filed, OCR is opening the following allegation for investigation:

Whether the College failed to provide Complainant with appropriate academic adjustments in the Spring 2019 semester to accommodate Complainant's disability, in violation of 34 C.F.R. Section 104.44(a).

Summary of Preliminary Investigation

During the investigation, OCR reviewed documents provided by the Complainant and the College and interviewed the Complainant. Before OCR completed its investigation, the College expressed a willingness to resolve the complaint on May 9, 2019.

The information reviewed by OCR to date shows that during the Spring semester of 2019, the Complainant was enrolled at the College as a senior in the following courses: XXXX; XXXX; XXXX; and XXXX. Early in the XXXX semester, the Complainant requested certain academic adjustments for the semester, including extended time on exams and extra time to complete course assignments.

The College and the Complainant confirmed that the College granted each of these accommodations¹ except extended time on assignments. Rather, the College informed Complainant that it would not provide the Complainant extended time to complete assignments that the Complainant had a week or more to complete, because it would “be considered a fundamental alteration of the course.”

Correspondence provided by the College indicates that on XXXX, 2019, the Complainant notified the XXXX that he did not complete some of his weekly assignments for his XXXX course. The College’s data demonstrates that although his XXXX professor (Professor) provided the Complainant extended time for tests and quizzes, he did not provide the Complainant extended time to complete XXXX because they were made available at the beginning of the semester. Nonetheless, on XXXX, 2019, the XXXX informed the Complainant that his Professor would accept his “late XXXX” and that if he could “keep up with the XXXX,” they could see if the Complainant could pass the course. According to the College, in late XXXX, the Complainant withdrew from the XXXX course rather than submit the missing assignments. In contrast, the Complainant alleges that he withdrew because he was not given extra time on assignments, which led him to fall behind in the course.

The Complainant currently needs XXXX credits to graduate from the College. The spring 2019 semester at the College has ended and the College intends to cease operations after this semester.

To complete the investigation, OCR would need to interview the XXXX and the XXXX to determine whether the College engaged in an interactive process with Complainant, appropriately considering the Complainant’s individual needs in concluding that granting him extended time on assignments would be a fundamental alteration to the College’s curriculum.

Prior to the conclusion of OCR’s investigation and pursuant to Section 302 of OCR’s *Case Processing Manual*, the College expressed an interest in resolving this complaint and OCR determined that a voluntary resolution is appropriate. Subsequent discussions between OCR and the College resulted in the College signing the enclosed Agreement which, when fully implemented, will address all of the allegations raised in the complaint. OCR will monitor the College’s implementation of the Agreement.

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).

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, assists, or participates in a proceeding under a law enforced by OCR. 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.

If you have any questions, you may contact Jacob Tabor, Civil Rights Attorney at (617) 289-0123 or by e-mail at Jacob.Tabor@ed.gov.

Sincerely,

Abra Francois
Compliance Team Leader

Enclosure

cc: Phil Catanzano, Esq.
Phil.Catanzano@hklaw.com