



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

December 11, 2019

Mary-Beth A. Cooper, PhD, DM
Via email: mbcooper@springfieldcollege.edu

Re: Complaint No. 01-19-2131
Springfield College

Dear President Cooper:

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 Springfield College (College). The Complainants allege that the College discriminated against their daughter (Student) on the basis of disability by failing to provide adequate gluten-free dining options to her, as a student who has celiac disease. 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), 29 U.S.C. Section 794, 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.

Summary of Preliminary Investigation

During the investigation, OCR reviewed documents provided by the Complainants/Student and the College; and interviewed the Complainants, the Student, and a College administrator. Before OCR completed its investigation, the College expressed a willingness to resolve the complaint.

Background

The Student has celiac disease, an autoimmune disease where the ingestion of gluten leads to damage in the small intestine. XX.
XXXXXXXX the Student and the Complainants
XX met with the Director of the Academic Success Center and provided documentation of her disabilities, including celiac disease. The Student reported to OCR that the Director of the Academic Success Center did not provide her with any information about dining accommodations and instead referred her back to the Director of Dining Services, an Aramark employee.

The Student alleged that, XXXXXXXXXXXXXXX, she found that the College’s gluten-free dining options were limited and not comparable in nutrition to the meals available to other students.

The Department of Education’s mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

She told OCR that oftentimes the gluten-free meals offered at the College’s dining hall were not filling, well-balanced, and/or were frequently repeated (*i.e.*, served for both lunch and dinner). In addition, the Student alleged that she cannot eat anything from the restaurants in the campus food court (Union Station) due to cross-contamination concerns, and noted that, as a result, she has difficulty spending the “Dining Dollars” from her meal plan.¹

The Student reported to OCR that she has concerns about cross-contamination in the dining hall because the cafeteria is self-serve. She noted that food from the “made without gluten” station is supposed to be pre-plated or served by cafeteria staff; however, she has seen staff put food from the “made without gluten” station on a plate with gluten items. She told OCR that she also has concerns that not all cafeteria staff have been properly trained on food allergies and cross-contamination because, based on her interactions with managers and staff, some seem unfamiliar with the issues involved (*e.g.*, the difference between “wheat-free” and “gluten-free”) and there are a number of rotating staff and temporary workers. She also told OCR that she has concerns about the accuracy of signage concerning foods containing specific allergens.

According to the College, Dining Services provides a variety of daily made-without-gluten options for students in the College’s dining hall. In particular, the College reported that it has two stations (“made without gluten” and “made without the top 8 allergens”) that prepare food without certain allergens and gluten; the menu items at these stations are created by staff who have completed a mandatory allergen training and are individually plated to prevent cross-contamination.² The stations have dedicated equipment, including a microwave and toaster, to be used only for gluten-free items, as well as a refrigerator stocked with prepackaged gluten-free items and meals. The College reported that students may make individual requests for meals without certain allergens and gluten by communicating directly with staff, chefs, or managers at the dining stations.³ The College also reported that students are able to request gluten-free prepackaged meals with 24-hours’ notice for dine-in or to-go by utilizing the “Chef Express Form.”

The College acknowledged to OCR that, while some of the restaurants in Union Station offer food items made without gluten, none of those items, except for prepackaged items, is “gluten-free” because the vendors share the same kitchen, and thus, there is a risk of cross-contamination. The College stated, however, that the retail grocery store (POD Market), which is in the same building as Union Station, has a variety of gluten-free prepackaged meals and

¹ The College offers student meal plans that include a combination of meals from the main dining hall and “Dining Dollars” that can be used at any of the College’s on-campus dining locations, such as the restaurants in Union Station and the retail grocery store (POD Market). All meal plans offered by the College include “Dining Dollars.”

² The College provided OCR with documentation regarding allergy trainings for Dining Services staff and managers, as well as guidelines for staff to follow to avoid cross-contamination (*e.g.*, use of separate service utensils, perform audits).

³ The College reported to OCR that it recently implemented a locker system in the dining hall for eligible students to store gluten- or allergen-free food items and small appliances, like toasters. The College explained that each student with dietary needs will be assigned a locker and that he/she can place requests with Dining Services for particular items. The Complainants informed OCR that, XXXXXXXX, the College notified them by email that Dining Services had installed lockers and is implementing a new program for students with food allergies.

quick serve items for purchase through the meal plan. The College noted also that there is a designated gluten-free microwave where students can heat up meals purchased from the POD Market.

The Complainants reported to OCR that Dining Services has made some improvements to its dining offerings over the past year, noting, for example, that the College implemented coolers stocked with gluten-free items and frozen meals and a gluten-free microwave in the dining hall; a gluten-free section in the POD Market; and individually-prepared meals for the Student that required advanced notice. The Complainants alleged, however, that, despite these changes, the Student still found the gluten-free offerings inadequate and continued to have concerns regarding cross-contamination.

The Complainants told OCR that the College reimbursed them for the cost of the Student’s meal plan for XXXXX semester.

XX.

Legal Standard

The Section 504 regulation, at 34 C.F.R. § 104.43(a), provides that a qualified person with a disability may not be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in any postsecondary aids, benefits, or services on the basis of disability. Such discrimination may include a failure to make reasonable modifications⁴ in the College’s policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability.

Colleges may establish reasonable requirements and procedures for individuals with disabilities to provide documentation of their disability and request reasonable modifications. Individuals with disabilities are responsible for obtaining disability documentation and for knowing and following the procedures established by the college. Once the individual with a disability has provided adequate notice and documentation of his/her disability and the need for modifications due to the disability, the college must provide the individual with a disability with reasonable modifications of the college’s policies, practices, or procedures as necessary to avoid discrimination on the basis of disability. However, the college is not required to make modifications that would result in a fundamental alteration of the college’s program (*e.g.*, by altering an essential aspect of the program) or impose an undue burden.

In determining what modifications are appropriate for a student with a disability, the college should familiarize itself with the student’s disability and documentation, explore potential modifications, and exercise professional judgment. The question of whether a college has to make modifications to its policies, practices, or procedures is determined on a case-by-case basis.

⁴ The College and the Complainants/Student frequently refer to academic adjustments and reasonable modifications 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 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).

OCR generally does not substitute its judgment for that of qualified educators and professionals regarding modifications. Instead, OCR reviews relevant factual evidence to determine whether a college acted in a reasonable manner and whether it took appropriate steps consistent with Section 504 in making decisions regarding a student’s eligibility for modifications. Section 504 envisions a meaningful and informed process with respect to the provision of modifications, *e.g.*, through an interactive and collaborative process between the college and the individual with a disability. If a college denies a request for a modification, it should clearly communicate the reasons for its decision to the individual with a disability so that he or she has a reasonable opportunity to respond and provide additional documentation that would address the college’s objections.

Preliminary Analysis

1. The College’s Dining Accommodations Process

The Student/Complainants reported to OCR that, XXXXXXXXXXXXX, they met with the Director of the Academic Success Center and provided documentation of her disabilities. They reported that the Director of the Academic Success Center did not provide them with any information about the dining accommodations process and instead referred them to the Director of Dining Services, an Aramark employee. The College reported to OCR and provided correspondence showing that, since their initial meeting, the Student/Complainants and Dining Services remained in regular communication regarding dining options, and that the Student/Complainants were also in communication with the College regarding their concerns. The Complainants contend that Dining Services has been unable to adequately address the Student’s concerns regarding gluten-free dining options and cross-contamination and that their attempts to resolve these issues with College administrators have been unsuccessful.

Based on information and documents provided by the parties and available on the College’s website, OCR has concerns about the process by which the College handled the Student’s requests for dining accommodations based on her celiac disease. In particular, information provided by the Complainants/Student suggests that, instead of having a designated employee engage in an interactive and collaborative process with the Student, the College delegated the decision regarding reasonable modifications to its outside food vendor. OCR notes that the Complainants/Student did have some communication with College administrators regarding the Student’s requests for modifications (*e.g.*, XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX); however, OCR does not have sufficient information, including the extent of their interactions, to determine whether the College acted in a reasonable manner and whether it took appropriate steps consistent with Section 504. OCR also does not have any information as to whether the College administrators and/or Aramark managers and staff who communicated with the Student regarding her requests had relevant training in Section 504.⁵

Because the College requested a voluntary resolution, and OCR deemed such a resolution appropriate, OCR has not fully investigated the process by which the College handled the Student’s requests for dining accommodations in this case. The Agreement will ensure that the

⁵ OCR also notes that, during our preliminary investigation, the College’s dining accommodations process, as described to OCR by the College, appeared to conflict with the procedures on the College’s website.

College has a designated employee (Designated Employee) to be responsible for all requests for dining accommodations on the basis of food allergies, celiac disease, or other disabilities requiring a special diet; and that the College publishes procedures notifying students who are requesting dining accommodations to contact the Designated Employee and of the forms and documentation required for requesting accommodations. The Agreement will also ensure that the revised procedures relating to dining accommodations include a cross-reference to the College's Section 504 procedures. In addition, the Agreement will ensure that the Designated Employee and other College administrators and staff involved in the process of deciding and implementing dining accommodations are properly trained on the College's legal obligations under Section 504 and the College's revised dining accommodations procedures.

2. Dining Accommodations Provided During the XXXXX School Year

The parties disagree on whether the College provided sufficient dining accommodations to the Student during the XXXXX school year. The Student/Complainants reported two main concerns: a lack of nourishing, healthy gluten-free options and a failure to ensure that the options available were not cross-contaminated with gluten. The Student cited to OCR specific examples where she was not offered well-balanced gluten-free meals. The Student also reported to OCR that she has observed cross-contamination issues in the dining hall, and that interactions with certain Dining Services staff suggest a lack of familiarity with the concept of gluten-free and cross-contamination.

The College provided OCR with information and documentation about the daily made-without-gluten and gluten-free options for students in the College's dining hall and POD Market. In addition, the College provided OCR with documentation regarding allergy trainings for Dining Services staff and managers, as well as guidelines for staff to follow to avoid cross-contamination.

Because the College requested a voluntary resolution, and OCR deemed such a resolution appropriate, OCR has not fully investigated whether the College discriminated against the Student on the basis of her disability by failing to provide reasonable dining accommodations during the XXXXXX school year. The Agreement will require the College to reimburse the Complainants for the cost of the Student's meal plan for her XXXXX semester. The Agreement will also ensure that the College develops and implements a comprehensive plan to ensure that students with food allergies, celiac disease, or other disabilities requiring a special diet have an equal opportunity to participate in and/or benefit from its dining services as fully as students without disabilities. Lastly, the Agreement will ensure that training is provided to all Dining Services administrators, managers, and staff on, *inter alia*, celiac disease and food allergies, cross-contamination, and how to handle inquiries regarding food allergies and disability-related dining accommodations.

Conclusion

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.

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.

Sincerely,

/s/ Michelle Kalka

Michelle Kalka
Compliance Team Leader

Enclosure

cc: XXXXXXXXXXXXXXXXXXXXXXXX