



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

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March 26, 2015

Nancy Kleniewski, Ph.D.
President
State University of New York – College at Oneonta
108 Ravine Parkway
Oneonta, New York 13820

Re: Case No. 02-14-2385
State University of New York – College at Oneonta

Dear Dr. Kleniewski:

This letter is to notify you of the determination made by the U.S. Department of Education, New York Office for Civil Rights (OCR) in the above-referenced complaint filed against the State University of New York (SUNY) - College at Oneonta (College). The complainant alleged that the College discriminated against him, on the basis of his disability, by failing to provide him with appropriate and effective academic adjustments/auxiliary aids for the XXXX XXX - XXXX for the XXXXXXXX XXXXX course (the Course) he took during the spring 2014 semester.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities receiving 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 (the ADA), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35. Under the ADA, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The College is a recipient of financial assistance from the Department and is a public post-secondary educational institution. Therefore, OCR has jurisdictional authority to investigate this complaint under both Section 504 and the ADA.

In its investigation, OCR interviewed the complainant and College staff. OCR also reviewed documentation that the complainant and the College submitted. OCR made the following determinations.

The complainant alleged that the College discriminated against him, on the basis of his disability, by failing to provide him with appropriate and effective academic adjustments/auxiliary aids for the Course. The complainant asserted that this resulted in his receiving a failing grade in the Course for spring 2014 semester.

The regulation implementing Section 504, at 34 C.F.R. § 104.44(a), requires recipients to modify academic requirements when necessary to ensure that the requirements are not discriminatory on the basis of disability, and to take steps to ensure that no qualified individual with a disability is subjected to discrimination because of the absence of education auxiliary aids. At the postsecondary level, it is the student's responsibility to disclose a disabling condition and to request academic adjustments or auxiliary aids. In reviewing allegations regarding the provision of academic adjustments or auxiliary aids, OCR considers whether: (1) the Student provided adequate notice to the recipient that the academic adjustments or auxiliary aids were required; (2) the academic adjustments or auxiliary aids were necessary; (3) the appropriate academic adjustments or auxiliary aids were provided; and (4) the academic adjustments or auxiliary aids were of adequate quality and effectiveness.

The complainant has a XXXXXXXXXXXXX disability that causes XXXX to his XXXXX XXX and XXXX. The complainant informed OCR that his disability does not allow him to XXXXXXXX. The complainant enrolled in the College in fall 2012, and was scheduled to graduate in May 2014. In or around fall 2012, the complainant registered with the Student Disability Services Office (SDS). The SDS reviewed the complainant's medical documentation and granted the complainant the following academic adjustments/auxiliary aids: (1) taking exams/quizzes in a distraction-free area; (2) double time on all exams; (3) XXXXXXX XXXXX XXXXX XXXXX to him; (4) not having to XXXX XXX XXXXXXXXXXX XXXXXXX; (5) use of a computer with adaptive equipment for each exam; (6) a note taker; (7) recording of class lectures; and (8) use of his personal laptop in class to record class lectures.

The complainant took the Course during the spring 2014 semester. The Course consisted of XXXXXXX XXXXXXX XXXXXXXXXXXXXX XXXXXXXXXXX XXXXX, XXXXXXXXXXX, XXXXXXXXXXX, XXXXXXXXXXX, XXXX XXXXXXXXXXX and XXXXXXXXXXX XXXXXXXXXXX. The Professor's method of instruction consisted of lecture, question/answer, discussion, demonstrations, guided practice and independent practice.

The Professor stated that students completed independent practice assignments outside of the class period, and that it consisted of completing XXXX XXXXXXXXXXX relating to the prior class lectures. The Professor stated that independent practice was not included in the grade calculation for the Course; however, she assigned independent practice to the Course students to help them understand the Course material and reviewed the independent practice assignments at the beginning of each class. Accordingly, the independent practice assignments were necessary for participation in the Course.

Before the beginning of the spring 2014 semester, in or around December 2013, the complainant first requested that the SDS Director (the Director) provide him with a XXXXX XXXXXXX for the Course for the spring 2014 semester. The complainant reminded the Director that he had to withdraw from a XXXXXXX course during the fall 2013 semester because he lacked viable accommodations to allow him to XXXX and complete the XXXXXXX and XXXXXXXXXXX XXXXXXXXXXX required for the course on his computer. In electronic mail messages (emails) dated December 30, 2013, and January 17, 2014, the complainant again stated to the Director that he needed to be able to use a computer program to take the Course, noting that he had to withdraw from the XXXXXXX course in fall 2013.

The complainant explained to OCR that he needed the XXXXX XXXXXXXX on his computer to assist him with the independent practice assignments, as these assignments had to be completed outside of class and were necessary for participation in the Course. The complainant explained that he could not XXXXXXXXXXX XXXX out the XXXXXXXXXXXXXXX, so the software would assist him in formulating the XXXXXXXXXXXXXXX so that he could XXXX XXX the XXXX XXXXXXXX. The complainant further explained that he XXXXXXXXXXX the XXXXXXXXXXX himself after the software formulated the XXXXXXXXXXX.

OCR determined that the Course began on or about January 16, 2014. On or about January 21, 2014, the complainant again inquired about his receiving software for the Course. In an email to the complainant dated January 21, 2014, the Director stated that he had asked colleagues about a XXXX program to assist the complainant and did not receive many responses; however, one suggestion was for the XXXX XXXX XXXX program.¹ On or about February 2, 2014, the complainant informed the Director that the XXX XXXX XXXX software program did not work on his Mac computer, and was only compatible with a PC.

In an email dated March 21, 2014, the complainant informed the Course Professor that his grades were suffering without the software. In an email to the Director dated April 28, 2014, the complainant complained again, stating, “I feel like the school was not prepared for a student with my type of disability, which made it hard to properly accommodate my needs for a XXXXXXX class. You had thought a computerized XXXXXXX program would help, but were not able to find one for me, which I could use.” The complainant noted that the other accommodations and tutoring that he received were not effective.

In an email dated May 11, 2014, the complainant informed the Director that he did not believe he had received viable and adequate accommodations to successfully complete the Course, noting that he had requested software assistance from the SDS as early as fall 2013 to complete his XXXXXXX requirement and graduate in May 2014. On May 12, 2014, the Director forwarded the complainant’s email to the College’s Affirmative Action Officer (AAO), noting that he had repeatedly told the complainant that it was “his responsibility to do all expected work off campus”.

OCR determined that the complainant ultimately received a failing grade in the Course. The complainant’s spring 2014 semester grade point average (GPA) was 2.91; and cumulative GPA was 3.68. The complainant stated that in summer 2014, he re-took the Course at SUNY Broome College (Broome). The complainant informed OCR that Broome provided him with the XXXXX software, XXXXXXXXXXXXXXX. The complainant used the software program to take exams and complete his independent practice assignments, and earned a grade of “B” in the Course at Broome.

¹ The XX XXXXXXXXXXX offered the following products: (1) XX XXXX - The Original XXXXXXXXXXXXXXX Drawing Tool; (2) XX XXXXXXXXXXX- Astoundingly Quick XXXXXXXXXXXXXXX; (3) XX XXXX - Powerful XXXXXXXXXXX made Dead Simple; and (4) XX XXXX - A XXXXXXXXXXXXXXX Package Designed for Secondary Schools.

The Director advised OCR that although he was aware that the software was incompatible with the complainant's computer, he believed the College's providing the complainant with the XXXXX and other accommodations fulfilled its obligations regarding the complainant's request for academic adjustments and auxiliary aids. The Director acknowledged that he was aware that the complainant struggled academically in the Course; and that he never followed up with the complainant regarding any additional software and/or other accommodation for independent practice to assist the complainant with the Course.

The Director informed OCR that the reason the College did not pursue additional auxiliary aids for the complainant for Course was because the complainant needed the software to help him with his independent practice assignments. The Director acknowledged that the XXXXX software could have been installed in a computer lab; but, stated that the complainant did not make the request. The Director further stated that even if a student's overall grade depended upon the out-of-class assignments, such as independent practice or "homework," he would not consider providing the software because the College's position always has been that if a student needs academic adjustments or auxiliary aids "outside the classroom," the student is responsible for obtaining them on their own. The Director stated that there is no written policy in the College's procedural handbook stating that accommodations are not provided to students with disabilities at home for out-of-class assignments; but, in his 15 years at the College, the College has never provided such academic adjustments/auxiliary aids to students.

Based on the above, OCR determined that the evidence indicated that the College has a policy pursuant to which it does not provide students with auxiliary aids to assist them with assignments to be completed off campus, including independent practice. OCR determined that there was sufficient evidence to establish that the College discriminated against the complainant, on the basis of his disability, by failing to provide the complainant with appropriate and effective academic adjustments/auxiliary aids for the Course during the spring 2014 semester that would allow the complainant to complete independent practice assignments out of the classroom; and, that such assignments were necessary for participation in the Course. The College acknowledged that the complainant repeatedly complained that the academic adjustments and auxiliary aids that the College provided to him for the Course were not effective; and the complainant was unable to complete independent practice assignments, thereby preventing him from fully participating in the Course.

On March 2, 2015, the College agreed to implement the enclosed resolution agreement, which addresses the compliance concerns identified in this letter. OCR will monitor the implementation of the resolution agreement. If the College fails to comply with the terms of the resolution agreement, OCR will resume its investigation.

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.

The complainant may file a private suit in federal court whether or not OCR finds a violation.

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. 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, it will seek to protect, to the extent provided by law, personally identifiable information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions regarding OCR's determination, please contact Michele Ginter-Barbara, Compliance Team Investigator, at (646) 428-3816 or michele.ginter-barbara@ed.gov; or Jeanette Tejada Bustos, Compliance Team Attorney, at (646) 428-3777 or jeanette.tejadabustos@ed.gov; or me, at (646) 428-3801 or nadja.r.allen.gill@ed.gov.

Sincerely,

Timothy C.J. Blanchard

Encl.

cc: XXXXXX XXXXX, Esq.