

June 9, 2017

B. Kaye Walter, Ph.D.
President
Bergen Community College
400 Paramus Road
Paramus, New Jersey 07652

Re: Case No. 02-17-2047
Bergen Community College

Dear Dr. Walter:

This letter is to notify you of the determination made by the U.S. Department of Education, Office for Civil Rights (OCR), regarding the above-referenced complaint filed against Bergen Community College (the College). The complainant alleged that the College discriminated against his daughter (the Student), on the basis of her disability, by denying, in or around September 2016, the Student's appeal to change her grade from "E" to a "withdrawal" in her EDU 110 course (the course), taken during the spring 2016 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 or activities receiving financial assistance from the U.S. Department of Education (the Department). OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (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 a public postsecondary education system. Therefore, OCR has jurisdictional authority to investigate this complaint under both Section 504 and the ADA.

Pursuant to the regulation implementing Section 504, at 34 C.F.R. § 104.43(a), a qualified individual with a disability may not be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination under any postsecondary education program or activity. Additionally, the regulation implementing the ADA, at 28 C.F.R. § 35.130(b)(1)(i) and (vii), states that a public entity may not, on the basis of disability, deny a qualified individual with a disability the opportunity to participate in or benefit from any aid, benefit or service; or,

otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

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

OCR determined that the Student enrolled in the College and registered as a student with a disability (learning and communication impairments, and dyscalculia) in summer 2014. On January 1, 2016, the Student registered for four courses for the spring 2016 semester, including EDU 110 (the course). The Student informed OCR that in January 2016, she attempted to withdraw from the course and one other course using the College's online system, Web Advisor. She stated that she believed that she had successfully completed the process, but acknowledged that she did not verify that the withdrawals were processed for both courses.

In or around May 2017, the complainant received a tuition bill for the course, even though the Student believed that she had withdrawn from the course. The Student's transcript reflected an "E" grade for the course.¹ On June 24, 2016, the Student petitioned the College's Academic Standing Committee (Committee) to change her grade from "E" to "W" in the course. By letter dated October 6, 2016, the Committee notified the Student that it had denied her grade appeal. The complainant alleged that the College's failure to change the Student's grade constituted discrimination against the Student on the basis of her disability. The Student did not allege that the Committee treated her differently because of her disability, although she asserted that the Committee should have considered her disability and treated her more "sympathetically."

The College's Handbook states that a student is not officially withdrawn from the College or from any individual course unless the appropriate form has been filed or the student has dropped the course via the College's Web Advisor system. According to College staff who also sat on the Committee, the burden is on each student to follow up to ascertain whether the student's request to withdraw from a course is indicated correctly as a withdrawal in the Web Advisor system. The College stated that there was no record of the Student's withdrawing from the course, although she did not attend any of the course sessions.

Consistent with the College's withdrawal and grade policies, the College awarded the Student a grade of "E" in the course, rather than a grade of "W", for failing to withdraw from the course prior to the official deadline for the semester. According to the College's policy, students may petition the Committee to change an "E" grade to a "W", and such petitions should be filed when "circumstances beyond the student's control prevented the student from withdrawing from the course officially." College staff explained that this particular appeals process is intended to address extenuating circumstances that prevent a student from completing his/her studies (i.e., a one-time occurrence beyond a student's control such as an accident; medical emergency; or legal, catastrophic or other unforeseen event). College staff also informed OCR that administrative error by the College in processing a student's request to drop a course would be a

¹ The College's policy provides that an "E" grade, which is equivalent to a failing grade in the computation of a student's GPA, is assigned to students when they have completed too little work for an earned grade (i.e., A, B, C, D or F) and when they stop attending or never attended class, and do not withdraw by the official deadline.

legitimate basis for changing an “E” grade to a “W.” Committee members informed OCR that the Committee’s practice is to determine, by majority vote following the receipt of all information, whether to grant or deny a student’s appeal request.

The Committee reviewed the Student’s grade appeal at a meeting held on September 27, 2016. The Student’s appeal letter was read aloud during the meeting. The letter did not contain any assertion by the Student that she needed assistance or an accommodation to withdraw from the course using Web Advisor, and indicated that she had successfully withdrawn from another course using Web Advisor on the same date. The XXXXXXXX XXXXXXXXXX (the XXXXXXXXXX), who was a member of the Committee, and was also the Student’s academic advisor in spring 2016, reported to OCR that although the Student identified herself as a student with a disability to the College and received academic adjustments, she did not receive or require any academic adjustments pertaining to use of the Web Advisor system to add or drop a course. She further reported that the Committee did not consider any information about the Student’s status as a student with a disability, since the Student did not raise this information in her appeal.² The Committee tabled further consideration of the Student’s appeal, pending obtaining additional information from the College’s registrar related to the Student’s assertion of administrative error in the on-line process when she tried to drop the course through Web Advisor. Notwithstanding the Committee’s decision to obtain additional information, the administrative chair of the Committee issued a letter, dated October 6, 2016, denying the Student’s grade appeal.

The administrative chair informed OCR that she understood that the Committee had asked her to investigate with the registrar whether the Student was registered for the course; and that if the Student had registered for the course, her appeal would be denied. The administrative chair advised OCR that she went to the registrar and confirmed that the Student had registered for the course; but the administrative chair advised OCR that she did not inquire as to whether the Student attempted to withdraw from the course using the College’s on-line system.

The registrar informed OCR that she was not aware of any inquiry by the administrative chair concerning the Student in connection with her appeal, until after the filing of the instant OCR complaint. Additionally, the registrar stated that there would be no record to indicate whether an administrative error occurred if a student attempted, unsuccessfully, to withdraw from a course online.

On May 25, 2017, the College signed the enclosed resolution agreement to voluntarily resolve the allegation under Section 302 of OCR’s Case Processing Manual in lieu of further investigation.

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

² The XXXXXXXXXX stated that she did not disclose any information about the Student’s disability to the Committee.

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 individual 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, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions, please contact Michele Ginter-Barbara, Compliance Team Investigator, at (646) 428-3816 or michele.ginter-barbara@ed.gov; or, Jane Tobey Momo, Senior Compliance Team Attorney, at (646) 428-3763 or jane.momo@ed.gov.

Sincerely,

/s/

Timothy C.J. Blanchard

Encl.

cc: XXXXXXXXXXX XXXXXXXXXXX, Esq.