



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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**November 25, 2014**

**IN RESPONSE, PLEASE REFER TO: 03132323**

Dr. Bradley Gottfried, President  
College of Southern Maryland  
8730 Mitchell Road  
P.O. Box 910  
LaPlata, MD 20646-0910

Dear Dr. Gottfried:

This is to advise you that we have completed our investigation and reached a determination in the above-referenced complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against the College of Southern Maryland – Leonardstown Campus (the College). The XXXXXX (the Student) on the XXXXXX:

- 1) XXXXXX;
- 2) XXXXXX;
- 3) XXXXXX.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by any recipient that receives Federal financial assistance from the Department. OCR also has jurisdiction as a designated agency under Title II of the Americans with Disabilities Act of 1990 (ADA), and its implementing regulation, 28 C.F.R. Part 35, over complaints alleging discrimination on the basis of disability that are filed against public entities, such as public institutions of higher education. As a recipient of Federal financial assistance and a public entity, the College is subject to Section 504, the ADA and their respective implementing regulations. Section 504 and the ADA also prohibit retaliation.

OCR applies a preponderance of the evidence standard to determine whether the evidence is sufficient to support a particular conclusion. Specifically, OCR examines the evidence in support of and against a particular conclusion to determine whether the greater weight of the evidence supports the conclusion or whether the evidence is insufficient to support the conclusion. If we receive conflicting information from the Complainant and the College regarding key elements of our legal analysis, and the differences between the two accounts cannot be reconciled by the available evidence, then OCR will not be able to establish that a violation occurred.

During our investigation, we interviewed the Complainant and College staff, and reviewed documents submitted by the Complainant and the College. As a result of our investigation, OCR

found insufficient evidence to support Allegations #1 and #2. However, OCR found sufficient evidence to support Allegation #3.

### **APPLICABLE LEGAL STANDARDS**

The Section 504 regulation, at 34 C.F.R. Section 104.3(j), defines a person with a disability as any person who (i) has a physical or mental impairment which substantially limits one of more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment. OCR determined that the Student is an individual with a disability in accordance with 34 C.F.R. § 104.3(j). The Student has moderate to profound hearing loss which her audiologist described as educationally and socially significant and uses hearing aids and lip-reading to communicate with others. Therefore, OCR concluded that the Student's hearing impairment substantially limits the major life activities of hearing and communicating.

Section 504 and its implementing regulation at 34 C.F.R. § 104.4(a) provide that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any service, program or activity of a public entity or an entity that receives Federal financial assistance from the Department.

The Section 504 implementing regulations further define a qualified person with respect to non-educational services provided by a recipient as a person who "meets the essential eligibility requirements for the receipt of such services." 34 C.F.R. § 104.3(k)(4). Section 504 requires reasonable modifications to a program so a beneficiary can achieve the purposes of that program; recipients are not required to provide a modification that would fundamentally alter the program. The regulation implementing Title II, at 28 C.F.R. § 35.130(b)(7), contains a similar standard, requiring a public entity to make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity. To prove that a proposed modification would constitute a fundamental alteration in the nature of a program, a recipient must demonstrate undue financial and administrative burden after consideration of all resources available for the program or activity. Where undue burden has not been demonstrated, recipients must provide each person with a disability with services necessary to his or her meaningful enjoyment of the benefit offered.

In determining how to provide persons with disabilities with meaningful and equal access to the same benefit, recipients will have considerable discretion in determining what supplementary services are necessary in a particular case. Recipients may require individuals to follow reasonable procedures to request and document the need for modifications to policies, practices, and procedures. In some cases, this will require that the individual provide the results of medical, psychological, or other diagnostic tests. Under OCR policy, judgments concerning which modifications are necessary and which requirements are essential to a program must be made on a case-by-case basis. If a recipient disputes whether a modification is necessary, or what kind of modifications are required, a 504 violation may depend on OCR's determination of issues such as the steps taken by the recipient to reach its determination, the use of experts be either the complainant or the recipient, and the credibility of these experts. OCR focuses on objective factors and whether the recipient acted in a reasonable, professional manner.

The Section 504 regulations at 34 C.F.R. § 104.4(b)(4) states that a recipient may not utilize criteria or methods of administration that have the effect of subjecting qualified persons with disabilities to discrimination on the basis of disability.

The Section 504 regulations at 34 C.F.R. § 104.7(b) provide that a recipient that employs fifteen or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part. Recipients must provide notice to students and employees of the procedure, including how and where to file a complaint.

## **FACTS**

### Relevant Policies/Procedures:

The College provided its general "Procedure for Requesting Services, 2013-2014" (the "Procedure") to OCR, which states that all students who require special accommodations while attending the College must register with the Student Success Center/Disability Support Office at least six weeks before the semester begins, fill out and return the Request for Accommodations form, and provide recent documentation of their disability from an appropriate licensed professional. The Procedure also states that Disability Support Services will "meet with the student to review and determine appropriate and reasonable accommodations. An accommodations plan will be drafted with student input." The College reported that all individuals requesting services for summer camp, continuing education and credit classes must comply with these procedures.

The College's policy includes an Intake form, Consent and Authorization to Release Information form, Procedure for Requesting Services form, the Rights and Responsibilities of the Student with Disabilities form, and the Rights and Responsibilities of the College of Maryland form. Parents of children participating in the summer camp must complete and sign these forms after discussing the content of the forms with the College.

While the College's procedure for requesting a reasonable accommodation is generally applicable to all individuals attending the College, the College has a specific Summer Camp/Kids' College Request for Accommodations form which asks for general identification information, the individuals' documented disability, and the class for which the accommodation is being requested.

XXXXXX

X---REDACTED---X

### *Legal Analysis:*

We find that the College engaged in a reasonable process to determine what modification(s) may be appropriate for Student to participate in the Program. This process included a physical review of the Student, a review of relevant documentation, and input from the Complainant, individuals familiar with the Program, and individuals familiar with working with individuals with disabilities.

X---REDACTED---X

OCR's regulations do not mandate that a qualified individual with a disability be entitled to a particular accommodation. Instead a recipient is required to provide an accommodation that is both appropriate for the disabled individual and reasonable for the recipient. An accommodation

found to cause a fundamental alteration in the recipient's program is not considered to be reasonable and, therefore, not required by OCR. Based on a preponderance of the evidence, we find insufficient evidence that the College's refusal to approve the ABA therapist accommodation requested by the Complainant violated Section 504.

XXXXXX

X---REDACTED---X

*Legal Analysis:*

There is insufficient evidence that the College's process and procedures to obtain a reasonable modification deters and discourages students with disabilities XXXXXX. The College's policies and procedures for requesting such modifications are reasonable on their face. XXXXXX.

Issue #3: Failing to have Section 504 grievance procedures.

X---REDACTED---X

*Legal Analysis:*

OCR's investigation found that the College does not maintain any grievance procedures to address disability discrimination complaints, in violation of Section 504/Title II. Thus, OCR determines that a preponderance of the evidence supports a conclusion that the College failed to comply with Section 504/Title IX. On November 7, 2013, the College signed commitments (copy enclosed) to address the noted compliance concern. Thus, OCR considers this issue to be fully resolved and the College is in compliance with Section 504/Title II and their implementing regulations, based upon the commitments that, when fully implemented, remedy the identified compliance concern. OCR will monitor the College's actions with respect to the implementation of the commitments.

This concludes OCR's investigation. This letter is not intended, nor should it be construed, to cover any issues regarding the College's compliance with Section 504/Title II that may exist, but are not discussed herein. You may have the right to file a private suit in federal court whether or not OCR finds a violation.

This letter is a letter of findings issued by OCR to address an individual OCR case. Letters of findings contain fact-specific investigative findings and dispositions of individual cases. Letters of findings are not formal statements of OCR policy and they 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.

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.

Page 5 - Dr. Bradley Gottfried, President

OCR is committed to a high-quality resolution of every case. If you have questions or concerns about OCR's insufficient evidence finding, you may contact Randle Haley, at 215-656-8532 or [randle.haley@ed.gov](mailto:randle.haley@ed.gov).

Thank you for your cooperation with this matter.

Very truly yours,

/s/  
Beth Gellman-Beer  
Team Leader

enclosure