



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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REGION III  
DELAWARE  
KENTUCKY  
MARYLAND  
PENNSYLVANIA  
WEST VIRGINIA

July 15, 2016

Dr. Mark T. Brainard  
President  
Delaware Technical Community College  
PO Box 897  
Dover, DE 19903

In Response, Please Refer to: OCR Complaint 03-15-2416

Dear Dr. Brainard:

The Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) has completed its investigation of the complaint we received on September 11, 2015, against Delaware Technical Community College (the College). XXXXXX (the Complainant) alleged that the College discriminated against her on the basis of disability by refusing to allow her service animal to accompany her on campus.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of 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), 42 U.S.C. § 12131, and its implementing regulation, at 28 C.F.R. Part 35, over complaints alleging discrimination on the basis of disability that are filed against public entities. OCR has determined that the College is a recipient of Federal financial assistance and is a public entity and is, therefore, subject to Section 504, the ADA and their implementing regulations.

OCR's investigation of this complaint included a review of information gathered through written documentation provided by the Complainant and the College, as well as interviews conducted with College personnel and the Complainant. After a careful review of all information obtained, OCR has determined there is sufficient evidence to support a finding of noncompliance with Section 504 and Title II with respect to the issues raised in this complaint. OCR's findings and conclusions are discussed below.

## **Background**

Delaware Technical Community College (the College) is a statewide community college with four campuses located throughout the state. The Complainant is enrolled at the College's Owens campus, in Georgetown, Delaware. According to information available on the College's website, the Owens campus had a total enrollment in fall 2014 of 4,296 students, with 1,803 enrolling full-time.

The Complainant has been diagnosed with XXXXXX. To assist in her anxiety, the Complainant uses a service animal, XXXXXX. According to the Complainant, her service animal XXXXXX.

## **Findings of Fact**

Upon her enrollment at the College for the spring 2015 semester, the Complainant brought her dog to campus. XXXXXX.

xx – paragraphs redacted -- xx

## **Legal Standards**

The regulation implementing Section 504, at 34 C.F.R. § 104.4(a), provides that no qualified person with a disability shall, on the basis on disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance. The regulation implementing Section 504, at 34 C.F.R. § 104.44(b), provides that recipients may not impose upon students with disabilities rules that have the effect of limiting the participation of students with disabilities in the recipient's education program or activity. The Title II regulation, at 28 C.F.R. § 35.130(a), provides that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity. The Title II regulation also requires public entities to make reasonable modification to policies, practices, or procedures when such modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modification would fundamentally alter the nature of the service, program, or activity.

The Title II regulation, at 28 C.F.R. §35.136(g), states, "Individuals with disabilities shall be permitted to be accompanied by their service animals in all areas of a public entity's facilities where members of the public, participants in services, programs or activities, or invitees, as relevant, are allowed to go." The regulation at 28 C.F.R. §35.136(a) states that, "Generally, a public entity shall modify its policies, practices, or procedures to permit the use of a service animal by an individual with a disability." The regulation at 28 C.F.R. §35.136 (f) states that a public entity is prohibited from asking about the nature or extent of a person's disability, and may only make two inquiries to determine whether an animal qualifies as a service animal: 1) if the animal is required because of a disability, and 2) what work or task the animal has been trained to perform. A public entity may properly exclude a service animal if: (1) the service

animal is out of control and the animal's handler does not take effective action to control it; or  
(2) the service animal is not housebroken. 28 C.F.R. §35.136 (b).

### **Analysis**

Based on a review of the Complainant's medical information, XXXXXX. Thus, OCR finds that the Complainant is a qualified individual with a disability within the meaning of 34 C.F.R. § 104.3(j) and 28 C.F.R. §35.104.

xx – paragraphs redacted – xx

### **Conclusion**

Based on a preponderance of the evidence, OCR finds that the College's policies and procedures relative to service animals and the College's response to the Complainant's request to bring her service animal on campus violate Section 504, at 34 C.F.R. §§ 104.4(a) and 104.44(b) and Title II, at 28 C.F.R. §§ 35.130(a) and 35.136.

On July 6, 2016, the College signed the enclosed resolution agreement to address the compliance concerns noted in OCR's findings. When fully implemented, the resolution agreement will address all of OCR's compliance concerns. Consistent with our usual practice, OCR will monitor the implementation of the agreement until we have determined that the College is in compliance with the requirements of the regulations of Section 504, at 34 C.F.R. §§ 104.4(a) and 104.44, and Title II, at 28 C.F.R. §§35.130 and 35.136.

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, or participates in an OCR proceeding. 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.

OCR is committed to a high-quality resolution of every case. If you have any questions regarding OCR's finding, please contact Dannelle Walker, the OCR Team Attorney assigned to this complaint, at 215-615-5711 or Dannelle.Walker@ed.gov. Thank you for your cooperation with this matter.

Sincerely,

*/s/*

Melissa M. Corbin  
Team Leader  
Philadelphia Office

Enclosure

cc: Brian Shirey, Esquire  
Elizabeth Olsen, Esquire