



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
THE WANAMAKER BUILDING, SUITE 515
100 PENN SQUARE EAST
PHILADELPHIA, PA 19107-3323

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January 27, 2017

IN RESPONSE, PLEASE REFER TO: 03-16-2165

Dr. Murray K. Hoy
President
Wor-Wic Community College
32000 Campus Drive
Salisbury, MD 21804

Dear Dr. Hoy:

This is to notify you that the U.S. Department of Education (the Department), Office for Civil Rights (OCR), has reached its determination in the complaint filed against Wor-Wic Community College (the College) alleging disability discrimination. Specifically, XXXXXX (the Complainant) alleged that:

1. The College discriminated against her on the basis of disability XXXXXX when:
 - a. She was denied academic adjustments;
 - b. The instructor refused to grade her last assignments;
 - c. The instructor refused to allow her to take the final examination;
 - d. The instructor subjected her to a hostile environment when he disclosed to the class that she has a disability; and,
 - e. The College failed to provide a written response to her December 17, 2015 grievance that alleged disability discrimination.

OCR enforces Section 504 of the Rehabilitation Act of 1973, 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 enforces Title II of the Americans with Disabilities Act of 1990, and its implementing regulation, at 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities.

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.

In reaching a determination in this complaint, OCR reviewed documentation provided by the Complainant and the College. OCR also conducted interviews with the Complainant and College

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faculty and staff. Based on the information and evidence obtained during the investigation, we have determined that there is insufficient evidence that the College discriminated against the Complainant, as alleged. As part of our investigation, OCR reviewed the College's grievance procedures for addressing complaints of disability discrimination, and found that they do not comply with the requirements of Section 504 and Title II. The College agreed to revise these procedures in accordance with the requirements of the enclosed Resolution Agreement (Agreement). The bases for our determinations are summarized below.

Legal Standard

Disability Discrimination

The regulation implementing Section 504, at 34 C.F.R. §104.4(a) and 104.43(a), provides that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any postsecondary education program of a recipient of Federal financial assistance.

Academic Adjustments

The Section 504 regulation, at 34 C.F.R. §104.44(a), also requires recipient colleges and universities to make modifications to their academic requirements that are necessary to ensure that such requirements do not discriminate, or have the effect of discriminating, against qualified individuals with disabilities. Academic requirements that the recipient can demonstrate are essential to the instruction being pursued by such student or to any directly related licensing requirement will not be regarded as discriminatory within the meaning of this section. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted. In addition, the ADA regulation, at 28 C.F.R. §35.130(b)(7), public colleges and universities must make reasonable modifications in policies, practices or procedures when necessary to avoid discrimination on the basis of disability, unless doing so would fundamentally alter the nature of the service, program or activity.

In making a compliance determination regarding the provision of academic adjustments and auxiliary aids and services in the post-secondary setting, OCR considers whether the student provided adequate notice to the post-secondary institution of the nature of the disability and the need for a modification, adjustment, aid or service. The student is responsible for providing evidence of a condition that requires academic adjustments. In some cases, this will require that the student provide the results of medical, psychological, or educational diagnostic tests and professional prescriptions for academic adjustments. In disputes over the need for academic adjustments, OCR considers whether the recipient took reasonable steps to obtain a professional determination of whether aids or adjustments were necessary and, if so, what kind of aids or adjustments. This may include a determination of whether the recipient acted on the basis of an assessment by professionals who had appropriate credentials and who used appropriate criteria.

It is the prerogative of an educational institution to decide what requirements are essential, so long as each requirement has a rational relationship to the program of instruction and, therefore, is not a pretext for discrimination. OCR will defer generally to the academic judgment of educators, and therefore, OCR examines whether the recipient acted in a reasonable manner. Once a recipient approves an academic adjustment or auxiliary aid, it must be delivered in a manner that affords a person with a disability equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement.

Different Treatment

The regulation implementing Section 504, at 34 C.F.R. § 104.4(a), provides that no qualified disabled person shall, on the basis on disability be excluded from participation in, be denied the benefits of, or otherwise subjected to discrimination under any program or activity which receives Federal financial assistance. 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.

When investigating a different treatment claim, OCR examines whether the student was treated differently than similarly situated non-disabled students. If such different treatment is found, OCR then examines any legitimate nondiscriminatory justification offered by the recipient. Finally, OCR will review any justification offered by the recipient to determine whether it is pretext for discrimination.

Hostile Environment

A recipient, such as the College, has a duty to provide a nondiscriminatory environment that is conducive to learning. The existence of a hostile environment that a recipient creates, encourages, accepts, tolerates, or leaves uncorrected constitutes different treatment on the basis of disability in violation of Section 504 or Title II. OCR will find that a recipient violates Section 504 and/or Title II when it determines, based upon a review of evidence, that: 1) a student was subjected to harassment on the basis of disability; 2) the harassment rose to a level (was so severe, persistent, and pervasive) that it denied or interfered with the student's ability to participate in or benefit from the educational program, services, activities, or privileges provided by the recipient; 3) the recipient had actual or constructive notice of the harassment; and, 4) the recipient failed to take prompt and remedial action to end the harassment and prevent its reoccurrence.

OCR considers the totality of all relevant circumstances to determine whether the alleged harassing conduct is sufficiently severe, persistent, or pervasive to rise to the level of a hostile environment so as to interfere with or limit the ability of a student to participate in or benefit from the recipient's programs or activities. Factors considered include the context, nature, scope, frequency, duration, and location of the alleged harassment, as well as the age, identity,

number, and relationships of the persons involved. OCR evaluates the conduct and circumstances from both a subjective and objective perspective.

Once a recipient is on notice of the existence of a hostile environment, an appropriate response includes taking immediate steps to determine what occurred, ending any harassment and eliminating the hostile environment, and preventing harassment from occurring again, and remedying the effects of the harassment.

In instances where the alleged disability harassment is perpetrated by representatives of the recipient, OCR will first apply a standard different treatment analysis. Under this analysis, a recipient violates Section 504 and Title II if one of its agents or employees, acting within the scope of his or her official duties, has treated a student differently on the basis of disability in the context of an educational program or activity without a legitimate, nondiscriminatory reason so as to interfere with or limit the ability of the student to participate in or benefit from the services, activities or privileges provided by the recipient.

Grievance Procedures

The Section 504 regulation, at 34 C.F.R. §104.7(a), requires that recipients designate at least one employee to coordinate compliance with the regulation. Further, the regulation, at 34 C.F.R. §104.7(b), requires recipients to adopt and publish a policy against disability discrimination and grievance procedures providing for prompt and equitable resolution of complaints of discrimination on the basis of disability. The Title II regulation, at 28 C.F.R. § 35.107, contains similar requirements. OCR requires that grievance procedures must contain the following elements in order to be prompt and equitable:

- a. notice to students and employees of the procedure, including how and where to file a complaint;
- b. application of the procedure to complaints alleging disability discrimination carried out by employees, other students, or third parties;
- c. adequate, reliable, and impartial investigation, including the opportunity for both parties to present witnesses and other evidence;
- d. designated and reasonably prompt timeframes for the major stages of the complaint process;
- e. notice to the parties of the outcome of the complaint; and
- f. an assurance that the recipient will take steps to prevent the recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate.

Factual Summary

xx – paragraphs redacted – xx

As part of our investigation, OCR reviewed the College's Section 504 and Title II grievance procedures. Based on our review, OCR determined that the College's procedures are not consistent with the requirements of Section 504 and Title II because they do not state that they apply to complaints alleging disability discrimination carried out by employees, other students or third parties. The grievance procedures also do not provide for an impartial investigation, including the opportunity for both parties to present witnesses and other evidence. The grievance procedures do not identify reasonably prompt timeframes for major stages of the complaint process nor do they provide notice to the parties of the outcome of the complaint. Finally, the grievance procedures do not provide an assurance that the recipient will take steps to prevent the recurrence of any harassment and to correct its discriminatory effects on the complainant and others.

The College agreed to resolve the areas of non-compliance regarding its Section 504 and Title II grievance procedures through a Resolution Agreement signed by the College on December 22, 2016. A copy of the signed Agreement is enclosed. As is our standard practice, OCR will monitor the University's implementation of the Agreement. Accordingly, OCR is concluding its investigation of these allegations as of the date of this letter.

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 have the right to 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 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.

If you have any questions or concerns, please contact Linda Thomas, Equal Opportunity Specialist, by telephone at (215) 656-8553, or by email at linda.thomas@ed.gov.

Sincerely,

/s/

Melissa M. Corbin
Team Leader
Philadelphia Office

cc: Dr. Deirdra Johnson, Senior Director of Student Development
Bryan Newton, Vice President, Enrollment Management and Student Services