



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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November 8, 2018

DeRionne P. Pollard, Ph.D.
President
Montgomery College
Sent via email only
<president@montgomerycollege.edu>

IN RESPONSE, PLEASE REFER TO: 03-18-2174

Dear Dr. Pollard:

This is to advise you of the resolution of the above-referenced complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR) against Montgomery College (the College). XXXXXX (the Complainant) alleged that the College discriminated against him on the basis of disability by denying him the approved academic adjustment of double time for a practical exam in XXXXXX.

OCR enforces:

- Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance.
- Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive Federal financial assistance from the Department.

As a recipient of Federal financial assistance from the Department the College is subject to these laws.

To date, OCR has investigated this complaint by reviewing information provided by the Complainant and College. Prior to the completion of OCR's investigation, the College asked to resolve this complaint. On November 8, 2018, the College submitted the enclosed signed resolution agreement (the Agreement) to OCR. When fully implemented, the Agreement will resolve the issues in the complaint.

Legal Standards

The Section 504 regulation, at 34 C.F.R. § 104.43(a), provides that a qualified person with a disability may not be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in any postsecondary aids, benefits, or services on the basis of disability.

The regulation implementing Section 504, at 34 C.F.R. § 104.3(j) defines a person with a disability as a person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such an impairment. The regulation at 34 C.F.R. § 104.3(l)(3) defines a qualified person with a disability, in postsecondary education, as a person with a disability who meets the academic and technical standards for admission or participation in the recipient's education program or activity.

The regulation implementing Section 504, at 34 C.F.R. § 104.44(a), requires a recipient to make such modifications to its academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating, on the basis of disability, against a qualified complainant with a disability. Recipients are not required to make modifications that are essential to instruction or 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 complainant 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 complainant is responsible for providing evidence of a condition that requires academic adjustments. In some cases, this will require that the complainant 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 an equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement.

Investigation to Date

XX – paragraph redacted – XX

As noted above, prior to the completion of our investigation, the College signed an agreement with OCR. In light of the commitments the College has made in the Agreement, OCR finds that the complaint is resolved, and OCR is closing its investigation as of the date of this letter. OCR will monitor the College's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively. OCR may request additional information as necessary to determine whether the College has fulfilled the terms of the Agreement and is in compliance with Section 504 and Title II with regard to the issue raised.

If the College fails to implement the Agreement, OCR may initiate administrative or judicial proceedings to enforce specific terms and obligations of the Agreement. Before initiating administrative (34 CFR §§ 100.9, 100.10) or judicial proceedings to enforce the Agreement, OCR will give the College written notice of the alleged breach and sixty (60) calendar days to cure the breach.

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.

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

Thank you for the assistance Tim Dietz extended to OCR in resolving this complaint. If you have any questions, please contact Cynthia Wesley at (215) 656-8548 or Cynthia.wesley@ed.gov.

Sincerely,

/s/

Nancy E. Potter
Team Leader

Enclosure: Resolution Agreement