



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION IV

61 FORSYTH ST., SOUTHWEST, SUITE 19T10
ATLANTA, GA 30303-8927

April 7, 2014

REGION IV
ALABAMA
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TENNESSEE

Dr. George Van Allen, President
Nashville State Community College
120 White Bridge Road
Nashville, Tennessee 37209

Re: Complaint # 04-14-2001

Dear Dr. Van Allen:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has concluded its investigation of the above-referenced complaint filed against the Nashville State Community College (College), alleging discrimination on the basis of disability (XXXXXX, XXXXXX and XXXXXXXX). Specifically, the Complainant alleged that during the XXXXXXXX, she was denied her approved accommodation/academic adjustment of XXXXXXXXX by her XXXXXX Professor (Professor).

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; and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131 et seq., and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance from the Department and a public entity, the College is subject to Section 504 and Title II.

Accordingly, OCR opened an investigation of whether the College discriminated against the Complainant on the basis of disability by failing to provide her with her approved academic adjustment, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.44(a) and the Title II implementing regulation at 28 C.F.R. § 35.130 (a) and (b).

Applicable Regulations

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

The Section 504 implementing regulation at 34 C.F.R. § 104.44 requires that a recipient 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 applicant or student with a disability. 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. The Title II implementing regulation at 28 C.F.R. § 35.130(a) is interpreted as offering no greater or lesser protection than the Section 504 regulation.

Applicable College Policy

The College's Student Disability Services (SDS) Policy (Policy) states that SDS assists students who have documented physical, emotional, or learning disabilities. SDS personnel assist eligible students with academic planning, registration and communication with faculty. SDS is administered through Student Services. The SDS staff provides advising, advocacy, and assistance to ensure that all students have equal access to a quality education. Students are assisted with academic adjustments and modifications to ensure that the requirements do not discriminate on the basis of disability. Academic requirements that are essential to the program of instruction or directly related to licensing will not be considered as discriminatory. Student disability documentation is required. The Policy also provides contact information for the SDS and lists the accommodations process as: apply; complete admissions application; make SDS appointment; bring disability documentation; register for classes; contact SDS for scheduling; get accommodations forms; communicate with class instructors.

The College also submitted a copy of its SDS flyer, which under "Helping Students with Disabilities" states that a physical disability is "[a]ny physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin and endocrine, which substantially limits one or more major life activities. Similar to the Policy above, the flyer also does not contain a notation that students may also contact the SDS Office for accommodations at any point during the application, admission and enrollment process (i.e., to receive accommodations for any tests required for admission).

Background information

At the time of filing, the Complainant was enrolled in the Surgical Technology certificate Program (Program) at the College. The Complainant started the Program in August 2013. The Complainant took Microbiology during the summer 2013 semester; however, she received a course grade of XXX and had to retake the class in the X semester,¹ which is the course at issue in this case.²

Complaint Allegations

The Complainant alleged that on XXXXXXXX, 2013, she requested, and was granted, the accommodation of XXXXXX XXXXXXXX (amongst other accommodations/academic adjustments) from the SDS office. The Complainant alleged that her XXXXXX Professor (Professor) failed to provide her with XXXXXXX XXXXXXXX in his course. Specifically, the Complainant alleged that her Professor reported her as being XXXXXXXXXX. The Complainant stated that, as a result, she received a XXXXXXXX warning and that the XXXXXXXX told her that she could lose her financial aid or might fail the course.³

Factual Findings

The Complainant's Self-Disclosure and Accommodations Request Forms (Accommodations Request Form) shows that she registered with the SDS Office on XXXXXXXX, 2013 and identified her disabilities

¹ The XXXXX

² The Program requires that students receive a grade of "C" or higher in XXXXXXXX.

³ XXXXXXXXXXXXXXXX

Analysis and Conclusion

The evidence shows that the Complainant requested, and was approved for academic adjustments/accommodations, including XXXXXX XXXXXXXX. The evidence shows that the Complainant was late for her XXXXXXXX class XXX times and absent XXX. According to the XXXXXXXXXX attendance policy, her XXX late arrivals and one absence should have resulted in XXXXX absences from the class [the policy states two late arrivals equal one absence]. However, her attendance was not recorded in this manner on any formal records. The evidence further shows that the attendance, financial aid report for the class shows the Complainant in a status of “attending.” During rebuttal, OCR asked, and the Complainant was unable to provide any evidence to support her allegation. Review of all of the documentary and testimonial evidence supports a conclusion that the Complainant was provided the XXXXXX XXXXXXXX that she was approved for and her XXX late arrivals and XXXX absence had no adverse effect on her, including no effect on her financial aid. Accordingly, OCR has determined, based upon the preponderance of the evidence, that there is insufficient evidence to conclude that the College failed to provide the Complainant with her approved academic adjustment of XXXXXXXXXXXXXXX, in noncompliance with Section 504 and Title II, as alleged.

Notwithstanding the above, OCR identified several policy-related compliance concerns during the course of the investigation of this complaint, which the College resolved through a resolution agreement. Based on the foregoing, the policy-related compliance issues included in the enclosed Resolution Agreement (Agreement) that the College entered into, which when fully implemented, will resolve those issues. OCR will monitor the College’s implementation of the Agreement to ensure that it is fully implemented. If the College fails to fully implement the Agreement, OCR will reopen the case and take appropriate action to ensure compliance.

This concludes OCR’s investigation of this 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 regardless of whether OCR finds a violation.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If we receive such a request, we will seek to protect, to the extent possible, any personally identifiable information, the release of which could reasonably be expected to constitute an unwarranted invasion of personal privacy.

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.

If you have any questions about this complaint, please contact the undersigned at 404-974-9356.

Sincerely,

Wendy Gatlin
Compliance Team Leader

Enclosure