



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

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REGION IV
ALABAMA
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TENNESSEE

February 6, 2017

VIA ELECTRONIC AND REGULAR MAIL

Mr. Stephen A. South
President
South College
3904 Lonas Dr.
Knoxville, TN 37909

Re: Complaint #04-16-2167

Dear Mr. South:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its case resolution process of the above-referenced complaint filed against South College (College), on April 1, 2016. Specifically, the Complainant alleged that the College discriminated against her on the basis of disability from January through July 2015 when it failed to provide her with the academic adjustments of a sign language interpreter and a frequency modulation (FM) system.

OCR investigated this complaint pursuant to Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance (FFA). As a recipient FFA from the Department, the College is subject to these laws. Accordingly, OCR has jurisdiction over this complaint.

Based on the allegation above, OCR investigated the legal issue of whether, from January 2015 through July 2015, the College discriminated against the Complainant on the basis of disability when it failed to provide her with academic adjustments (i.e., sign language interpreter and FM system), in noncompliance with the Section 504 implementing regulation, at 34 C.F.R. § 104.44.

During its complaint resolution process, OCR reviewed evidence submitted by the Complainant and the College, interviewed witnesses from the College, and also interviewed the Complainant. A finding that a recipient has violated one of the laws that OCR enforces must be supported by a preponderance of the evidence (i.e., sufficient evidence to prove that it is more likely than not that unlawful discrimination occurred). Prior to the conclusion of the investigation, the College requested to address the complaint allegation with a voluntary resolution agreement (Agreement) pursuant to Section 302 of OCR's *Case Processing Manual*. Provided below is an analysis of OCR's investigation thus far of the legal issue.

Legal Standards

The Section 504 implementing regulation at 34 C.F.R. § 104.3(l)(3) defines a qualified person with a disability with respect to postsecondary education services, as a person with a disability who meets the academic and technical standards requisite to admission or participation in the postsecondary institution's education program or activity.

Qualified students with disabilities may not, on the basis of their disability, be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination under any academic, research, occupational training, housing, health insurance, counseling, financial aid, physical education, athletics, recreation, transportation, other extracurricular, or other postsecondary education aid, benefits or services, in accordance with the Section 504 implementing regulation at 34 C.F.R. § 104.43(a).

The Section 504 implementing regulation further provides at 34 C.F.R. § 104.44(d) that postsecondary recipients take such steps as are necessary to ensure that qualified individuals with disabilities are not denied the benefits of, excluded from participation in, or otherwise subjected to discrimination under the program or activity because of the absence of educational auxiliary aids and services for students with impaired sensory, manual or speaking skills. Auxiliary aids may include taped texts, interpreters or other effective methods of making orally delivered materials available to students with hearing impairments, readers in libraries for students with visual impairments, classroom equipment adapted for use by students with manual impairments, and other similar services and actions. However, the postsecondary recipient need not provide attendants, individually prescribed devices, readers for personal use or study or other devices or services of a personal nature.

In making each of these determinations, it is necessary to decide on a case-by-case basis whether the student carried out his or her responsibility for cooperating in the provision of aids and adjustments, and whether the student and the educational institution acted in a reasonable manner consistent with effective delivery of services. Institutions of postsecondary education must provide appropriate accommodations based on students' disabilities and individual needs when necessary to avoid discrimination. If an aid and adjustment, is not meeting a student's needs then it is the student's responsibility to contact the institution as soon as possible so they can work together to resolve the issue.

OCR evaluates evidence obtained during an investigation under a preponderance of the evidence standard to determine whether the greater weight of the evidence is sufficient to support a conclusion that a recipient failed to comply with a law or regulation enforced by OCR or whether the evidence is insufficient to support such a conclusion.

Evidence Obtained Thus Far

Background

The Complainant contacted the University's Department of Student Services in November 2014 and registered as an individual with a disability (hearing impairment/deaf) requiring use of a

frequency modulator (FM) system and an interpreter or note taker, accommodations she had previously used in high school. The Complainant also submitted supporting medical documentation to the College confirming the need for an FM system and interpreters or note takers for her classes. She was enrolled at the College from January 2015 – July 2015 in its Bachelor of Science, XXXXX XXXXXXXX program.

During an interview with OCR staff on April 1, 2016, the College stated it does not provide students with formal documentation identifying approved accommodations for each quarter, and most communication regarding academic adjustments are done either in person or via email. OCR reviewed the College's *Services for Students with Disabilities* policy contained in its Student Handbook and Academic Catalog which state that students with disabilities should contact the Dean of Student services and request services at least one month prior to the beginning of classes; further, "students who have demonstrated and recognized physical or learning disabilities must contact the Dean of Student Services each quarter if they wish to continue receiving special services." This language is not contained in the Academic Catalog.

The College provided OCR with a series of email communications and documentation confirming that in November 2014, prior to winter quarter classes starting on January 14, 2015, that the Complainant self-identified as a student with a disability (hearing impairment) requiring use of an FM system and interpreters or note takers. The College also provided invoices showing that the College obtained interpreters for the Complainant for enrollment meetings with College staff in November 2014 (i.e. admissions and financial aid) and also for orientation in December 2014.

In an email dated December 29, 2014, the Complainant requested an update from the College as to what accommodations she would receive for classes starting in January 2015 and if the College had contacted the local Vocational Rehabilitation (Voc Rehab) office for assistance with acquiring her academic adjustments. In an email communication to Voc Rehab on January 7, 2015, the College inquired if the agency would supply Complainant's FM system, had interpreter services for the Complainant, and if the agency was aware of any recording or voice recognition software the Complainant could use. Voc Rehab replied that it would not purchase an FM system for the Complainant's use (citing the College's responsibility to purchase the system) and provided the College with information about free voice recognition downloads. Also, on January 7, 2015, the Complainant informed the College that she would purchase her own FM system so that she could have it for use outside the classroom and requested an update on interpreter services.

Winter Quarter Accommodations (January 15 – March 26, 2015)

Email communications between the Complainant and the College reflect that on January 9, 2015, the College informed the Complainant that it would provide interpreter services for the first day of the Complainant's winter quarter classes starting on January 15, 2015, and explore voice recognition software, as recommended by Voc Rehab. The Complainant declined using any voice recognition software, stating her lack of familiarity with the voice recognition software, lack of comfort with its usage, and a desire to remain with a live interpreter as per her audiologist's recommendations which had previously been forwarded to the College. In addition to reiterating her request for an interpreter, in an email dated January 10, 2015, the Complainant

also inquired about the College's ability to hire a professional transcriber. Neither the College nor the Complainant provided any written documentation showing its response regarding a transcriber.

On January 20, 2015, the Complainant sent the College an email requesting an interpreter for the following day due to a malfunction of her FM system. Neither the Complainant nor the College submitted evidence to show that the College responded to this message. However, on Friday, January 23, 2015 when the system was still not operational, she requested interpreters for all of her classes for the following Monday (January 26, 2015). The College stated it could not provide interpreter services for Monday and offered a staff member who knew how to sign to attend classes with the Complainant. The Complainant declined, stating the staff member "was not confident in her skills and is not a professional interpreter."

OCR reviewed invoices submitted by the College reflecting that the College provided interpreters for all of Complainant's classes for the first day of winter quarter (January 14, 2015) and subsequently for the Psychology class beginning January 26, 2015 through March 25, 2015. During interview with OCR, the College stated it did not have any formal arrangement or discussion with the Complainant for providing services if her usual methods of communication were unavailable. However, the Complainant submitted an email communication to the College dated February 10, 2015, referencing a discussion with the College a week earlier regarding approval for services if the Complainant could not utilize her usual devices. Neither the Complainant nor the College provided any written communications reflecting the entirety of the discussion.

Spring Quarter Accommodations (April 6 – June 17, 2015)

In an interview with OCR on August 31, 2016, the College stated that it had no communication with the Complainant regarding academic adjustments or services between February 10, 2015 and April 3, 2015. However, the Complainant submitted email communication dated March 24, 2015 indicating she had "already made a request for interpreters" for some of her classes and wanted to revisit the transcriber option since it was not provided as an option during earlier meetings with the College. In an interview with OCR staff, the College stated that the first communication with the Complainant regarding spring quarter services was during a meeting on April 2, 2015 where the Complainant verbally requested an interpreter for all classes for the first two days of classes. Email communication submitted by the College reflects that the provider was closed due to a holiday and the College could not contact the provider to obtain services for the first day of classes. The College again offered the staff member the Complainant had previously rejected and the Complainant again declined to use the staff member.

Email communication submitted by the Complainant indicated that on April 21, 2015, the Complainant requested the College confirm in writing that near the end of first quarter, she made a request for interpreter services for her two psychology classes for spring quarter, and that the College was unable to provide interpreters during the week she did not have her FM system available. Further, the email communication reflected the College confirmed approval for interpreter services for the Complainant's two psychology courses on April 30, 2015 and again on May 1, 2015. Invoices submitted by the College indicate the College began providing

interpreter services on May 4, 2015 for the Complainant's spring quarter courses which began on April 6, 2015.

OCR reviewed email communications between the College and the Complainant indicating the Complainant requested interpreter services for summer courses on July 13, 2015 but withdrew from the College after the College indicated it would need to get estimates for interpreter services. In a letter to the Complainant dated July 30, 2015, the College referenced that it refunded the Complainant's tuition for summer semester (\$6,625).¹

Reasons to Resolve Pursuant to CPM Section 302

As noted, there was no formal documentation provided each quarter that clearly outlined the services the College would provide to the Complainant. Documentation submitted by the Complainant and the College indicate discussions regarding services for winter quarter were initiated in November and December 2014 and that the Complainant agreed to purchase her own FM system. Invoices indicated the College did provide interpreter services on a regular basis for one of the Complainant's courses in winter quarter approximately two weeks after the start of classes and for spring quarter, almost a month after classes started. However, prior to the College's request to resolve this complaint, OCR had not reviewed the College's release of additional email communications which may have included information regarding agreement on timing of services and approvals which were not contained in the College's initial submission. To complete its investigation, OCR would need to determine whether the College engaged in the interactive process when it did not provide interpreter services for all of Complainant's classes and whether interpreter services were provided in a timely manner.

Resolution Agreement

The attached Agreement requires the College to (1) revise its process for requesting academic adjustments, auxiliary aids, and other disability-related benefits or services, (2) revise its non-discrimination policies and procedures, (3) revise its Section 504 grievance procedures, (4) implement, publish, and disseminate its revised policies and procedures, (5) make available for training by OCR the College's Section 504 Coordinator and all of the College's faculty, administrators and staff within its Academic Support & Student Services Department involved in decisions concerning requests for academic adjustments, and (6) provide the Complainant with pro-rated reimbursement of tuition for the days she did not receive interpreter services in addition to appropriate academic adjustments if she re-enrolls and requests services within designated timeframes. With regards to the training conducted by OCR, it shall cover, at a minimum, the prohibition against discrimination, the College's obligations under Section 504 to furnish appropriate auxiliary aids and services where necessary to ensure that individuals with disabilities have access to communications that are as effective as communications provided to others, the College's obligation to ensure an equal opportunity for individuals with disabilities to

¹ On September 16, 2016, the College submitted additional documentation/email communications to OCR. OCR did not review the additional documentation from the College, as the information arrived after the College indicated it wished to resolve the complaint and before OCR completed its investigation and confirmed the information.

participate in the College's programs and services, and the legal standard under which auxiliary aids and services are to be determined necessary and effective under Section 504.

The provisions of the Agreement are aligned with the complaint allegations and the information obtained during the investigation and are consistent with applicable regulations. OCR will monitor the implementation of the agreement until the recipient is in compliance with the statutes and regulations at issue in the case.

Conclusion

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.

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.

Intimidation or retaliation against complainants by recipients of Federal financial assistance is prohibited. No recipient may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the laws OCR enforces, or because one has made a complaint, or participated in any manner in an investigation in connection with a complaint.

This concludes OCR's consideration of this complaint, which we are closing effective the date of this letter. If you have any questions regarding this letter, please contact Zandra Hall at (404) 974-9290, or me at (404) 974-9367.

Sincerely,

Ebony Calloway-Spencer, Esq.
Compliance Team Leader

Enclosure

cc: XXXXX XXXX, XXX.