



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

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REGION IV
ALABAMA
FLORIDA
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TENNESSEE

February 22, 2017

Dr. Eileen Holden
President
Polk State College
3425 Winter Lake Road
Lakeland, Florida 33803

Re: OCR Complaint # 04-16-2294

Dear Dr. Holden:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint, received in this office on August 8, 2016, in which the Complainant alleged discrimination on the basis of disability by Polk State College (College). OCR notified the parties on November 15, 2016, that it would investigate the legal issue of whether, during summer 2016, the College discriminated against the Complainant on the basis of disability when it failed to provide the academic adjustment of extra time on tests in math, in noncompliance with the Section 504 implementing regulation at § 104.44, and the Title II implementing regulation at 28 C.F.R. § 35.130.

OCR is responsible for enforcing:

- 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. 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), 42 U.S.C. §§ 12131, *et seq.*, and its implementing regulation, 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities.

During the course of this investigation, OCR reviewed evidence provided by the Complainant and the College, including correspondence, student records, and the College's policies and procedures. OCR also interviewed the Complainant and College staff. OCR evaluates evidence under a preponderance of the evidence standard; in order to establish a violation, the evidence must be sufficient to prove that it is more likely than not that a violation occurred. Based on its investigation, OCR has determined that there is insufficient evidence to establish a violation of Section 504 and Title II, as alleged.

Legal Standards

The Section 504 implementing regulation at 34 C.F.R. § 104.44(a) states that a recipient to which this subpart applies shall 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 student with a disability. Section 504, at 34 C.F.R. § 104.44(d), states that postsecondary recipients shall 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 aides may include taped texts, interpreters or other effective methods of making orally delivered materials available to students with hearing impairments.

Under the requirements of Section 504, a complainant with a disability is obligated to notify the College of the nature of the disability and the need for a modification, adjustment, aid or service. Once a university receives such notice, it has an obligation to engage the complainant in an interactive process concerning the complainant's disability and related needs. 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 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.

Although the Title II regulation does not contain provisions specifically pertaining to the provision of academic adjustments, as in the case of the Section 504 regulation, OCR interprets the Title II regulation's general prohibition against discrimination (at 28 C.F.R. § 35.130) to incorporate the relevant provisions of the Section 504 regulation.

Factual Findings and Analysis

The Complainant alleged that the University failed to provide him with the academic adjustment of extra time on tests in his math course pursuant to his request for such academic adjustment one month prior to summer term 2016.

The College's response to OCR's request for evidence in this investigation indicated that the Complainant failed to follow the College's policies and procedures with regard to requesting and obtaining academic adjustments. In particular, the College stated that the Complainant made requests for academic adjustments by email, but failed to register with the Office of Disability Services (DS) or provide medical documentation contemporaneous with his requests. Despite the Complainant's refusal to register with the DS, the College provided the Complainant with the academic adjustment of "two times the normal time for testing" in his math class.

OCR’s review of the College’s policy for obtaining academic adjustments, Rule 4.23 *Accommodations for Students with Disabilities*, states that students seeking accommodations due to a disability are required to submit documentation of their disability and need for accommodations as soon as possible, which includes documentation evidencing the specific diagnosis of disability and the need for accommodation(s). The first step in the process is for a student to contact the Associate Dean of Student Services or designee, and complete a *Student with Disability Accommodation* form. The policy provides that the student is responsible for submitting all supporting medical documentation. The Associate Dean or designee will make a final determination of the accommodations and notify the student and his/her faculty of the accommodations to be provided by the first day of class.

OCR’s further review of the *Accommodation* policy indicated, however, that the College proscribed maximum testing accommodations to be “one and a half times the normal time to take a test,” and “if a reader is needed, two times the normal time to take the test will be provided.” The policy also proscribes that “calculators as an academic accommodation will not be permitted if a primary purpose is to measure computation.” OCR also found the limitations on extended time for testing published in a *Q&A* for the DS Office.

OCR also reviewed letters from the College’s legal counsel in response to the Complainant’s requests for academic adjustments; one letter, dated XXXX XX XXXX, summarized that the Complainant met with DS staff on XXX XX XXXX, and provided a letter from the XXXXX XXXXXXXXXXXXXXXXXXXX (XXX) as proof of his disability. The letter also stated that the Complainant was notified by DS staff that the XXX document was sufficient to begin the process for obtaining academic adjustments, but that documentation from his physician was necessary to support his request for specific academic adjustments. DS staff then provided the Complainant with a required form. The letter also notified the Complainant that he must submit the form and required medical documentation to be provided with academic adjustments. Another letter from College Counsel, dated XXXX XX XXXX, notified the Complainant that he would be provided with the academic adjustment of “two times the normal time” for math tests, even though he did not yet register with the DS Office. The letter also encouraged him to register. OCR also reviewed an Instructor Accommodation Memorandum, dated XXXX XX XXXX, to the Complainant’s instructor for the course titled XXXXXXXXXXXXXXXXXXXX XXXX/XXXXXXXXX notifying the instructor that the Complainant was to receive “double time for testing in the Teaching Learning Computer Center.”

OCR reviewed an electronic log that evidenced that in XXXX XXXX the Complainant took three tests for the course titled XXXXXXXX in the testing center and that the duration of each test was 2.15 hours, 3 hours and 2.5 hours, approximately. Further, the log also evidenced that the Complainant took two XXXXXXXX tests in the testing center in XXXXXXX XXXX and the duration of the tests was 2.5 hours each.

OCR also reviewed voluminous electronic communication between the Complainant and the College, and determined that the requests from the Complainant for academic adjustments were not clearly articulated; an email from the Complainant to a DS staff person on XXXX XX XXXX, stated that he is a student with a disability and that “the College has a very confusing

Office of Disability Services.” He also stated “should I seek any accommodations.” He did not indicate whether he required any specific accommodations. The DS staff person responded to the Complainant on the same day with a list of some examples of academic adjustments, and the Complainant responded on the same day, stating “none in the classroom.” He also responded “I wanted to meet the teachers and ask them if they thought I should I request anything.” Further, pursuant to an email from the Complainant to a DS staff person on XXXXXX XX XXXX, he stated “extended time for assignments” and “extended test time;” these phrases were the sole contents of the email. In addition, three days before his XXXX XX XXXX, email, he sent an email to another DS staff person on XXXX XX XXXX, in which he stated that his goal was to receive an education so that he would not require any accommodations in the workplace.

OCR determined, however, that even though the Complainant displayed confusion about the process for obtaining academic adjustments, the College provided him with guidance on the process through email, a letter and during an in-person meeting with DS staff. Throughout the course of the investigation, OCR did not locate any documentation evidencing that the Complainant registered with the DS or provided the required medical documentation.

During an interview with OCR, DS staff stated that the Complainant did not complete the forms necessary for registration with the DS, but he did provide her with documentation from a physician stating that he has a disability. Thus, two days letter, on XXXX XX XXXX, the College granted the Complainant double-time for math tests, pursuant to discussions with the Complainant. The Complainant’s math instructor verified that he received the XXXX XX XXXX, memo from the DS instructing him to provide the Complainant with double-time for tests and that he provided the Complainant with the academic adjustment for testing. He further stated that, pursuant to conversations with the Complainant after the first math test, in which the Complainant told the instructor that he needed extra time to take tests, the instructor began giving him twice the normal allotted test time.

During an additional conversation with the Complainant, in which OCR discussed with him the evidence obtained, he stated that he did not recall whether he received additional time to take his tests after the first exam in his math course in XXXXXX XXXX. He did not provide OCR with any additional evidence to support his allegation.

Based on the preponderance of the evidence obtained in this investigation, OCR determined that the Complainant did not properly notify the College of the nature of his disability and the need for particular academic adjustments for XXXXXX XXXX XXXX. OCR guidance indicates that, unlike students in elementary and secondary school settings, in postsecondary settings, the *student* is responsible for providing a college or university with evidence of a condition that requires the need for academic adjustments or auxiliary aids and services. Regardless, OCR also determined that, although the Complainant did not follow through with the College’s process for obtaining academic adjustments, the Complainant was provided with extended testing time in XXXXXXXX of at least double the normal testing time for at least five tests. Based on this information, OCR determined that there is insufficient evidence to establish a violation of Section 504 or Title II with regards to the issue alleged.

During the course of this investigation, however, OCR determined that, because the College's *Accommodations for Students with Disabilities* policy and at least one corresponding DS publication contain across-the-board limitations or maximums to some of the listed academic adjustments, the policy and publication fail to comply with the federal requirements that the provision of academic adjustments be an individualized determination made on a case-by-case basis, and based upon each student's unique needs.

Accordingly, the attached agreement (Agreement) will require the College to take actions to remedy the compliance concern regarding the limitations proscribed in the documents and includes the following provisions: (1) revise its policy titled *Accommodations for Students with Disabilities*, and any other applicable publications, to remove any limitations or maximums proscribed for any of the listed academic adjustments (i.e., extended time for testing and calculators); and (2) provide training regarding Section 504 and Title II for all faculty, administrators and staff involved in approving academic adjustments to address that decisions as to what adjustments are necessary is an individualized determination made on a case-by-case basis. The provisions of the Agreement are aligned with the complaint allegation and the information obtained during the investigation is consistent with applicable regulations.

On February 17, 2017, OCR received the enclosed signed Agreement that, when fully implemented, will resolve the issue. OCR will monitor the College's implementation of this 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 with Section 504 and Title II.

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 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 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.

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 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 regarding this matter, please contact Wayne Awtrey, at (404) 974-9377, or me at (404) 974-9367.

Sincerely,

Ebony Calloway-Spencer
Compliance Team Leader

Enc: Agreement