



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

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

REGION IV
ALABAMA
FLORIDA
GEORGIA
TENNESSEE

October 31, 2018

Dr. Reginald Sykes, President
Bishop State Community College
351 North Broad Street
Mobile, AL 36603

Re: Complaint #04-16-2300
Letter of Resolution

Dear Dr. Sykes:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed with our office on August 8, 2016, against Bishop State Community College (College), alleging discrimination on the basis of disability. Specifically, the Complainant alleged that the College discriminated against her XX XX (Student) on the basis of disability when the College's Disability Support Services Office failed to provide academic adjustments in a timely manner. In addition, the Complainant alleged that two professors failed to provide the Student with approved academic adjustments.

As a recipient of Federal financial assistance from the Department, the College is subject to the requirements of 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 prohibits 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 (Title II), 42 U.S.C. §§ 12131 *et seq.*, and its implementing regulation, 28 C.F.R. Part 35, which prohibits discrimination on the basis of disability by public educational institutions. Accordingly, OCR has jurisdiction over this complaint.

OCR investigated the following legal issues:

1. Whether the College discriminated against the Student on the basis of disability by failing to provide academic adjustments in a timely manner, in non-compliance with the Section 504 implementing regulation at 34 C.F.R. § 104.44 and the Title II implementing regulation at 28 C.F.R. § 35.130.
2. Whether the College discriminated against the Student on the basis of disability by failing to have an appropriate procedure for requesting academic adjustments, in non-compliance with the Section 504 implementing regulation at 34 C.F.R. § 104.44 and the Title II implementing regulation at 28 C.F.R. § 35.130.

During its investigation, OCR reviewed and analyzed relevant documents submitted by the Complainant and the College and interviewed five professors and three faculty members. Based on its investigation, OCR found insufficient evidence to support a finding of non-compliance with Issue #1. OCR found sufficient evidence to support a finding of non-compliance with Issue #2. The attached Resolution Agreement, when fully implemented, will resolve the non-compliance issue. Set forth below is a summary of OCR's findings.

Legal Standards

The Section 504 implementing regulation at 34 C.F.R. § 104.44(a) requires a recipient to make 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. 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, 34 C.F.R. § 104.44(d) requires a recipient to take necessary steps to ensure that no student with a disability is denied the benefit of, excluded from participation in, or otherwise subjected to discrimination because of the absence of educational auxiliary aids.

The Title II regulation at 28 C.F.R. § 35.130 states 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. As the Title II implementing regulation provides no greater protection than the Section 504 implementing regulation with respect to the complaint, OCR conducted its investigation in accordance with the applicable Section 504 standards.

In reaching a determination, OCR reviewed the evidence using the preponderance of the evidence standard. Under a preponderance of the evidence standard, OCR evaluates evidence obtained during an investigation to determine whether the greater weight of the evidence is sufficient to support a conclusion that the College failed to comply with a law or regulation enforced by OCR or whether the evidence is insufficient to support such a conclusion.

Background

In May 2016, the Student enrolled in the College, shortly before the summer semester began. XXX XXX XX XXXXXXXXX. Prior to the commencement of the summer semester, the Student and the Complainant attempted to contact the Disability Support Services (DSS) Office in May 2016 to request academic adjustments for the Student's classes. However, the ADA/DSS Coordinator (ADA Coordinator) was on a leave of absence and the Student did not receive academic adjustments until July 12, 2016, two weeks before the end of the summer semester. The Complainant alleged that the College would not allow the Student to make up missed work

prior to receiving any academic adjustments in her classes and as a result, failed her classes for the summer 2016 semester.

Factual Findings and Analysis

Issue #1: Whether the College discriminated against the Student on the basis of disability by failing to provide academic adjustments in a timely manner, in non-compliance with the Section 504 implementing regulation at 34 C.F.R. § 104.44 and the Title II implementing regulation at 28 C.F.R. § 35.130.

As noted above, the Student enrolled in five online classes at the College in May 2016, shortly before the beginning of the summer semester. The Complainant and the Student informed OCR that they attempted to contact the ADA Coordinator via telephone and the email address on the “Contact Information” section of the DSS Office’s website. The Student also sent emails directly to the Dean of Students and to one of her professors on June 14, 2016 and June 26, 2016.

During its investigation, OCR interviewed the Dean of Students regarding the ADA Coordinator’s status during the summer 2016 semester. The Dean of Students confirmed that the ADA Coordinator was on leave during the entire summer 2016 semester and returned at the beginning of the fall 2016 semester. The ADA Coordinator left the College shortly after the fall 2016 semester began.

The Dean of Students advised OCR that he served as the interim ADA Coordinator during the ADA Coordinator’s absence in the summer 2016 semester and following the previous ADA Coordinator’s departure from the College after the fall 2016 semester. While he served as the interim ADA Coordinator, the Dean of Students advised OCR that he monitored the ADA Coordinator’s email and voicemail. However, the Dean of Students confirmed that he did not monitor the email (msims@bishop.edu) referenced on the DSS webpage that was still listed on the DSS Office’s “Contact Information” page at the time of this complaint. The Dean of Students advised OCR that the (msims@bishop.edu) email address is associated with an employee who retired from the College in the summer of 2015 and further acknowledged that he exclusively monitored the ADA Coordinator’s email and telephone during her absence. However, the Dean of Students could not explain why DSS maintained an outdated email address for its “Contact Information” on its website.

The Dean of Students stated that he received an email from the Student on June 26, 2016. The Dean further advised OCR that he replied to the Student’s email on June 27, 2016 and referred her to the College Counselor. In response to the Dean of Students’ advice, the Student XXXXXXXX in support of her request for academic adjustments.

On July 12, 2016, the Dean of Students met with the Student and her sister to discuss the Student’s request for academic adjustments. During this meeting, the Dean of Students approved the primary accommodation request for extended time and both the Dean of Students and the Student signed the College academic adjustment forms. According to the “Student Accommodation Request Form”, the Student was approved for the following academic adjustments:

- Instructor/Student meetings to verify student comprehension and discuss concerns by either party;
- Increase amount of time required to complete assignment, both in and out of class;
- Extended time while testing (quizzes/tests - time and a half);
- Student should be tested in a distraction-free environment; and
- Allow use of technology in lieu of regular methodology (tape recorder; computer; calculator; live scribe pen; video/captioning; other)

The Dean of Students provided the Student with a copy of the “Student Accommodation Request Form” (“Form”) and instructed the Student to submit the Form to each of her professors. In addition, the Dean of Students also sent an email on July 12, 2016 to the Student’s professors and informed them that the Student should receive additional time on tests and quizzes. All of the Student’s professors provided the Student with extended time on tests and quizzes.

In August 2016, the Complainant contacted the College after final exams to protest the Student’s final grades. The Dean of Instructional Services reviewed the Student’s grades and granted the Student an Incomplete for all of the Student’s summer 2016 classes due to the College’s delay in providing academic adjustments to the Student. The Student received eight (8) weeks to complete all missing work from her summer 2016 classes. Consistent with the College Handbook, students who receive an Incomplete have until midterms the following semester to complete their work. According to this calculation, the Student received until fall 2016 midterms to complete her outstanding work for the summer 2016 semester. The Student received her academic adjustment of extended time during the eight-week period.

Accordingly, OCR finds, using a preponderance of the evidence standard, that while there is sufficient evidence to support a finding of non-compliance with regard to Issue #1, OCR determined that the College remedied this violation by providing the Student with eight additional weeks to make up all missing work in her classes and the Student was provided with academic adjustments during this period.

Issue #2: Whether the College discriminated against the Student on the basis of disability by failing to have an appropriate procedure for requesting academic adjustments, in non-compliance with the Section 504 implementing regulation at 34 C.F.R. § 104.44 and the Title II implementing regulation at 28 C.F.R. § 35.130.

As previously described above, in May 2016, the Student attempted to contact the ADA Coordinator to request academic adjustments. However, the Student was unable to provide notice to the College of her need for academic adjustments until June 14, 2016, after multiple unsuccessful attempts to contact the point of contact designated on the DSS home page. At that time, the Student and the Complainant contacted the Dean of Students directly as the interim ADA Coordinator.

As also discussed above, the Dean of Students received an email from the Student on June 26, 2016 and replied to her email on June 27, 2016. In his response, he advised the Student to

provide appropriate supporting documentation to the College Counselor. The Dean of Students met with the Student and her sister on July 12, 2016.

The Counselor stated that the Dean of Students informed her on June 28, 2016 that the Student had requested accommodations. The Student and Counselor exchanged emails on July 4 and 5, 2016. The Student sent the Counselor a copy of XXXX as documentation. The Counselor reviewed the XXXX and noted that it was out of date. The Counselor also advised OCR that she spoke with the Complainant on July 10 or 11, 2016 and XXXXXXXXXXXXXXXX. The Counselor also stated that XXXXXX or additional documentation in support of her request for academic adjustments. The Dean of Students accepted the XXXXX documentation and approved the Student's requested academic adjustments on July 12, 2016.

The College confirmed to OCR that the Student had left a voicemail for the ADA Coordinator on June 6, 2016. In the voicemail, the Student provided her contact information and requested to fax disability documentation to the ADA Coordinator. In addition, the Student sent an email on June 12, 2016 to (msims@bishop.edu) referenced on the DSS website. The College also verified that the email address (msims@bishop.edu) was an outdated email for a retired employee and the Dean of Students did not monitor the email for disability-related requests. Although the College monitored the ADA Coordinator's email address, the ADA Coordinator's email was not listed on the DSS "Contact Information" page.

After multiple unsuccessful attempts to contact the unmonitored DSS email referenced above, the Complainant and Student contacted the campus switchboard operator who referred them to the Dean of Students. Once the Student identified that the Dean of Students served as the interim ADA Coordinator, she emailed him on June 14, 2016 to request academic adjustments. The Dean of Students did not reply to the June 14, 2016 email and the Student followed up with a second email on June 26, 2016. The Dean of Students responded to the June 26, 2016 email on June 27, 2016.

The College requires students to complete an application form for academic adjustment requests. Students must then contact the DSS Office to schedule an interview and complete the remaining forms. The DSS Office will make a determination whether a student qualifies for academic adjustments based on the interview and medical documentation provided. In this case, OCR determined that the Complainant and the Student attempted to contact the DSS Office using the above process to provide notice that the Student required academic adjustments for the summer 2016 semester. The record reflects that the Student attempted to contact the College on June 6, 2016 and June 12, 2016 via the College's established process, as noted above. The Student ultimately emailed the Dean of Students in his capacity as interim ADA Coordinator on June 14, 2016 and June 26, 2016, and the Dean of Students finally responded to the Student's requests for academic adjustments on June 27, 2016.

According to the College, the designated ADA Coordinator was on leave during the summer 2016 semester. During her absence, the College did not notify current students and applicants that the ADA Coordinator was on leave nor did it provide reliable contact information regarding the designated interim ADA Coordinator. As a result, the Student was unable to obtain appropriate academic adjustments until near the end of the summer 2016 semester. OCR notes

that during the course of this investigation, the College updated the DSS contact information on the College website and rerouted the DSS phones to the Dean of Students. In addition, the College posted a sign on the DSS Office door to direct students and faculty to the Dean of Students. The College also informed OCR that it has hired a new ADA Advisor¹ who coordinates the College's compliance with Title II and Section 504. OCR subsequently reviewed the College's DSS webpage, which provides the contact information for the ADA Advisor.

Accordingly, OCR finds, using a preponderance of the evidence standard, that there is sufficient evidence to support a finding of non-compliance with regard to Issue #2.

The College has entered into the enclosed Resolution Agreement (Agreement) to remedy the non-compliance issue in this complaint and, when fully implemented, will resolve this issue. The Agreement requires the College to update its publications and websites to provide updated contact information for the College's ADA Advisor. In addition, the Agreement requires the College to train its staff and faculty regarding Section 504, Title II, and the College's ADA/Disabled Student Services Handbook regarding the appropriate process for responding to applicants' and students' requests for academic adjustments.

OCR will closely monitor the College's implementation of the Agreement to ensure that it is fully implemented and that the College is in compliance with the statutes and regulations at issue in this case. If the College fails to fully implement this Agreement, OCR will reopen the case and take appropriate action to ensure compliance with Section 504 and Title II. The Complainant may file a private suit in federal court whether or not OCR found a violation.

This concludes OCR's consideration of this complaint, which we are closing effective the date of this letter. This letter 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.

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 or other individual may file a complaint with OCR 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.

¹ The *ADA Advisor* assumed the Title II and Section 504 coordination responsibilities of the College's *ADA Coordinator* referenced herein.

OCR is committed to a high-quality resolution of every case. If you have any questions regarding this letter, please contact Malicia Hitch, General Attorney, at (470) 231-1994 or the undersigned at (404) 974-9392.

Sincerely,

Vahn Wagner
Acting Compliance Team Leader

Enclosure (Signed Resolution Agreement)
cc: XXXXXX, attorney for the College (w/ encl.)