July 13, 2017

Joe H. Pickens, J.D., President
St. Johns River State College
5001 St. Johns Avenue
Palatka, FL 32177

Complaint #04-17-2081

Dear President Pickens:

The U.S. Department of Education, Office for Civil Rights (OCR) has completed its case
resolution process in the above-referenced complaint filed against St. Johns River State College
(College) by the Complainant on behalf of the Student alleging discrimination on the basis of
disability (Spastic Quad Cerebral Palsy). The Complainant specifically alleges that the College
agreed to give the Student the accommodation of being able to use her personal aide and a word
bank to complete writing assignments in ENC1101. The Student utilized this accommodation
for graded assignments during the class and on the final exam but the professor gave the Student
a zero on the final exam after concluding the method of writing was not autonomous enough.

The complaint was investigated pursuant to Section 504 of the Rehabilitation Act of 1973
 SECTION 504), as amended, 29 U.S.C. Section 794, and its implementing regulation at 34 C.F.R.
Part 104, which prohibit discrimination on the basis of disability by recipients of Federal
financial assistance from the Department; and Title II of the Americans with Disabilities Act of
1990 (Title II), as amended, 42 U.S.C. §§ 12131 et seq., and its implementing regulation at 28
C.F.R. Part 35, which prohibits discrimination on the basis of disability by public entities
including public elementary and secondary education systems.

OCR investigated the following legal issue: Whether the College failed to provide the
complainant with an academic adjustment in noncompliance with 34 C.F.R. Section 104.44 (a).

During the course of this investigation, OCR reviewed evidence submitted by the Complainant
and the College and interviewed the Student’s parent and College staff. 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 (CPM). Provided below is an analysis of OCR’s
investigation thus far of the legal issue.
Legal Standards

The regulation implementing Section 504, at 34 C.F.R. § 104.44(a), provides that a recipient shall make such modifications to its academic requirements as are necessary to ensure that such requirements do not discriminate on the basis of disability against a qualified disabled student. Academic requirements that the recipient can demonstrate are essential to the program of instruction being pursued by such student or to any directly related licensing requirement will not be regarded as discriminatory. The regulation implementing Title II, at 28 C.F.R. § 35.130(b)(7), provides that a public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program or activity.

When determining whether a recipient provided academic adjustments in accordance with Section 504 and Title II, OCR examines the following: (1) whether the student provided adequate notice in accordance with required procedures of the need for academic adjustments; (2) whether reasonable academic adjustments were provided; and, (3) whether the academic adjustments provided were of adequate quality and effectiveness.

In keeping with the policy of deference to academic decision making, OCR gives significant deference to the professional judgments of faculty and other educational experts with respect to genuine academic decisions. OCR does not substitute its judgment for that of educational experts with respect to whether academic requirements are or are not essential to participation in a recipients program or activity. OCR may, however, review the process that a postsecondary institution utilizes to determine whether an academic adjustment is an essential requirement.

Under an appropriate process, when determining whether a requested academic adjustment or auxiliary aid would constitute a fundamental alteration of an essential program requirement, relevant officials within the institution are generally required to engage in a reasoned deliberation that includes a diligent assessment of available options. An appropriate process should include the following: 1) the decision is made by relevant officials including faculty members; 2) the decision makers consider a series of alternatives, their feasibility, cost and effect on the academic program; and after reasoned deliberation; and, 3) the decision makers reach a rationally justifiable conclusion that the available alternatives would result either in lowering of academic standards or requiring substantial program alternative.

Evidence Obtained Thus Far

The Student has Spastic Quad Cerebral palsy. She cannot speak or write and uses her eyes and body movement to communicate. She also utilizes an aide to assist with her academics. Prior to her enrollment she self-identified and requested accommodations for the placement exam in Summer 2014. The College’s Disability Services (Coordinator) reached out to the Association of Higher Education and Disability (AHEAD) seeking advice from other colleges regarding accommodating a student with Spastic Quad Cerebral palsy. Information concerning the Student’s disability and prior accommodations and capabilities including whether she had used
assistive technology was also obtained by Disability Services. The Student was allowed multiple choice questions on the placement exam and after testing was informed that there was no need for remediation in Reading or English. The Student was given the following accommodations: exemption for math and foreign language, testing multiple choice, tape recorder, scribe for tests, extended time for tests, assignments, alternative test environment, front row seating, note take, movement as necessary, permission to leave class, and a table.

The Student took her first class in the spring semester of 2015. Disability Services continued to reach out to AHEAD and Disabilities services staff regarding how to accommodate the writing requirement for the Student. Several responses suggest use of assistive technology and the Coordinator is also given the name of a Special Needs Technology Developer/Specialist. The Student’s mother response to the use of assistive technology is that it has been used in the past and hasn’t worked well and the Student has used an aide for all writing assignments. The Student wanted to take ENC 1101 in the spring semester but dropped the class due to the writing mandate as it was determined that multiple choice questions would not work for the writing portion of the class which focused on original work. The Student takes several classes some with a writing requirement of which the Aide was allowed to assist and successfully completed the classes.

Disability Services continued to research writing accommodations for the Student including possible waiver of the writing requirement. The Student registered for ENC 1101 class during the fall semester. After several meetings among College staff the Student’s parents and the Student it was decided that the Student would receive the following accommodations for ENC 1101: the class was reformatted to accommodate the Student, classroom moved to better facilitate seating for all students and to assure Student front row seating, separate untimed section of Blackboard built for Student, separate class registration number (CRN) created to extend time for course over one full year (if needed) at single semester tuition rate, writing portion of the early assessment was waived (temporarily) due to the low score on grammar portion (objective) of the early assessment, with separate library tour created to further explore MLA, APA, and Chicago documentation styles. For the intensive writing portion the Student’s accommodations included, through use of word banks and responses to research and discussions, Student will identify key words (specifically nouns, pronouns, objectives, and adverbs) to communicate the main ideas(s) for the specific written assignments, the scribe will create the sentence using Student’s selections and add appropriate punctuation, the Student is responsible for the word banks, understood that the content of the Student’s written assignment will be taken into consideration during grading, identification of a main idea, focus on that main idea, number and quality of supports and overall format. To successfully complete the course the Student must recognize and utilize essay writing (as stated above) and on exams correct grammar in areas such as fragments, comma splices, and fused sentences, subject/verb and pronoun antecedent agreement; correct pronoun, adjective, adverb usage, punctuation; and demonstrate competency in basic research documentation strategies by utilizing MLA, APA and Chicago documentation styles.

The Student with the assistance of her Aide using the writing method as understood by the Aide completed 3, out of class papers. College staff expressed concern that the Student was not doing the work on her own to Disability Services and the Department. College staff felt that due to
how quickly the Student was completing the out of class assignments she was not doing the work on her own; as it was anticipated that it would take the Student longer given the writing method. The Student’s out of class assignments were graded as all other students’ and her grade going into the final was a “B.” It is unclear whether Disability Services and the Department addressed the Professor’s concerns. The final exam for the class is a proctored exam and this was the first time the writing process was witnessed by College staff. College staff felt that the writing process, as witnessed, was not in compliance with what staff understood to be the agreed upon accommodations and it appeared that the Student could not relate thoughts to the Aide but was instead responding to suggestions from the Aide. The Student received a grade of zero on the final exam. After questioning the grade and the reason for the grade, Disability Services advised the Student to file a grade appeal because the class was over when the grades were posted; instead of filing a grievance regarding the accommodation. The appeal was denied.

Reasons to Resolve Pursuant to CPM Section 302

As noted, the Student received accommodations in the class, however; documentation provided to OCR appears to indicate that there was a lack of clarification between the Student and the University regarding how the accommodation for the writing requirement in ENC 1101 would work between the Aide and the Student and exactly how the word bank would be developed and utilized by the Student. The Student received a zero on the final exam. Prior to the College’s request to resolve the complaint, OCR had not made a determination concerning whether the College engaged in any discriminatory action that resulted in the Student receiving a zero on the final exam.

Proposed Resolution and Conclusion

The attached Agreement requires the College to: 1) clarify the writing accommodations with the Student, her Aide and the professor of the class specifically explaining how the word bank will be developed and utilized by the Student and the role of the Aide in the writing process; 2) the College will accept the Student’s grades for the three, out of class, assignments in ENC 1101 and allow the Student to retake the final exam to determine her final grade for ENC 1101. The final exam should be proctored by someone other than the original professor knowledgeable of the accommodations; and, 3) The College will train Disability Services staff on their obligation to notify persons involved with the implementation of accommodations, including professors, students, scribes and any other persons authorized to assist with the approved accommodations, on the accommodations to be received and the manner in which the services are to be provided to the student to ensure clarity on what is to be received and how it is to be implemented and be responsive to concerns raised by faculty, staff or students regarding the approved accommodations.

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.
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 Vicki Lewis, Senior Attorney, at 404-97-9332 or vicki.lewis@ed.gov or me at 404-974-9376 or art.manigault@ed.gov.

Sincerely,

Arthur Manigault, Esq.
Compliance Team Leader

Enclosure