



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

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ATLANTA, GA 30303-8927

REGION IV
ALABAMA
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February 4, 2019

Ava Parker
President
Palm Beach State College
4200 S. Congress Ave
Lake Worth, FL

Re: OCR Complaint No. 04-18-2349
Letter of Resolution

Dear Ms. Parker:

The U.S. Department of Education (the Department), Office for Civil Rights (OCR), has completed its investigation of the complaint we received on August 8, 2018 against the Palm Beach State College (the College). The Complainant alleged that the College ailed to timely investigate her internal grievance that was filed in April, 2018, failed to timely provide her with academic adjustments and auxiliary aids during the summer, 2018 semester and that the College retaliated against her by denying her admission to summer and fall, 2018 classes as a result of missing transcripts from other academic institutions.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive 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 at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive Federal financial assistance from the Department. The laws enforced by OCR prohibit retaliation against any individual who asserts rights or privileges under these laws or who files a complaint, testifies, assists, or participates in a proceeding under these laws. Because the College receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504, and Title II.

OCR investigated the following legal issues:

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

1. Whether the College discriminated against the Complainant on the basis of disability by failing to timely investigate the Complainant's internal grievance, filed in April, 2018 in noncompliance with Section 504 implementing regulation 34 C.F.R. §104.7 and Title II and its implementing regulation 28 C.F.R. §35.130.
2. Whether the College discriminated against Complainant on the basis of disability by failing to provide academic adjustments in a timely manner in non-compliance with Section 504, implementing regulation 34 C.F.R. §104.44, and Title II and its implementing regulation 28 C.F.R. §35.130.
3. Whether the College retaliated against the Complainant when the College required her to withdraw from upcoming classes, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. §104.61 and Title II and its implementing regulation at 28 C.F.R. §35.134.

In reaching a determination, OCR reviewed data from the College and Complainant. OCR also interviewed the current Dean of Student Affairs, two DSS managers, two professors, the former Dean of Student Affairs and the former Provost. OCR also offered the Complainant an opportunity for rebuttal via telephone and in writing.

Before OCR could conclude its investigation, the College expressed interest in voluntarily resolving Issue #1, pursuant to Section 302 of OCR's *Case Processing Manual*. On February 4, 2019, the College signed the enclosed Resolution Agreement, which, when fully implemented, will address Issue #1. OCR will monitor the implementation of the Resolution Agreement.

After carefully considering all of the information obtained during the investigation, OCR found insufficient evidence to support a finding of non-compliance with Issues #2 and #3. Set forth below is a summary of OCR's findings.

Legal Standards

The Section 504 implementing regulation at 34 C.F.R. §104.7(a), states that a recipient who employs 15 or more people shall designate at least one person to coordinate its efforts to comply with Section 504. The regulation at 34 C.F.R. §104.7(b) requires a recipient that employs 15 or more people to adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504. The Title II implementing regulations at 28 C.F.R. §35.107 (a) and (b) contain similar provisions for public entities with 50 or more employees.

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

The Section 504 implementing regulation at 34 C.F.R. §104.61 incorporates 34. C.F.R. §100.7(e) which states that no recipient or other person shall “intimidate, threaten, coerce, or discriminate against” any individual because the individual has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under” OCR’s regulations (the participation clause); *or* “for the purpose of interfering with any right or privilege secured by” the statutes and regulations enforced by OCR (the interference clause).

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. In addition, 28 C.F.R. §35.134 states that no entity shall discriminate against any individual because that individual has opposed any act or practice made unlawful by Title II, or because that individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this regulation. 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

The Complainant was a student at Palm Beach State College (College) at the time of filing and plans to return. The Complainant attended the College intermittently since the summer, 2011 semester and was a student during the spring and summer, 2018 semesters.

The Complainant attended classes for the spring and summer, 2018 semesters. At the end of the spring, 2018 semester, on or around April 24, 2018, the Complainant filed an internal grievance against the College. The College investigated and determined the Complainant’s grievances to be unsubstantiated. A letter was sent to the Complainant’s advocate on August 23, 2018. The Complainant alleges that the College failed to correctly investigate her grievance.

The Complainant also alleges that the College failed to timely give her academic adjustments for two of her three summer courses. Specifically, the Complainant alleges that she did not receive academic adjustments for her Introduction to Health Information Management (Health Information Technology) class until partway through the semester and did not receive academic adjustments for her Microsoft Applications for Health Professionals (MS Office) class. The Complainant stated she had no issues with academic adjustments for her remaining class; Medical Terminology.

Finally, the Complainant alleges College retaliated against her for filing an internal grievance by denying her overrides for outstanding official transcripts from additional colleges that the

Complainant attended. Without an override or a copy of the transcripts, the Complainant cannot register for additional classes. Prior to attending the College the Student attended XXX XXX, XXX XXXX XXX, XXXX XXXX, and XXXX XXXX XXXX. The Complainant has produced transcripts from XXXX XXXX XXX and XXX XXXX. However, the Complainant has not produced official transcripts from XXXX or XXXXXX. In the past, the Complainant was able to receive overrides and attend classes despite having outstanding transcripts from her previous colleges.

Analysis

#1 Whether the College discriminated against the Complainant on the basis of disability by failing to timely investigate the Complainant’s internal grievance, filed in April, 2018 in noncompliance with Section 504 implementing regulation 34 C.F.R. §104.7 and Title II and it’s implementing regulation 28 C.F.R. §35.130.

The College has five campuses. During the spring, 2018 semester the Complainant primarily attended classes on the Boca Raton campus, but transferred two classes to the Lake Worth campus partway through the semester. The Complainant filed her internal grievance on April 24, 2018 with the Interim Dean of Student Development (Dean).

The Dean asked the Complainant to clarify her complaint via email on April 30, 2018. The Complainant sent an emailed list of eight (8) issues on May 3, 2018. The issues included: difficulty carrying books in the campus bookstore, a broken elevator, assistance to class via security staff-driven golf cart, issues with note takers in her classes, issues with extended time in an Anatomy and Physiology class, issues with a lab class, a comment from a professor, and a complaint about a transcript override. The College completed the investigation on August 23, 2018 and notified the Complainant of their conclusions via a letter to her attorney. The College declared all claims as unsubstantiated.

The College provided OCR with a copy of the Palm Beach State College Harassment, Sexual Harassment, Discrimination, and Retaliation Procedure (Procedure).

OCR reviewed the Procedure. During the review, OCR discovered that there is no reference to the Section 504 coordinator or other contact person for that position. The Procedure also lacks citations to Section 504. During its review OCR also noted that a complainant may provide written details of the conduct that is the subject of the complaint. However, there is not a provision that the complainant will be granted an opportunity to present witnesses and evidence during the investigation.

Based on a review of the evidence, OCR had concerns about whether the College processed the Complainant’s grievance in a prompt and equitable manner, as required pursuant to 34 C.F.R. §104.7. However, before OCR could complete the investigation regarding Issue #1, the College expressed interest in voluntarily resolving Issue #1. Because OCR did not complete the investigation, OCR did not reach a finding whether the College failed to conduct a prompt and equitable response to the Complainant’s internal grievance.

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

OCR reviewed the data provided by the Complainant and College regarding academic adjustments for the summer, 2018 semester. OCR also interviewed the Dean, Loxahatchee Grove DSS Manager, and two professors. The Complainant was also offered a chance to respond verbally and in writing.

The Complainant registered for three classes. One online class, based at the Lake Worth campus, and two on-campus classes based at the Loxahatchee Grove campus. The Complainant alleged to OCR that she did not receive the academic adjustments of a note taker or extended time, until partway through the semester for her Health Information Technology class. The Complainant also alleged that she did not receive the academic adjustments of clarification or extended time in her MS Office class. The Complainant stated she did not have issues receiving academic adjustments for her online class.

The summer, 2018 semester began on May 15, 2018. The Complainant filled out her application for academic adjustments on May 14, 2018 and Letters of Notification were drafted on May 15, 2018. One letter was directly sent to the online instructor and the other two were sent to the DSS Manager for the Loxahatchee Grove campus.

The Complainant went to the DSS office at Loxahatchee Grove on May 22, 2018 and met with the DSS Manager (Loxahatchee Manager) for that campus. During the meeting, the Loxahatchee Manager reviewed the approved academic adjustments with the Complainant. Academic adjustments included a note taker, preferential seating, extended time, breaks, permission to record the lecture, copies of lecture notes, and assistance to class via cart as needed for her Health Information Technology and MS Office classes.

The Loxahatchee Manager stated to OCR that the Complainant requested a note taker for her Health Information Technology class, but declined a note taker for her MS Office class. The Loxahatchee Manager also stated that the Complainant also declined a recording device for her classes.

The Loxahatchee Manager also stated that the Complainant objected to the use of a student volunteer and wanted a paid professional note taker for Health Information Technology. The DSS manager stated that paid professional note takers were not in the budget, but a student volunteer would be found. The Complainant received a volunteer note taker for two classes, but the volunteer later withdrew from the class. The College then provided a live transcription service for notetaking. The Complainant disagrees and states that she was told no note takers were available.

The Complainant requested a meeting with all of her advisors and DSS staff to review her academic adjustments. On June 5, 2018, DSS and College staff attended the meeting and the Complainant's Vocational Rehabilitation counsel was present by phone. At the meeting the

Complainant clarified she needed notetaking services for her Health Information Class, but did not need one for the MS Office or her online class. The Complainant also discussed the need for extended time at the meeting. The DSS staff explained that the Blackboard assignments already had extended time built in. The DSS staff also encouraged the Complainant to either reach out to the IT department or use on-campus computers to resolve any Blackboard access issues. A separate meeting took place June 7, 2018 with the Health Information Technology professor and the Loxahatchee Manager. The purpose of that meeting was to ask for clarification about assignments.

OCR interviewed the Health Information Technology and MS Office Professors. Both Professors stated that all students to attend at least 90% of the class to pass. For the summer semester, students can miss up to two class periods. Failing to attend three or more classes will result in an automatic failure. The Complainant missed her first class on or around May 15, 2018 in Health Information Technology. However, she did attend the MS Office class on or around May 15, 2018.

On or around June 12, the Complainant stopped attending her MS Office class. The Complainant also stopped attending her Health Information Technology on or around June 12, 2018. The DSS Manager and the Professors stated they attempted to contact the Complainant to determine why she was missing classes, but the Complainant did not respond to their emails. The Complainant disputes this and states she communicated with the Loxahatchee Manager. The Complainant stated to OCR that she stopped attending classes because she felt she was not getting her academic adjustments and was overwhelmed.

On or around July 6, 2018, the Complainant decided to withdraw from all three of her classes. However, she did not complete the withdraw process by the July 11, 2018 deadline. The Complainant states she was unable to withdraw in time due to the hold on her record and sent the registrar a late withdraw request on or around July 27, 2018, but the registrar did not receive it.

After reviewing the data, OCR determines that there is insufficient evidence that the Complainant did not receive appropriate academic adjustments. The Complainant and the College engaged in an interactive process to determine appropriate academic adjustments on several occasions. The Complainant requested her academic adjustments at the very beginning of the semester, but the request was processed within one day and letters were sent to the Loxahatchee Grove campus on May 15, 2018. The Complainant did not meet with the Loxahatchee Manager or pick up her letters until May 22, 2018.

The Complainant provided notice to the College that she was having issues and a meeting was held with DSS staff and College staff members as well as the Complainant's Office for Vocational Rehabilitation counselor. A separate meeting was also held with a professor that the Complainant requested to meet with to discuss her assignments. The Loxahatchee Manager also attended the separate meeting. The Complainant failed to attend the minimum amount of classes and did not respond to emails inquiring why she was missing class. The reason for her final grade is due to attendance and failure to complete work. Although the Complainant disagrees with the College's version of events, there is no corroborating evidence to refute the College's

explanation. Accordingly, the preponderance of the evidence does not establish that the College failed to provide the academic adjustments as alleged.

#3 Whether the College retaliated against the Complainant when the College required her to withdraw from upcoming classes, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. §104.61 and Title II and its implementing regulation at 28 C.F.R. §35.134.

On around April 24, 2018, the Dean emailed the Complainant to state she could not register for fall or summer, 2018 classes as she had not produced her outstanding official transcripts from previous colleges. On or around April 27, 2018, the Dean revised her decision and allowed the Complainant to attend summer, 2018 classes as a courtesy but stated she could not register for fall, 2018 classes until she produced her missing official transcripts. The Complainant alleges that this denial is retaliation for her filing an internal grievance.

OCR reviewed the data to determine if the Complainant suffered an adverse action and engaged in a protected activity. The Complainant filed an internal grievance with the Dean on April 24, 2018 via email, shortly before the Dean stated she could not attend fall or summer classes. The internal grievance alleged, among other things, that the Complainant had not received appropriate academic adjustments in her classes. In addition to filing an internal grievance, the Complainant also filed an OCR complaint against the College in the past (OCR Complainant #04-16-2326).

To determine if a Complainant suffered an adverse action, OCR examines whether the College's action significantly disadvantaged the Complainant in her ability to gain the benefits of the College's program. As the College denied the Complainant the ability to continue enrolling in classes, OCR determines that College's actions could be construed as an adverse action.

To determine whether the complainant engaged in a protected activity, OCR looks to determine if the Complainant either opposed an act or policy that is unlawful under a law OCR enforces or made a complaint, testified, assisted or participated in an investigation conducted under a law OCR enforces. As the Complainant filed an OCR complaint against the College in the past and filed an internal grievance against the College, OCR determines that the Complainant engaged in a protected activity.

OCR then reviewed the data to determine whether a causal connection exists between the protected activity and the adverse action. OCR considers a variety of factors in assessing whether a causal connection exists, including a close proximity in time between the protected activity and the adverse action. In this case, the request for an internal grievance and the denial of access to classes occurred on or around April 24, 2018. Such close temporal proximity between the protected activity and the adverse actions satisfies the causal connection element.

After determining that the Complainant was subjected to an adverse action, engaged in protected activity, and a causal connection can be inferred between the two, OCR next considered whether the College had legitimate, non-discriminatory reasons for its actions that were not a pretext for retaliation.

The College requires all degree-seeking and certificate-seeking students to submit official transcripts from other institutions. Students have a grace period of one semester to produce the transcripts. If transcripts are not provided, they may not register for subsequent terms.

OCR reviewed the data regarding the Complainant's transcripts and interviewed the former Dean and former Provost. The Complainant was also granted an opportunity to respond verbally and in writing. When the Complainant returned to the College for spring, 2018 the former Provost and former Dean of Student Development/Ombudsman (former Dean) met with the Complainant in January, 2018. The Complainant was missing two official transcripts from her previous colleges. The former Dean allowed the Complainant to receive overrides for her missing transcripts as long as she produced evidence of a payment plan to the two colleges she attended before. The former Dean sent the Complainant an email on or around January 9, 2018 with the items she must complete, based on their meeting the evening before.

OCR reviewed the data regarding the Complainant's transcripts and interviewed the former Dean and former Provost. The former Dean left the College on or around January 26, 2018. The former Provost left the College on or around October 30, 2018.

The former Dean sent the Complainant an email summary of their meeting on January 9, 2018. The email stated that the Complainant was required, among other things, to contact the registrar by the end of January, 2018 and show proof that she worked out a payment plan with the two colleges that were holding her transcripts due to unmet financial obligations. The former Dean stated that the Complainant was required to show proof that she was making payments at her other colleges each semester. If the complainant provided proof she was making payments, she would be allowed to register for classes for the next semester. The former Provost stated that the Complainant was required to either provide the College with her transcripts or provide evidence that she had set up a payment plan with her other colleges.

On February 6, 2018, the Complainant sent an email to the registrar stating she was contacting him about her "plan of action" to resolve her balances with the two colleges. She had reached out to the two colleges holding her transcripts to set out a payment plan. However, the Complainant also stated she was considering filing for bankruptcy and might be including the unmet balances in her bankruptcy filings. The registrar allowed the Complainant to enroll in summer, 2018 classes.

On April 17, 2018, the registrar contacted the Complainant and clarified that she was required to work out a payment plan with her two colleges. The registrar then asked what evidence the Complainant had regarding payment plans or filing for bankruptcy. The Complainant replied that she was not filing for bankruptcy until later in the year. She was attempting to follow up with the two colleges, but had not developed a payment plan. The Complainant requested an extension to until the end of 2018 to correct her transcript issues and to be allowed to enroll in fall, 2018 classes.

Based on the data, OCR determines that the College has provided a legitimate non-discriminatory reason for denying registration to the Complainant. The Complainant was

required to develop a payment plan with her two previous colleges and provide proof of the plan to the College. The Complainant did not present proof of payment plans nor did she present proof of a bankruptcy filing. The Complainant disputes this and states that she attempted to work with a former college, but they did not do payment plans.

OCR reviewed the records of the College's transcript holds and overrides for the 2017-2018 school year to determine if the legitimate non-discriminatory reason was a pretext for retaliation. OCR looked to see whether similarly situated individuals were treated the same and whether there was a deviation in policy or practice. The College gives students have a grace period of one semester to produce outstanding transcripts from other institutions. If transcripts are not provided, they may not register for subsequent terms.

The Complainant received four (4) transcript overrides for the 2017-2018 school year. Since 2013, the Complainant has received nine (9) transcript overrides. OCR reviewed the data to determine if other students received transcript overrides.

- Approximately one hundred and thirty nine (139) students did not produce a transcript and had hold on their records
- Approximately forty-nine (49) students produced at least one transcript but had a hold due to missing additional transcripts.

OCR then reviewed the number of students with transcript hold to determine if they received an override.

- Thirty (30) students received one override on their transcript hold
- Four (4) students received two overrides on their transcript hold.
- One (1) student received four overrides on their transcript hold.

The remaining students with transcript holds did not receive an override.

OCR also noted that in addition to the students above, two students received two overrides and one student received three overrides on their transcript holds. Those students submitted official transcripts and no longer have holds on their records.

The primary reason for transcript holds and overrides was that the students were awaiting official transcripts from other institutions. Additional reasons were students declining to re-enroll, students not taking classes during a first override period, and students awaiting updated transcripts.

Based on the above, OCR determines based on the data that the legitimate non-discriminatory reason is not a pretext for retaliation. The Complainant received four overrides, which means she was treated more favorably than all other comparators. Specifically, the data shows that the Complainant received more overrides than any other student in the 2017-2018 school year. In addition, the Complainant has received nine total overrides since 2013. Similarly situated students received less overrides than the Complainant. The Complainant was granted an agreement to allow overrides if she produced evidence that she made a payment plan with her

other colleges. The Complainant did not produce evidence of a payment plan with her previous colleges. As a result, she was not granted any additional overrides and was, therefore, not allowed to enroll in fall classes.

Based on a preponderance of the evidence, OCR concludes that Complainant established a prima facie case of retaliation; however, the College proffered a legitimate, non-retaliatory reason for its actions. OCR further found that the College's proffered reason was not a pretext for retaliation based on its adherence to its policies and practices, which reflect that the Complainant was treated more favorably than all comparators. Accordingly, OCR concludes there is insufficient evidence of retaliation in noncompliance with Section 504, as alleged.

Conclusion

Prior to the completion of the investigation, OCR identified a potential compliance concern regarding Issue #1. Also prior to the completion of the investigation, the College expressed a desire to resolve this case through Section 302 of OCR's CPM. After carefully considering all of the information obtained during the investigation, OCR found insufficient evidence to support a finding of non-compliance with Issue #2 and #3.

This concludes OCR's investigation of the 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 a right to file a private suit in federal court whether or not OCR finds a violation.

The Complainant has a right to appeal OCR's determination regarding Issues #2 and #3 within 60 calendar days of the date indicated on this letter. In the appeal, the Complainant must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal. If the complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the recipient. The Recipient has the option to submit to OCR a response to the appeal. The Recipient must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the Recipient.

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 individual 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. In the event that OCR receives 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, please contact Malicia Hitch, General Attorney, at (470) 231-1994 or by email at malicia.hitch@ed.gov, or me at (404) 974-9354.

Sincerely,

Scott R. Sausser, Esq.,
Compliance Team Leader

Enclosure: Resolution Agreement

cc: XXX XXXX, College counsel *via email*.