



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

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March 18, 2019

Ava L. Parker, J.D.  
President  
Palm Beach State College  
4200 Congress Avenue  
Lake Worth, FL 33461

OCR Complaint #04-18-2408  
Resolution Letter

Dear President Parker:

The U.S. Department of Education (the Department), Office for Civil Rights (OCR), has resolved the above referenced complaint. The Complainant alleged that Palm Beach State College (College) discriminated against the Student on the basis of disability. Specifically, the Complainant alleged that the College failed to timely provide the Student with academic adjustments and auxiliary aids during the Spring 2018 semester after spring break, and failed to provide the Student with an accessible classroom for her Business Management class in Spring semester 2018 once the elevator in the building where that class was held broke. The Complainant also alleges that the College failed to provide her with her requested accommodation of transportation by cart to her classes.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) 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 (FFA) from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities.

**Legal Issues**

Based on the above, OCR investigated:

1. Whether the College discriminated against Student on the basis of disability by failing to provide academic adjustments, including extended time on assignments, a note-taker for her Anatomy and Physiology class, and a quiet location for test-taking between March and May 2018, 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.

2. Whether the College discriminated against the Student when the College failed to provide her with an accessible classroom for her Business Management class during Spring semester 2018 after the elevator in that building broke, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. §§104.44, 104.22 and Title II and its implementing regulation at 28 C.F.R. §§35.130, 35.149.
3. Whether the College discriminated against the Student on the basis of disability during the Spring and Summer academic terms of 2018 when the College failed to provide the Student access to the Boca Raton campus through the agreed to accommodation of “assistance to classroom via cart,” in noncompliance with the Section 504 implementing regulation at 34 C.F.R. §104.44 and Title II and its implementing regulation 28 C.F.R. §35.130.

### **Summary of Investigation**

The Complainant is the attorney for the Student—who attends Palm Beach State College (College). The Student took classes on the Boca Raton Campus of the College during the Spring 2018 semester. During the course of its investigation, OCR reviewed information provided by the Complainant and the College, including emails between the Student and the College, emails between Student and her professors, course syllabi, the Student’s medical records, and the Student’s accommodations letters from the College. In addition, OCR conducted interviews with the Complainant, the Student, the Student’s Anatomy and Physiology Professor, the Disabilities advisor at the College’s Loxahatchee campus, and the College’s Director of Disability Services. In addition, OCR conducted a rebuttal interview with Complainant and the Student. 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, such as the College, failed to comply with a law or regulation enforced by OCR or whether the evidence is insufficient to support such a conclusion.

### **Legal Standards**

The Section 504 regulation, at 34 C.F.R. § 104.22, requires recipients of FFA to operate their programs or activities so that when each part is viewed in its entirety, it is readily accessible to persons with disabilities. This paragraph does not require a recipient to make each of its existing facilities or every part of a facility accessible to and usable by persons with disabilities. Title II’s implementing regulation at 28 C.F.R. § 35.149 similarly provides that no qualified person with a disability shall, because a public entity’s facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of the services, programs, or activities of a public entity.

The Section 504 regulation, at 34 C.F.R. § 104.44 provides 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[ ...]applicant or student [with a disability]. 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.”

Subpart (b) provides: “A recipient to which this subpart applies may not impose upon ...students [with a disability] other rules, such as the prohibition of tape recorders in classrooms or of dog guides in campus buildings, that have the effect of limiting the participation of ...students [with a disability] in the recipient’s education program or activity.”

Subpart (c) continues: “In its course examinations or other procedures for evaluating students’ academic achievement, a recipient to which this subpart applies shall provide such methods for evaluating the achievement of ...students [with a disability] that impairs sensory, manual, or speaking skills as will best ensure that the results of the evaluation represents the student’s achievement in the course, rather than reflecting the student’s impaired sensory, manual, or speaking skills (except where such skills are the factors that the test purports to measure).

Subpart (d) provides: (1) A recipient to which this subpart applies shall take such steps as are necessary to ensure that no ...student [with a disability] is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination because of the absence of educational auxiliary aids for students with impaired sensory, manual, or speaking skills. (2) 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. Recipients need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.”

### **Background:**

The Student is an adult student at the College with multiple diagnoses including Post-Traumatic Stress Disorder (PTSD) and ADHD. She also complains of chronic back pain and mobility issues. In 2017, the Student’s physician noted that while the Student had a history of thoracic myofascial pain, and left upper quadrant abdominal pain, she was able to bend, kneel, squat, climb stairs with rails, reach overhead, and do activities that required pushing and pulling. The physician noted that the Student had a functional capacity to work part time and should be in a job that allows her to take breaks and change positions from sitting to standing at will.

The Student was also examined by a psychologist in 2013, who recommended that she be allowed the following accommodations in educational settings:

- Repeat and clarify instructions;
- Quiet work area to minimize distractions;
- Preferential seating to minimize distractions;
- Provide copies of class notes;
- Private quiet test area and clarification of test questions;
- Extended time to complete tests and assignments.

On the Student's Disability Support Services Self-Identification form from the beginning of the Spring 2018 semester at the College, she requested extended time on tests in the testing center, notes from her professor, preferential seating, and breaks as needed. The College granted these accommodations.

The Complainant's allegations arose mid-way through the Spring 2018 semester when the Student was enrolled at the College's Boca Raton campus, where she took Anatomy and Physiology, Anatomy and Physiology lab, Principles of Management, College Composition 2, and Fundamentals of Speech Communication. The Complainant alleged that she was denied note-taking and testing accommodations in her anatomy physiology class, she was denied an accessible classroom for her Principles of Management class when the College's elevator stopped functioning, and she was denied mobility accommodations through use of a disability cart on the College's campus.

### **Analysis:**

#### **Issue 1 – Failure to Provide Accommodations in Anatomy & Physiology:**

##### *Legal Standards and Allegations:*

When considering whether a post-secondary educational institution appropriately provided academic adjustments, services, and auxiliary aids, OCR determines whether the Student notified the institution of her need for academic adjustments, services, and auxiliary aids, demonstrated that the academic adjustments, services, and auxiliary aids were needed, and followed the institution's processes for obtaining academic adjustments, auxiliary aids, and services. The College's Disability Services webpage outlines the process students need to follow:

1. Make an appointment with Disability Support Services (DSS) coordinator or adviser on the campus you will be attending.
2. Submit current documentation from a qualified professional to support disability claim prior to meeting with DSS coordinator or adviser.
3. Complete intake process at the meeting with adviser.
4. Request services each term (Minimum of 3 weeks' notice) through DSS office.<sup>1</sup>

In this case, the Student deviated from the College's process by making her request for Spring disability services on January 11, 2018—six days after classes for the Spring 2018 semester had started. At this time, the Student alerted the College that she needed note-taking services, extended time on tests, and a quiet place to test.

##### *Factual Analysis:*

The documentation available to OCR shows that the Student and the College engaged in an interactive process and the College agreed to provide the academic adjustments and services requested in writing by the Complainant. The Student's accommodations letter from Spring

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<sup>1</sup> <https://www.palmbeachstate.edu/disability/>

semester states that the College agreed to provide the Student with “Copies of professor’s notes, overheads, or power point or Volunteer note-taker,” as well as a reduced-distraction test setting. The Student alleged that midway through the semester she was denied note-taking services and a quiet place to test in her Anatomy and Physiology class. During its investigation, OCR learned that, while there was a few weeks’ gap in notetaking services in the Student’s Anatomy Physiology class, the Student also received the Professor’s power point lecture notes throughout the semester, which were available to all students in the class. Based on the preponderance of the evidence available to OCR, the Student received at least one form of note accommodations throughout the Spring 2018 semester.

Regarding the Student’s claim that she did not receive her full testing accommodations, OCR learned that the Student took her tests in the College’s testing center. However, the evidence demonstrated that there are only three quiet work stations in the testing center, while the rest of the testing center is configured like a standard classroom with seating for 30-40 students. OCR confirmed that the Student took all of her tests in the testing center, but could not confirm whether she was able to test in one of the quiet carrels each time, or if she was in the larger area, and if so, how many other students would have been present. At this point in OCR’s investigation, the College asked to resolve this matter via a settled resolution.

*Conclusion:*

To conclude, OCR found that the preponderance of the evidence regarding the Student’s accommodations in her Anatomy and Physiology class demonstrated that she received at least one approved method of note-taking services during the entire Spring 2018 semester. The College provided proof that the Professor’s notes and power point presentations were available to all students enrolled in the class throughout the semester. Accordingly, OCR found insufficient evidence of noncompliance with Section 504, as alleged.

However, the issue of whether the College consistently provided the Student with a distraction-free testing environment raised potential compliance concerns. Before OCR could conduct further investigation on this issue, the College asked OCR to resolve this portion of the complaint via the resolution process outlined in §302 of OCR’s *Case Processing Manual*. Because there is a potential compliance concern regarding the provision of the Student’s distraction-free testing accommodation, this issue is appropriate for an agreed resolution and these concerns will be addressed in the attached resolution agreement.

**Issue 2—Failure to Provide an Accessible Classroom:**

*Legal Standards and Allegations:*

Complainant also claims the College failed to provide the Student with accommodations to make her Management Principles 2nd floor classroom accessible when the only elevator on the Boca Raton campus was down in both February and March 2018. OCR employs the same analysis cited above in the discussion on Issue 1 to determine whether the Student used the College’s process to alert them that she was a student with a disability in need of academic adjustments, auxiliary aids, and services, and whether the College responded appropriately.

The Student stated that the elevators on the Boca Raton campus failed on or about February 1, 2018. Service records for the elevator provided by the College to OCR demonstrate that the elevator was in a state of disrepair from January 31 to February 21, 2018, when it was repaired. Complainant contends that at the beginning of Spring semester 2018, she provided the College with information that she was a student with a mobility disability who would have needed accommodations when the elevator went down, but that none was forthcoming. She also claims that she went in person to the Disability Services office on many occasions during the February 1-21 time period to ask for help when the elevator was down. She also alleges that the elevator went down again in March.

*Factual Analysis:*

The data available to OCR shows that the first written communication to the College by the Student regarding the elevators was on February 22, 2018. There is also written evidence that the Student complained to the Disability Services office regarding the elevator on the previous day February 21, 2018. At that time, the College granted the Complainant a temporary accommodation and allowed her to store her backpack in the Disability Services office so that she would not have to climb the stairs with it.

As noted above, at the beginning of Spring semester 2018, the Student requested disability accommodations of extended time on tests in the testing center, notes from her professor, preferential seating, and breaks as needed. The Student also told OCR during an interview that she had provided the College's staff with information about her functional limitations from her physician on several occasions and submitted two functional evaluations from her physician to OCR to support this claim—one completed in 2013, and another completed in 2017.<sup>2</sup> The College contends that it never received documentation from a physician of the Student's physical disability. The College's Director of Disability Services stated that the Student's Spring 2018 intake interview noted that her back sometimes gave her trouble and requested transportation around the Boca Raton campus via golf cart, but it did not mention that she had trouble negotiating stairs.

*Conclusion:*

Taken in its totality, the evidence does not show by a preponderance of the evidence that the Student followed the College's process for requesting mobility accommodations for her upstairs classroom, or that she provided the College with notice that she had a mobility issue that would impede her use of the stairs prior to February 21, 2018. The Student relies on the functional physical assessments from her physician; however, the 2017 evaluation states that the Student is able to climb protected heights, such as stairs. This report also notes that the Student would have good and bad days due to her pain.

Aside from the Complainant's assertions that she alerted the College of her mobility issues, the only documentary evidence available to OCR in this regard demonstrates that the Student did

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<sup>2</sup> The Complainant also stated that her sons witnessed her tell College personnel about her physical disability. OCR offered to interview her sons, however they did not make themselves available to OCR.

communicate with the College about the elevator on February 21 and 22, that the College put a temporary accommodation in place for the Student on February 21, and that the elevator was repaired on that same day. The elevator maintenance records for the College do not show any further elevator outages during Spring semester. On the basis of this record, OCR finds insufficient evidence of a violation of Section 504 and/or Title II with regard to the Complainant's allegation that the College failed to provide an accessible classroom to the Student.

### **Issue 3—Failure to Provide Mobility Accommodations through Use of a Cart**

#### *Legal Standards and Allegations:*

The third issue raised by the Complainant is that the College failed to provide the Student access to the Boca Raton campus through the use of a cart, as requested by the Student. As with the previous two issues, OCR employs the same analysis cited above to determine whether the Student used the College's process to alert them that she was a student with a disability in need of academic adjustments, auxiliary aids, and services, and then whether or not the College responded appropriately using its interactive process. During her Spring 2018 Disability Services intake the Student did not originally include a request for use of a cart accommodation on her written accommodations request form. However, both the Student and the Director of Disability Services are in agreement that the Student made this request in person at the meeting regarding accommodations on January 11, 2018. At this point, it appears that the College attempted to begin the interactive process with the Student on this issue and the Student stated that she submitted documentation on her mobility issues.

#### *Factual Analysis:*

The Director of Disability Services told OCR that she told the Complainant that she had not submitted sufficient documentation to support the cart accommodation. She also stated that the Student had all of her classes in one building at the Boca Raton campus at the beginning of Spring semester, so she did not understand how the cart would be used, but she admitted that she did not consider the Student's transportation or potential parking situation. She also stated that she spoke with the Student in passing at other times about this request, but that the Student did not submit sufficient documentation. The Student stated that the Director did not tell her what more she would need to submit.

The Complainant submitted data that showed that the Student received access to a cart as an accommodation on the College's Loxahatchee campus for Summer 2018. The Student reported to OCR that she did not submit any additional information to the College in order to obtain this accommodation on the College's Loxahatchee campus. OCR was unable to learn during the course of its investigation who granted this accommodation to the Student, but did verify that the Loxahatchee campus is a one-building campus, so the Student's classes would all have been in one building, as was true with the Boca Raton campus. Before OCR was able to learn more about the College's interactive process with the Student regarding the cart accommodation, the College asked OCR to resolve this issue via § 302 of OCR's *Case Processing Manual*.

*Conclusion:*

Because the differing results of the interactive processes on the Boca Raton and Loxahatchee campuses raise the issue of a compliance concern in this matter, this issue is also appropriate for resolution via OCR's §302 mechanism, and these concerns will be addressed in the attached resolution agreement.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the District'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 the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the District must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

The complainant has a right to appeal OCR's determination 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.

If you have any questions regarding this letter, please contact Robyn Painter at 404-974-9345, or me, at 404-974-9354.

Sincerely,

Scott R. Sausser, Esq.  
Compliance Team Leader