



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

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ATLANTA, GA 30303-8927

REGION IV  
ALABAMA  
FLORIDA  
GEORGIA  
TENNESSEE

September 6, 2019

Dr. Tonjua Williams  
President  
St. Petersburg College  
6021 142<sup>nd</sup> Avenue North  
Clearwater, Florida 33760

Re: OCR Complaint No. 04-19-2051  
Letter of Resolution

Dear Dr. Williams:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has resolved the above-referenced complaint filed against St. Petersburg College (the College). The Complainant alleged that the College discriminated against her on the basis of disability. Specifically, the Complainant alleged that the College failed to provide her with her approved academic adjustment for a quiet testing room.

OCR opened the complaint for investigation under the authority 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 in programs and activities that receive Federal financial assistance from the Department. As a public entity, the College is also subject to the provisions of Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. Sections 12131 *et seq.*, and its implementing regulation, 28 C.F.R. Part 35, which prohibits discrimination on the basis of disability. The College is a recipient of Federal financial assistance from the Department and a public entity and is therefore subject to these laws that prohibit discrimination on the basis of disability.

OCR investigated whether the College discriminated against the Complainant on the basis of disability by failing to provide her with her approved academic adjustment in testing, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.44 and Title II implementing regulation at 28 C.F.R. Part 35.

During its investigation, OCR reviewed documents provided by both the College and the Complainant and interviewed College staff (the Career and Academic Advisor, Provost, and an Accessibility Coordinator) and the Complainant.

Prior to the completion of OCR's investigation, the College requested to voluntarily resolve this complaint. Pursuant to Section 302 of OCR's Case Processing Manual, a complaint may be resolved, before the conclusion of an investigation, when the recipient or public entity expresses an interest in resolving the complaint and OCR determines that it is appropriate to resolve the

complaint with an agreement. Set forth below are the applicable legal standards and a summary of the 302 resolution.

### **Legal Standards**

The Section 504 regulation at § 104.44(a) requires a college to modify its academic requirements as 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. The regulation at § 104.44(d) requires a college to ensure that no qualified individual 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. OCR interprets the Title II regulation to require public colleges to provide academic adjustments and auxiliary aids to the same extent as required under Section 504.

Colleges may establish reasonable requirements and procedures for students to provide documentation of their disability and request academic adjustments and auxiliary aids and services. Students are responsible for obtaining disability documentation and for knowing and following the procedures established by their college. Once the student has provided adequate notice and documentation of his/her disability and the need for modifications due to the disability, the college must provide the student with appropriate academic adjustments and auxiliary aids and services that are necessary to afford the student an equal opportunity to participate in a school's program. However, a college is not required to make adjustments or provide aids or services that would result in a fundamental alteration of the college's program or impose an undue burden.

The College frequently referred to academic adjustments and auxiliary aids as "accommodations." The Section 504 regulation addressing post-secondary education refers to "academic adjustments and auxiliary aids," while the Title II regulation refers to "reasonable modifications." When the term "accommodations" is used in this document, it refers to academic adjustments and auxiliary aids as those terms are used in 34 C.F.R. § 104.44 and reasonable modifications as that term is used in 28 C.F.R. § 35.130(b)(7).

In determining whether the College failed to provide the Complainant with academic adjustments, OCR will consider whether the academic adjustments and auxiliary aids that were provided were of adequate quality and effectiveness. If the answer to this question is "no," then OCR will also consider whether the Complainant provided notice of the inadequacy or ineffectiveness of the academic adjustment or auxiliary aid and recipient's response to such notice.

### **Factual Findings to Date**

**Issue: Whether the College discriminated against the Complainant on the basis of disability by failing to provide her with her approved academic adjustment in testing**

In order to make a determination regarding whether the College failed to provide adequate academic adjustments, it is necessary to decide on a case-by-case basis whether the Complainant

provided adequate notice that academic adjustments or auxiliary aids were required, and whether the academic adjustments or auxiliary aids were provided.

The evidence shows that the Complainant provided adequate notice of her disability to the College and was provided with the agreed upon classroom accommodations. The Complainant has been a student at the College since 2015. The Complainant was approved for several academic adjustments, including:

- Double time for testing
- Testing in a reduced distraction setting

The Complainant took her exams in the Testing Center and the proctor was the Accessibility Coordinator. The Complainant stated that the Accessibility Coordinator (Coordinator) she was assigned to from 2015 until August 2018 frequently interrupted her during testing. The Complainant wrote a letter dated, July 13, 2018 to the College which provided details regarding her testing encounters with the Coordinator, explaining that the Coordinator would often interrupt her and after she asked her Academic Advisor to speak with her about the interruptions; the Coordinator interrupted her more and accused her of cheating. The Provost met with Coordinator and gave the Coordinator a verbal warning that she should not interrupt students if she suspects cheating, she should take her evidence and provide it to the appropriate College faculty.

OCR interviewed the Coordinator. The Coordinator stated that it was her responsibility to proctor examinations taken in the testing room at the Testing Center<sup>1</sup> The Coordinator stated that she did not recall interrupting the Complainant multiple times during any test. However, she stated that she did have a practice of walking up to students during testing, sometimes touching them on the shoulder and asking if they were okay. The Coordinator also stated that she had sometimes asked students if they need additional paper during testing. The Coordinator also stated that did recall speaking with the Complainant on two separate occasions while the Complaint was taking her math examination at the Testing Center. Once when she provided the Complainant with a calculator and again when she asked the Complainant if she needed more scratch paper. The Coordinator stated that she did make a statement about cheating to the Complainant after the last test she proctored for the Complainant in the testing center but denied making any accusations or further interruptions while the Complainant was taking the

OCR also interviewed the College's Provost who indicated that she met with Complainant after receiving her July 13, 2018 letter. The Provost stated that after receiving the letter from the Complainant, the Complainant was assigned a new Accessibility Coordinator and the Provost stated that she verbally admonished the Coordinator regarding interrupting the Complainant while testing and because of the accusations of cheating when she subsequently met with her. The Provost denied knowledge of any other instances of interruptions. The Provost also stated that the standard practice of proctors could be to ask the student if they are okay periodically prior to the new contracted proctors. She was not aware of any protocols for the current proctors.

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<sup>1</sup> The College has since changed it's practice of having Accessibility Coordinators proctor exams. The College has contracted proctors to oversee examinations at the Testing Centers and the College.

OCR interviewed the Complainant's Academic Advisor (Advisor), who indicated that she had spoken with the Complainant a few minutes prior to her taking the test with her previous Coordinator as the proctor. The Advisor stated that the Complainant approached her as they were passing in the hall and asked her to speak to the Coordinator so that she would, "Allow her to take her test in peace this time." The Advisor stated that shortly after the Complainant had begun to take her test, she spoke with the Coordinator. While the Advisor was unable to recall specifically what she said to the Coordinator, she remembered discussing with the Coordinator that the Complainant had asked that the Coordinator not interrupt her because it was a distraction while she was taking her test.

On rebuttal, the Complainant was asked to clarify if she was referring to one instance or several, when she was interrupted during testing by the Coordinator. The Complainant stated that the interruptions were consistent and happened in the past many times. She also confirmed that she mentioned the interruptions to her Advisor before the test where she was accused of cheating and hoped that would encourage the Coordinator to allow her to take the test without interruption. However, she did not mention the other incidents to the Provost when she met with her to discuss her July 13, 2018 letter of complaint.

OCR identified an additional witness to interview that the Complainant stated would affirm that she had been interrupted on several occasions and multiple times during testing proctored by the Coordinator and the College reports was present during the Complainant's testing in the Testing Center, however, the witness was unavailable at the time OCR conducted the above interviews. At the conclusion of the above interviews, the College expressed an interest in resolving the complaint allegations before the conclusion of the investigation.

The College signed the enclosed Resolution Agreement (Agreement) that, when fully implemented, will resolve this complaint. The Agreement requires the College to provide training regarding the College's obligations to comply with the Section 504 and Title II provisions prohibiting discrimination on the basis of disability. The training will cover the protocols for appropriate proctor behavior when proctoring low distraction testing.

OCR will monitor the College's implementation of the 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 concludes OCR's investigation of this 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 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. 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.

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.

OCR is committed to prompt and effective service. If you have any questions, please contact Ms. Tara Jackson, Equal Opportunity Specialist, at (404) 974-9350 or the undersigned at (404) 974-9392.

Sincerely,

Vahn Wagner  
Acting Compliance Team Leader

Enclosure (Resolution Agreement)

cc: Counsel for College (w/ encl.) via email