



**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS**

500 WEST MADISON ST., SUITE 1475
CHICAGO, IL 60661-4544

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January 24, 2018

Mr. Terry Nolot
Interim Chancellor
Ivy Tech Community College
8204 County Rd 311
Sellersburg, IN 47172

Re: OCR Docket # 05-17-2346

Dear Mr. Nolot:

This is to notify you that the U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed against Ivy Tech Community College (College) alleging discrimination on the basis of disability and also alleging retaliation.

Specifically, the complaint alleged the following:

1. in May 2017, the College subjected a student at the Sellersburg campus (Student A) to discrimination based on disability when, in a biology course, it disabled software Student A needed as a result of his disability; and
2. in summer 2017, the College subjected Student A to discrimination based on disability and to retaliation for complaining of disability discrimination, in that it failed to provide Student A the necessary academic adjustments of extended time to complete assignments and use of a laptop to take notes in an English course.

OCR is responsible for enforcing 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, and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 - 12134, and its implementing regulation, 28 C.F.R. Part 35. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance from the Department, and Title II prohibits discrimination on the basis of disability by public entities. These laws also prohibit retaliation. As a recipient of Federal financial assistance from the Department and a public entity, the College is subject to these laws.

During OCR's investigation, OCR reviewed data provided by the College and Student A and interviewed College personnel and Student A. Based on the information obtained in the investigation, OCR determined that there is insufficient evidence to establish a violation of the applicable regulations with regard to Allegation 1. Prior to the completion of OCR's investigation, the College signed a Resolution Agreement (Agreement) to resolve Allegation 2.

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

Legal Standards

The standards adopted by Title II were designed not to restrict the rights or remedies available under Section 504. OCR has determined that the Title II regulations applicable to the issues raised in this complaint do not provide greater protection than the applicable Section 504 regulations and has, therefore, applied the relevant Section 504 standards in its analysis of this complaint.

The Section 504 regulation, at 34 C.F.R. § 104.4(a), provides that no qualified individual with a disability shall, on the basis of disability, “be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance.”

The Section 504 regulation, at 34 C.F.R. § 104.44(a), says, “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 [disabled] applicant or student.”

The Section 504 regulation, at 34 C.F.R. § 104.44(d), says, “A recipient to which this subpart applies shall take such steps as are necessary to ensure that no [disabled] student 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.”

The regulation implementing Title VI of the Civil Rights Act of 1964, at 34 C.F.R. § 100.7(e), which is incorporated by reference into the Section 504 regulation, at 34 C.F.R. § 104.61, prohibits a recipient from intimidating, threatening, coercing, or discriminating against an individual for the purpose of interfering with any right or privilege secured by Section 504 or because the individual has made a complaint, testified, assisted or participated in any manner in an investigation, proceeding or hearing under the regulation.

Background

Student A was enrolled in courses at the College during the 2016-2017 school year and had completed 33 hours of study with a 3.545 grade point average. Student A had submitted documentation of his disabilities to the College, and the College had approved academic adjustments and auxiliary aids for Student A, including use of a laptop computer and extended time for certain assignments, as well as a different electronic copy of his biology book.

Allegation 1

Facts

Student A asserted that the College did not provide an appropriate electronic book for his biology course in spring 2017. He stated that the pages in his book did not correspond to those in the book used by other students, so he had to search to find the corresponding page for course

readings. He also said that if he had to fill in a blank or answer questions in writing, he was delayed more than other students because his disability made it harder for him to respond to questions that require him to do something other than selecting from a choice of answers. He stated the College did not help him but instead he found a “work around” that he was able to use.

The College provided documentation that shortly after receiving notice from Student A of issues with his electronic book, it requested and received a different version of the electronic book from the publisher to improve access for Student A. The College’s acting disability coordinator (Coordinator) acknowledged that the book versions may not have corresponded exactly and this may have inconvenienced Student A slightly. However, the College indicated that it met Student A’s needs with regard to the provision of the electronic book.

Student A completed the biology course and received an “A” in the course.

Analysis and Conclusion

The evidence established that the College was notified of concerns with the electronic book provided to Student A, so it provided him a modified version of the electronic book. Although the College acknowledged there were minor inconveniences in Student A’s use of the book, the evidence established that Student A was able to successfully use the book to earn an “A” in the course. Therefore, the evidence is insufficient to establish a violation of the regulations with regard to Allegation 1.

Allegation 2

Student A asserted that the instructor for an English course (English 112) limited his use of a laptop computer and failed to provide him extended time for assignments. The College indicated that the instructor briefly limited Student A’s inappropriate use of a laptop computer, namely his use of the laptop during class to request an extension to turn in assignments. The College asserted that the English 112 instructor provided Student A the extended time he requested, as appropriate.

Prior to the conclusion of OCR’s investigation, the College expressed an interest in voluntarily resolving Allegation 2 of this case. In order to conclude OCR’s investigation of this complaint, OCR would have had to conduct additional interviews. Following discussions with OCR, the College signed the enclosed Agreement, which requires the following actions:

1. If Student A reenrolls in the College in the 2017-2018 school year, the College will offer Student A an opportunity to retake English 112 at no cost; and
2. The College will provide training on Section 504, including requirements related to provision of academic adjustments, auxiliary aids and other modifications, to relevant administrators and faculty and staff at the Sellersburg campus.

Based on the commitments the College has made in the Agreement described above, OCR has determined that it is appropriate to close the investigative phase of this complaint. OCR will monitor the implementation of the Agreement.

Overall Conclusion

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. OCR is closing the investigation of this complaint as of the date of 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 individual may file a 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.

The Complainant may file a private suit in federal court whether or not OCR finds a violation.

Thank you for the assistance the College extended to OCR in its investigation of this complaint. In particular, we wish to thank Mr. James Clark, Associate General Counsel. If you have any questions, please contact Dan Altschul, Senior Attorney, at (312) 730-1563 or by email at Dan.Altschul@ed.gov.

Sincerely,

Jeffrey Turnbull
Team Leader

Enclosure

cc: Mr. James Clark