



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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May 10, 2018

Michael Elbe
President
John Wood Community College
1301 S. 48th St.
Quincy, IL 62305

Re: OCR Docket # 05-18-2040

Dear Dr. Elbe:

This is to advise you of the resolution of the investigation of the above-referenced complaint against John Wood Community College (College). The complaint alleged that the College subjected Student A to discrimination based on disability (Deafness) in the Spring 2017 semester, when it discouraged him from enrolling in the College's Truck Driver Training Program (Program) and refused to provide him appropriate academic adjustments and auxiliary aids for the duration of the Program.

OCR is responsible for enforcing 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, and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131-12134, and its implementing regulation at 28 C.F.R. Part 35. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance, and Title II prohibits discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance from the Department and a public entity, the College is subject to these laws. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

Prior to the conclusion of OCR's investigation, the College expressed an interest in voluntarily resolving this complaint under section 302 of OCR's *Case Processing Manual*. Discussions between OCR and the College resulted in the College's signing the enclosed Resolution Agreement (Agreement), which, when fully implemented, will resolve the issues raised in the complaint.

Background

The College is located in Quincy, Illinois and is a part of the Illinois Community College System. The College's Truck Driving Program is an 8-week program consisting of both classroom instruction and a "behind-the-wheel" field component. Both the classroom and

driver training components are required as part of the Commercial Driver's License (CDL) certification process.

Student A

Student A, who is deaf, communicates primarily through American Sign Language (ASL). In Spring 2017, Student A worked with a vocational rehabilitation counselor to identify truck driving programs that would prepare him to get his CDL. On March 3, 2017, Student A underwent a physical examination required by the Illinois Department of Transportation (IDOT) for those individuals interested in entering a CDL program. The physician certified to administer the IDOT examination gave Student A a certificate stating he passed the exam. Consistent with federal regulations, the certificate granted Student A a hearing waiver/exemption based on Student A's ability to perceive a forced whispered voice in both ears from 10 feet with hearing aids.

Student A told OCR that, on April 18, 2017, he went to the College's Truck Driving Program Office to enroll in the program, which is where he met with the Program Director. According to Student A, he felt the Program Director discouraged him from enrolling in the program because he indicated that Student A would need to retake the IDOT physical exam at the College's preferred medical facility. Student A also stated that the Program Director questioned whether Student A would be able to find a job as a truck driver. The College denied that the Program Director intended to discourage Student A from enrolling in the program, and explained to OCR that typically all students in the program complete physical examinations at the same medical center during the first week of classes, so the Program Director was explaining this practice to Student A. Both Student A and the College told OCR that the College ultimately determined that Student A's medical certification was valid and that Student A was not required to undergo a second physical examination. Regarding the Program Director's statement about Student A's ability to find a job as a truck driver, the College explained that, under federal financial aid regulations, it cannot accept a student in its program if the student will not be able to obtain a job in the field.¹ Student A enrolled in the program, which was scheduled to begin on July 5, 2017.

On or about June 19, 2017, Student A met with the College's Disability Services Coordinator (Coordinator) to register as a student with a disability and discuss what disability-related academic adjustments or auxiliary aids and services he needed. Student A explained to the Coordinator that he is deaf and wears hearing aids; the College reported that Student A said he could hear slightly but must be in close proximity to the individual speaking. Student A told the Coordinator that he had to have an ASL interpreter in all classes and provided him a list of his preferred ASL interpreters. The College told OCR that at the close of the meeting, the Coordinator informed Student A that an ASL interpreter would be provided in the classroom, but that the College still needed to review the requirements for use of an interpreter during the driving/field portion of the program.

¹ The College acknowledged that Student A did not apply for or receive financial aid for the program but indicated it is good practice to determine appropriateness of its program for any student.

The College told OCR that after meeting with Student A, its staff communicated with the Illinois Secretary of State's office regarding what disability accommodations are given to an applicant with a hearing waiver, such as Student A, during CDL certification testing. According to the College, based on Student A's ability to hear a forced whisper from 10 feet away and his 20/20 vision, without corrective eyewear, the Illinois Secretary of State's office said that Student A would not be eligible for any accommodations during the CDL certification test given by the State of Illinois.

On June 30, 2017, the Coordinator and Director of Support Services met with Student A to inform him that they learned an ASL interpreter would not be provided by the State of Illinois during Student A's CDL certification test. As a result, the College told Student A it was tailoring his academic adjustments/provision of services to better prepare him for taking and passing the CDL certification test. Both the College and Student A told OCR the College offered to provide Student A an ASL interpreter for all classes during the first three weeks of the program. In the next two weeks, it would provide Student A an ASL interpreter on a half-time basis, and during the final three weeks of the program, no interpreter would be provided to prepare Student A for the conditions he would face during the CDL certification test. According to the College, it also offered Student A preferential seating within 10 feet of the instructor at all times, and offered to provide written directions, captions, supplementary electronic aids (UbiDuo), and use of flash cards in the classroom.

Student A told the College and OCR that he needed an ASL interpreter throughout the entire Program. Because the College was unwilling to grant his request, Student A withdrew from the program on or before July 5, 2017.

Resolution Agreement

Prior to the conclusion of this investigation, the College requested to resolve the complaint through a section 302 agreement. The enclosed Resolution Agreement is fully aligned with the complaint allegations. It requires the College to:

- provide all administrators and employees in the College's Disability Services Office, and the Program Director of the Truck Driving Certification Program, training on the College's policies and procedures for providing academic adjustments, auxiliary aids and/or modifications to students, including how to engage in the interactive process with students to ensure that academic adjustments are provided appropriately and specific to the needs of each individual student. The training must address possible academic adjustments and/or modifications that may be available to students with disabilities in the Truck Driving Certification Program and potential challenges and obstacles to providing such academic adjustments and/or modifications in classes that meet in places other than classrooms (*i.e.*, driving course).

- send a letter via certified mail to Student A advising him of this Resolution Agreement, and enclosing a check, money order, or other payment instrument in an amount that reimburses him for any fees and costs, if any, associated with his application to the College's Truck Driving Certification Program.

OCR will monitor the College's implementation of the Agreement. Please note that the first monitoring deadline is **July 31, 2018**.

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

Please be advised that the College may not harass, coerce, intimidate or discriminate against any individual because he or she filed a complaint or participated in the complaint resolution process. If this happens, the Complainant 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. The Complainant may file a private suite in Federal court, whether or not OCR finds a violation.

Thank you for your assistance and cooperation during OCR's investigation, particularly for the assistance of David G. Penn, counsel to the College. If you have questions about this letter, you may contact Roberto Flores, Equal Opportunity Specialist, at 312-730-1688 or roberto.flores@ed.gov.

Sincerely,

Marcela Sanchez-Aguilar
Supervisory Attorney

Enclosure