



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

230 SOUTH DEARBORN ST., 37TH FLOOR
CHICAGO, IL 60604

REGION V
ILLINOIS
INDIANA
IOWA
MINNESOTA
NORTH DAKOTA
WISCONSIN

August 30, 2019

XXXXXXXXXXXXX
President, Saint Paul College
235 Marshall Avenue
St. Paul, Minnesota 55102

Re: OCR # 05-19-2172
Complainant – XXXXXXXXXXXXX

Dear XXXXXXXXXXXX:

The U.S. Department of Education (Department) Office for Civil Rights (OCR) has completed processing of the referenced complaint against St. Paul College (College) alleging discrimination on the basis of disability. Specifically, the Complainant alleged that the College discriminated against her on the basis of disability (seizure disorder) when it failed to reasonably accommodate her after an injury caused by her disability.

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, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12132, and its implementing regulation, 28 C.F.R. Part 35, which prohibit 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 Section 504 and Title II.

During the course of OCR's investigation, OCR reviewed documents provided by the College. Prior to the conclusion of OCR's investigation, the College expressed interest in resolving the complaint. 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.

Applicable Regulations and Standards

The Section 504 implementing regulation at 34 C.F.R. § 104.4 (a) states that no qualified person 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 or benefits from Federal financial assistance. Additionally, the Section 504 regulation at 34 C.F.R. §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 disabled applicant or

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

XXXXXXXXXXXX

OCR # 05-19-2172

August 30, 2019

Page 2

student. The Section 504 regulation at 34 C.F.R. §104.44(d)(1), requires a recipient to 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 or services.

The Title II implementing regulation at 28 C.F.R. § 35.130 (a) 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. 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 allegations raised in this complaint do not provide greater protection than the applicable Section 504 regulations. Therefore, OCR used the Section 504 regulations in analyzing these complaint allegations.

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

Section 504 envisions a meaningful and informed process with respect to the provision of modifications, e.g., through an interactive and collaborative process between the recipient and the student. If a recipient denies a request for a modification, it should clearly communicate the reasons for its decision to the student so that the student has a reasonable opportunity to respond and provide additional documentation that would address the recipient's objections. Section 504 does not require a recipient to modify academic requirements that are essential to the instruction being pursued by the student or to any directly related licensing requirement. In reviewing a recipient's determination that a specific standard or requirement is an essential program requirement that cannot be modified, OCR considers whether that requirement is educationally justifiable. The requirement should be essential to the educational purpose or objective of a program or class. OCR policy requires, among other factors, that decisions regarding essential requirements be made by a group of people who are trained, knowledgeable and experienced in the area; through a careful, thoughtful and rational review of the academic program and its requirements; and that the decision-makers consider a series of alternatives for the essential requirements, as well as whether the essential requirement in question can be modified for a

XXXXXXXXXXXX

OCR # 05-19-2172

August 30, 2019

Page 3

specific student with a disability. OCR affords considerable deference to academic decisions made by recipients, including what is or is not an essential program requirement.

Facts

For the Spring 2019 semester,¹ the Complainant registered for two courses offered by the College's Health Information Technology Program (Program). The Program trains students to organize and manage health care information for paper file and electronic systems. One of the two courses taken by the Complainant, MEDS 2461-70: ICD-10-CM Coding (Coding) teaches students how to accurately code medical diagnoses and treatment using the ICD-10-CM coding system.²

The College offered Coding as a hybrid course. A hybrid course combines some on-line elements with required classroom attendance.³ The majority of Coding occurred in the classroom, with students working together to review medical cases and develop ICD-10-CM codes under the supervision of the instructor. According to College policy, for courses with required classroom attendance like Coding, students who fail to attend during the first five class days of the term receive an FN (Failure for Non-attendance) grade. Students with poor attendance that do not withdraw by the official withdrawal date receive a FW (Failure due to Unofficial Withdrawal) grade. According to the Coding syllabus, the College expected all students to attend and participate in all classes the first week of the semester and that students missing more than two classes overall, "should withdraw from the course and take it at a time when they can fully commit to all sessions." The syllabus described the attendance requirement as "critical."

On January 16, 2019, the Complainant sent the Coding Instructor (Instructor A) an email informing Instructor A that she suffered an accidental injury to her shoulder and arm. As a result, the Complainant could not type for very long periods of time and could not attend class due to a driving prohibition. The Complainant asked to Skype into class or, "any other accommodation." The Complainant provided no other information. Four hours later, Instructor A responded to the Complainant's email. In that response, Instructor A recommended, "because the course is primarily in the classroom, I think that you need to get in touch with [the College's Office of Access and Disability Resources (OADR)]." Instructor A attached the name and contact information of the OADR Director and informed the Complainant that in the meantime she would send over materials reviewed in class. Instructor A also informed the Complainant that

¹ The College's Spring 2019 semester began on January 14, 2019 and ended on May 17, 2019.

² Healthcare providers use the ICD-10-CM (International Classification of Diseases, Tenth Revision, Clinical Modification) system to classify and code all diagnoses, symptoms, and procedures recorded in conjunction with hospital care. The ICD-10-CM system requires users to generate a seven-character, alphanumeric code.

³ The College offers regular classroom-based courses, hybrid, and fully on-line courses. The College offered the Complainant's second course as a fully on-line course. It is not the subject to this complaint.

XXXXXXXXXXXX

OCR # 05-19-2172

August 30, 2019

Page 4

Coding did not require much typing. Shortly after receiving the email from Instructor A, the Complainant left a telephone message for the OADR Director requesting accommodations for her injury.⁴

Five class days later, on January 23, 2019, the Complainant sent an email message to the OADR Director and Instructor A informing them that she did not hear back from the OADR about her accommodation request and did not receive the Coding material referenced by Instructor A in the January 16, 2019 email.⁵ On January 24, 2019, the OADR Director responded to the Complainant via email asking five questions. Three hours later, the Complainant responded via email, answering the five questions as depicted below:

January 24, 2019 Communication	
OADR Question	Complainant Answer
Do you have an alternate form of transportation?	Sometimes it may be possible but probably not.
How long are you expected to be out?	Undetermined at this time. If I have to drive anywhere it will be longer.
Are you currently taking medication that prevents you from driving?	Not anymore, but my recent seizure may prevent me from driving. I've heard rumblings of possibly 6 months of no driving. I will know more about this next week.
What are your current limitations?	Driving, most cooking, most ADL's (like showering, laundry, dressing, and eating). ⁶
Will you be able to work at home if given the opportunity?	I can work 100% from home once I'm able to move around more and type. Right now, I cannot sit and type for long.

On January 26, 2019, after receiving no contact from Instructor A, the Complainant sent an email inquiring about the materials Instructor A promised to send on January 16, 2019. Specifically, the Complainant referenced the syllabus and reading assignments. She received no response.

On January 30, 2019, the Complainant informed Instructor A via email that she accessed the on-line cloud-based environment for Coding and obtained the syllabus and reading schedule. The Complainant also requested previously issued copies of any quizzes or assignments in order to test her knowledge. Finally, the Complainant informed Instructor A that she did not receive any

⁴ The Complainant did not receive an academic adjustment for her seizure disorder.

⁵ According to the Coding Syllabus and College Policy, Instructor A should have recommended that Student A withdraw from the course after two classes, and the College should have issued Student A a FN grade after five courses. Neither event occurred.

⁶ ADL – Activities of Daily Life.

XXXXXXXXXXXX

OCR # 05-19-2172

August 30, 2019

Page 5

accommodation information from the OADR Director. Instructor A then followed up with the OADR Director.

On February 1, 2019, OADR Director informed Instructor A via email that the Complainant, “broke her arm” and “is unable to drive to class.” The OADR Director also stated that the Complainant, “had not been able to do the course work” because “the course is primarily in the classroom.” The OADR Director then left the matter of accommodation to Instructor A’s discretion stating, “If you can make the material accessible without significant modification of the course content, please feel free to do so.” The same day the OADR Director sent the Complainant an email advising her to “work with your instructor to see what reasonable accommodations she can provide to you for your course.”

On February 4, 2019, Instructor A emailed the OADR Director and expressed her understanding that the OADR Director would verify the Complainant’s disability and discuss with them (Instructor A and the Complainant) what accommodation(s) to provide. Instructor A then expressed her opinion that unless the OADR verified the Complainant’s disability, the Complainant, like any other student, would need to drop the course. Instructor A concluded that because it did not seem to her like the Complainant had a verified disability, she would await further instruction from the OADR Director.

On February 11, 2019, the OADR Director emailed the Complainant and inquired how she was doing and about her ability to work. In response, the Complainant informed the OADR Director of her inability to do much, her requirement not to work for the next six weeks, and even then, a return to part-time employment. The Complainant also informed the OADR Director of her inability to drive until mid-April and that the College failed to provide her any information related to accommodations in Coding. Finally, the Complainant informed the OADR Director of her full participation in her other course at the College.

On February 18, 2019, the Complainant emailed both the OADR Director and Instructor A, requesting information about her accommodation request for Coding. The following day, Instructor A emailed the Complainant and informed her that she has not heard back from the OADR Director about an accommodation for Coding. Instructor A then stated, “At this point, I think that it would be wise to withdraw from the course and take it when it is offered again. The amount of information you have missed has been too much to make up at this time. Please let me know if I can help you create a schedule for future courses.”

On February 19, 2019, the Complainant responded to Instructor A’s email and copied the OADR Director and the Dean of Health Sciences and Services (Dean). The Complainant informed Instructor A that she would not withdraw from Coding and stated that since January 16, 2019, the Complainant had been requesting accommodations and that the College had failed in its

XXXXXXXXXXXX

OCR # 05-19-2172

August 30, 2019

Page 6

attempts. That same day, the Complainant sent a separate email to the Dean, informing him that she suffered a grand mal seizure which caused a shoulder dislocation, broken arm, and a torn labrum. This email to the Dean describes the same injuries discussed in the Complainant's email to Instructor A on January 16, 2019 but represents the first time the Complainant identified a seizure as the cause of the accident, which resulted in her injuries. The Complainant also informed the Dean that she appeared to have some, "lingering neurological issues." The Dean emailed Instructor A and the OADR Director for clarification.

In response, Instructor A sent all email communications between herself and the Complainant, the OADR Director responded, "She shared with me that she dislocated her shoulder and cannot drive. With the information she shared with me, I defer [*sic*] her back to [Instructor A] to provide accommodations ... If I knew this information, I would have had a better understanding of supporting her. I'm happy to collaborate for a reasonable accommodations [*sic*]."

On February 20, 2019, the Dean sent the Complainant an email stating that Coding, "is offered as a blended/hybrid and will not be offered as an on-line section for 2019 spring semester." The dean recommended that the Complainant complete the College's Late Drop – Late Withdrawal Tuition Waiver form and all the required documents.

Conclusion

During the course of OCR's investigation, prior to OCR conducting interviews with the relevant parties and making a final determination, the College advised OCR that it wished to resolve the complaint pursuant to Section 302 of OCR's CPM. OCR has determined that it is appropriate to resolve this complaint because OCR's investigation has not proceeded to a point where a finding is clear.

The terms of the Agreement are aligned with the complaint allegation. The Agreement requires the College to provide training to OADR staff about the interactive process, particularly as they related to temporary disabilities. The College has also agreed to refund the Complainant any tuition and fees associated with the Spring 2019 Coding course and ensure that the Complainant does not incur any academic or financial aid penalties.

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 will monitor the College's implementation of the Agreement.

XXXXXXXXXXXX

OCR # 05-19-2172

August 30, 2019

Page 7

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 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.

We appreciate the cooperation you and your staff extended to OCR during the course of the processing of this complaint. We particularly appreciate the cooperation of XXXXXXXXXX, counsel for the College. If you have any questions regarding this letter, you may contact Miguel Figueras, OCR Attorney at (312) 730-1578 or at miguel.figueras@ed.gov .

Sincerely,

Ann Cook-Graver
Supervisory Attorney

Enclosure