

August 23, 2017

XXXXXX XXXXXX, XXXXXX XXXXXX/XXXXXX XXXXXX XXXXXX
XXXXXX XXXXXX XXXXXX XXXXXX
XXXXXX XXXXXX. XXXXXX XXXXXX XXXXXX XXXXXX
XXXXXX XXXXXX XXXXXX
XXXXXX XXXXXX, XXXXXX XXXXXX - XXXXXX

Re: Docket # 07162090

Dear XXXXXX XXXXXX:

On May 2, 2016, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint alleging discrimination on the basis of disability by the St. Louis County Community College (College), St. Louis, Missouri. This letter is to confirm the College has voluntarily submitted a Resolution Agreement (Agreement) to resolve this complaint.

Specifically, the Complainant alleged the College discriminated against her daughter (the Student) on the basis of disability when it failed to provide academic adjustments for the Student in multiple classes in violation of 34 C.F.R. § 104.44 by:

- a. Penalizing her for disability-related absences;
- b. Refusing to recognize her self-appointed advocates, such as XXXXXX XXXXXX;
- c. Not allowing the Student to use an FM System listening device; and
- d. Sending security to question the Student regarding XXXXXX XXXXXX who came to the Student's class as an oral interpreter.

OCR is responsible for enforcing:

- Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 United States Code (U.S.C.) § 794, and its implementing regulation, 34 Code of Federal Regulations (C.F.R.) Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance (FFA).
- Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131, and its implementing regulation, 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities.

As a recipient of FFA from the Department and a public entity, the College is subject to Section 504 and Title II. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

To protect individuals' privacy, the names of employees and other parties were not used in the letter.

Legal Standards

The Section 504 regulation at 34 C.F.R. § 104.3(j)(1) defines an individual with a disability as any person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. Under the Section 504 regulation at 34 C.F.R. § 104.3(k)(3), a qualified individual with a disability with respect to post-secondary education is one who meets the academic and technical standards requisite to participation in the recipient's education program.

The Section 504 regulation at 34 C.F.R. § 104.44(a) regarding academic adjustments 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 student with a disability. Modifications may include changes in the length of time permitted for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted. The Title II regulation at 28 C.F.R. § 35.130(b)(7) states that a public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program or activity.

Under the requirements of Section 504 regulation, a student with a disability is obligated to notify his or her postsecondary institution of the nature of the student's disability and the need for an academic adjustment or auxiliary aid. Once a college or university receives such notice, it has an obligation to engage the student in an interactive process concerning the student's disability and related needs. As part of this process, the college or university may request that the student provide documentation, such as medical, psychological, or educational assessments, of the student's impairment and functional limitation, and may set reasonable standards as to what type of documentation is required to establish that a student has a disability protected by Section 504. Colleges and universities are not required to conduct or pay for an evaluation to document a student's disability and need for an academic adjustment or auxiliary aid. In addition, a college or university may require its students to follow reasonable procedures established by the college or university when requesting an academic adjustment or auxiliary aid due to a disability.

To determine whether a college or university discriminated against a student by failing to provide academic adjustments, OCR will ascertain whether: 1) the student is a qualified person with a disability; 2) the student identified herself to the college or university as a person with a disability, requested academic adjustments from the college or university, and followed the college or university's procedures, including submitting appropriate documentation to the college or university, to obtain academic adjustments; 3) she and the college or university engaged in an interactive process to determine the academic adjustments to be provided to her; 4) the college or university provided her the agreed-upon academic adjustments; and 5) the academic adjustments provided by the college or university were effective.

Background

The information the Complainant and the College provided established that the Student was XXXXX years old during the 2015-16 school year. The Student provided letter dated January 2016, from the Student's physician regarding her XXXXX XXXXX and necessary accommodations to the College's Access Office. The Access Office and the Student agreed to several academic adjustments which were to be conveyed by the Student to her instructors. The Student, who began classes at the College in January 2016, did not notify her instructors of the designated academic adjustments at the beginning of the spring 2016 semester and the Student did not receive all the agreed upon academic adjustments. The Complainant asserted that the College should have notified the Complainant's instructors of the academic adjustments the Student was to receive.

Resolution

On June 22, 2016, the College expressed to OCR an interest in engaging in resolution negotiations pursuant to Section 302 of OCR's *Case Processing Manual*.¹

Prior to completion of OCR's investigation, the College submitted a signed Agreement (copy enclosed) on August 17, 2017 that, when fully implemented, will address the allegations of this complaint. The Agreement requires the College to provide training to instructors and administrators on the requirements of Section 504 and Title II. The training topics shall include academic adjustments and auxiliary aids, accessibility, nondiscrimination in admissions, recruitment, treatment, financial assistance to and employment of students with disabilities, disability related harassment, and grievance procedures. The training will be conducted by an individual(s) knowledgeable about the laws and issues pertaining to Section 504 and Title II compliance.

The Agreement also requires that, within sixty (60) days, the College will review its Access policies as set forth in all electronic and print media and ensure they accurately reflect the level of support available to registered students including, but not limited to, the availability of Access staff to assist with giving notice of academic adjustments to faculty. Beginning with the fall 2017 semester, the College will notify all students registered for academic adjustments during that semester of the services and support available through Access offices including, but not limited to, assisting with providing notice of academic adjustments to faculty.

Additionally, the College agrees to fully refund the Student's tuition for the spring 2016 semester, and to retroactively withdraw Student from all classes for that semester, so there is no negative impact or designation apparent from her transcript, on her academic career, or on or eligibility for financial aid. Please consult the Agreement for further details

OCR considers the allegations of this complaint resolved effective the date of this letter and will monitor the College's implementation of the Agreement. When OCR concludes the College has

¹ The *Case Processing Manual* is available on OCR's website at <http://www.ed.gov/about/offices/list/ocr/docs/ocrcpm.html>.

fully implemented the terms of the Agreement, OCR will close the complaint. If the College fails to carry out the Agreement, OCR may resume investigating the complaint.

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, please be advised 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.

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.

OCR is committed to prompt and effective service. If you have any questions, please contact XXXXX XXXXX XXXXX, Attorney, at (816) 268- XXXXX (voice) or (877) 521-2172 (telecommunications device for the deaf), or by email at XXXXX. XXXXX [@ed.gov](mailto:XXXXX@ed.gov).

Sincerely,

/s/ Anne Bradley

Anne Bradley
Acting Supervisory Attorney

Enclosure