



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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May 31, 2017

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XXXXXXXX XXXXXXXX, P.C., L.L.C.
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XXXXX, XXXXXXXX XXXXX

Re: Docket # 07172035

Dear Mr. XXXXXXXX:

On November 18, 2016, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint against your client, Clarkson College, Omaha, Nebraska (College), alleging discrimination on the basis of disability. This letter is to confirm the College has voluntarily submitted a Resolution Agreement (Agreement) to resolve this complaint.

Specifically, the Complainant alleged the College failed to comply with 34 C.F.R. § 104.44 when it failed to modify its course withdrawal/refund policy to allow her to withdraw after the identified deadlines without penalty despite her notification to the College that her disability was impacting her ability to complete course work during the Fall 2015 and Winter 2016 semesters. Further, the Complainant alleged the College again failed to provide appropriate modifications to the same policy when it penalized her for late withdrawal from Fall 2016 courses, despite the fact that she was postponing her withdrawal pending the College's decision regarding her appeal of how it responded to her late withdrawal from Winter 2016 semester courses.

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 Federal financial assistance 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 also were not used in the letter.

OCR reviews evidence under the “preponderance of the evidence” standard. Under a preponderance of the evidence standard, OCR evaluates the evidence obtained during an investigation to determine whether the greater weight of the evidence is sufficient to support a conclusion that the College failed to comply with Section 504 and Title II as it relates to the complaint issues. During the course of the investigation, OCR identified compliance concerns regarding the implementation of the College’s policies and procedures regarding the provision of academic adjustments to students with disabilities. Prior to reaching a determination as to the sufficiency of the implementation of these policies and procedures, the College agreed to provide training to relevant identified staff members regarding the implementation of said policies and procedures pursuant to the enclosed Resolution Agreement (Agreement). Below is a summary of OCR’s legal standards, findings, and a summary of the Agreement.

Legal Standard

Academic Adjustments

The regulation implementing Section 504 at 34 C.F.R. § 104.44 states that recipients 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 handicap, against a qualified handicapped applicant or student. Academic requirements that the recipient can demonstrate are essential to the instruction being pursued by such student or to any directly related licensing requirement will not be regarded as discriminatory within the meaning of this section. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted.

Findings of Fact

Complainant’s Allegation

The Complainant, a student with a disability, alleged the College failed to modify its course withdrawal/refund policy to allow her to withdraw after the identified deadlines without penalty despite her notification to the College that her disability was impacting her ability to complete course work during the Fall 2015 and Winter 2016 semesters. Further, the Complainant alleged the College again failed to provide appropriate modifications to the same policy when it penalized her for late withdrawal from Fall 2016 courses, despite the fact that she was postponing her withdrawal pending the College’s decision regarding her appeal of how it responded to her late withdrawal from Winter 2016 semester courses.

The Complainant confirmed to OCR that she began pursuing a Registered Nurse to Masters of Science in Nursing degree program at the College in Fall 2013. She stated that typically, it was a two-year program, but she was taking only six credit-hours at a time because she was also working full-time. According to the Complainant, she has only seven hours left to complete her

Masters of Science in Nursing degree with the College and would strongly prefer to resolve her complaint as quickly as possible so that she can enroll and complete the program. She believes that her health has improved and she will be able to complete the semester. She stated that in Fall 2015, she had to withdraw from her classes for health reasons and that the College was aware of her health concerns. She stated she provided documentation of her health concerns to the College to help facilitate the development of a modification plan. She stated the modification plan included modifications for more time to take a test and to get minor extensions on assignments, but nothing else. She stated that she notified the College of her health-related reasons for withdrawing in Fall 2015 and Winter 2016 semesters after the deadline for refunds, but the College denied her request for refunds without explanation. She said that she received a letter notifying her of the denial of her appeal, but that it contained no explanation, and when she requested an explanation of the appeal denial the College employee simply referred her to the letter. She stated that she had to withdraw both in Fall 2015 and in the Winter 2016 semester, and while she enrolled for Fall 2016 pending the outcome of her appeal of the Winter 2016 withdrawal, the College did not reach a decision until after the deadline to withdraw for a refund and so she has paid for three semesters without completing or receiving credit for those semesters. The Complainant to OCR her employer has paid for part of her tuition and notified her that it will no longer assist pending the outcome of the OCR investigation.

The Complainant told OCR she never met any of the College employees she dealt with regarding her request for refunds and appeals in person and could not remember any names of employees from the College's Access, Financial Aid, or Registrar's offices. She recalled that the contact person from the Access office changed several times over the course of the time she was enrolled.

The Complainant denied that anyone at the College ever discussed with her the financial aid policies related to tuition and financial aid and withdrawal. She also denied that anyone ever discussed the concept of "satisfactory academic progress" with her. She told OCR that the entire degree program was online except for the clinical program, but the College instructor provided students with a list of potential locations and the student could arrange to complete the program at particular locations.

College's Response to Allegation

As part of its response to OCR's request for data in this investigation, the College asserted: 1) it provided numerous academic adjustments to the Complainant when she notified the College of her disability and provided the required documentation; and 2) the Complainant had a pattern of withdrawing from courses after the College's deadline had passed for students to receive refunds for doing so, and then would request exemptions from that general policy.

The College is located in Omaha, Nebraska and provides post-secondary education to students pursuing careers in health related professions, including health care education and leadership, health care services, medical imaging, nursing, health care business and health information management, physical therapy, and radiologic technology.

The Complainant enrolled in its Registered Nurse to Masters of Science in Nursing program in

2012, enrolling originally as an online student. The Complainant has taken classes in nursing on a half-time and less than half-time basis since 2012.

The College provided copies of documentation in response to OCR's data request, including the District's notice of nondiscrimination, the Complainant's academic transcript, the Complainant's most recent petition for reconsideration, correspondence between the Complainant and a College coordinator regarding her request for assistance and the development of her access plan, the Complainant's access plans and email correspondence forwarding the access plans to Complainant's professors, and correspondence between College staff members and the Complainant regarding her petitions for reconsiderations and the outcomes of these requests. OCR interviewed the College's student financial services director and registrar regarding the Complainant's allegations.

According to the information provided by the College, its withdrawal policies allow students who withdraw from courses within the first week of classes to receive a 100% refund of tuition costs. Students who withdraw in the second week of classes receive a 75% refund, and the amount is reduced by 25% each additional week into the semester. Therefore, students who withdraw from a class four or more weeks after the beginning of the semester are not eligible to receive a tuition refund. The College asserted it applies this policy consistently to all students and the policy is intended, in part, to assist the College in complying with federal financial aid requirements. The student financial services director told OCR that undergraduate students must complete 67% of their courses with a 2.0 grade point average or higher to maintain "Satisfactory Academic Progress" (SAP) as defined by the Department for federal financial aid purposes. The College asserted its policy related to tuition reimbursement helped avoid having students register, take a space in sought-after courses, "and withdraw at the last moment without any financial incentive to finish the class."

The student financial service director told OCR that even though the Student withdrew from two courses that semester, she was meeting the SAP requirement during fall 2016 because she stayed enrolled in a third course and completed the attendance and grade point average requirement. The Department's regulation does not require the College to refund the aid to the Department under these circumstances because the Complainant completed one of the courses and met SAP. The student financial services director told OCR that the Student was continuing to withdraw from classes, keeping the federal financial aid money for all three courses that semester, and then seeking to re-take the courses the following semester at no additional charge.

Prior to the completion of OCR's investigation,¹ the College submitted a signed Agreement (copy enclosed) on May 31, 2017 that, when fully implemented, will address the allegations of this complaint. The Agreement requires the College to invite the Complainant to submit additional information that the College will consider along with information originally

¹ OCR has not yet obtained sufficient information to determine whether the Student followed the proper procedures for requesting an academic adjustments, including whether the information provided by the Student when withdrawing from her courses was sufficient to put the College on notice that she was making such a request based on her disability. OCR would also need to determine whether the Student's requested action qualified as an academic adjustment that was not a fundamental alteration of the College's program. OCR also has not determined whether the College's response to the Student's petition met the requirements to respond to such a request.

considered as it re-reviews the decision to deny her request for her petition for reconsideration in Fall 2016. If the Complainant re-enrolls in the College, the College is required to engage in the interactive process with the Complainant to determine what academic adjustments, if any, are appropriate, and ensure that such adjustments are provided. The College will also provide training to designated College staff members regarding compliance with Section 504 and Title II.

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

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, Attorney, at (816) 268-XXXX (voice) or (877) 521-2172 (telecommunications device for the deaf), or by email at XXXXX.XXXXX@ed.gov.

Sincerely,

/s/ Kelli Douglas
Supervisory Attorney

Enclosure