



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

1244 SPEER BLVD, SUITE 310
DENVER, CO 80204-3582

REGION VIII
ARIZONA
COLORADO
NEW MEXICO
UTAH
WYOMING

October 16, 2018

Dr. Maria Harper-Marinick, Chancellor
2411 West 14th Street
Tempe, Arizona 85281

By Email Only to maria.harper@domail.maricopa.edu

Re: Maricopa County Community College District (Phoenix Community College)
OCR Case Number 08-16-2070

Dear Dr. Harper-Marinick:

This letter advises you of the resolution of this complaint alleging that Maricopa County Community College District – Phoenix Community College (College) discriminated on the basis of disability. Specifically, the complainant alleged:

1. The College failed to afford the complainant timely, adequate, and appropriate auxiliary aids and services leading to effective communication, with respect to textbooks, required course reading assignments, homework assignments and supporting materials, software, library catalog and other library resources, learning management software, examinations, and in other contexts.
2. The College's chosen auxiliary aids inappropriately resulted in the complainant having been treated differently from her nondisabled peers, such as by assigning a reader instead of providing accessible textbooks, allegedly resulting in her inability to study at home instead of at the College and depriving her of the ability to work independently.
3. The College treated the complainant differently on the basis of disability, with respect to her placement in a clinical program, and in other contexts.

Because we have the authority and the complaint was filed timely, we initiated an investigation of this complaint under the authority Section 504 of the Rehabilitation Act of 1973 and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department; and Title II of the Americans with Disabilities Act of 1990 and its implementing regulation at 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 these laws and regulations.

During the course of our investigation, before we had made any findings, the College indicated its desire to voluntarily enter into an agreement to ensure compliance with Section 504 and Title II as it relates to allegation #2, and for those portions of allegation #1 involving accessible-format textbooks and course software used in certain courses in the Health Information Management (HIM) program.

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

Pursuant to Section 302 of OCR’s Case Processing Manual, a complaint may be resolved when, before the conclusion of an investigation, a recipient expresses an interest in resolving the complaint, OCR believes that doing so is appropriate, and the remedies align with the allegations.

On October 8, 2018, we received the College’s signed Resolution Agreement (enclosed). OCR is closing the investigative phase of this case as it relates to accessible-format textbooks and software used by students in the HIM program and in prerequisite Biology courses, effective the date of this letter. The case is now in the monitoring phase. OCR will closely monitor the recipient’s implementation of the Agreement to ensure that the commitments made are implemented timely and effectively and that the recipient’s policies and practices are administered in a nondiscriminatory manner. When the Agreement is fully implemented, the allegations will have been resolved consistent with the requirements of Section 504 and Title II, and their implementing regulations. If the College fails to implement the Agreement, we will take appropriate action, which may include enforcement actions, as described in the Agreement.

Concerning the remaining issues in allegation #1, and regarding allegation #3, OCR completed a full investigation. In reaching a determination, OCR reviewed documentation submitted by the College. OCR also interviewed the complainant on multiple occasions in the presence of her attorney, as well as the complainant’s aide/tutor who worked with the complainant between the fall of 2015 and the time the complainant graduated from her desired program (May 2017). OCR also interviewed College staff knowledgeable about the events at issue in this complaint, including the Director of the Disability Resources and Services Office (the DRS) and the Program Director (PD) for the complainant’s chosen program, the HIM program. Furthermore, OCR conducted a site visit to specifically assess those software programs identified by the complainant as inaccessible to students who are blind or those with visual impairments. Last, OCR provided the complainant with an opportunity to respond to the information submitted by the College.

After carefully considering all of the information obtained during the investigation, OCR has concluded that there is insufficient evidence to conclude that the College subjected the complainant to disability based discrimination in violation of Section 504 or Title II for the remaining allegations. The reasons for our conclusion are set forth below.

Background

The complainant is visually impaired. In order to access digital information (i.e. electronic textbooks, course material, software), the complainant uses JAWS screen software. Prior to becoming blind, the complainant had experience in the medical coding field. Based on her experience, the complainant enrolled in the College’s HIM program (formerly Health Information Technology) in 2010.

As part of the admissions process, the complainant registered with the DRS. The complainant requested and was approved to receive auxiliary aids and services from the College. Specifically, the DRS office approved a recorder for lectures, formatted textbooks, preferential seating, and testing accommodations (scribe/reader). In addition to those services approved by the DRS, the DRS also hired aides¹ at different times for the complainant while she was in the program.

The complainant also received assistance from the Division of Vocational Rehabilitation (DVR), which contracted with the Southern Arizona Association for the Visually Impaired (SAAVI) to provide her with

¹ At different points while in the program the College, and at times SAAVI, have provided the complainant a reader, a paid lab aide, and a paid classroom aide that also fulfilled the role as a paid tutor for the complainant. Thus, for ease of reading, OCR will use the term “aide” throughout the letter.

services consistent with her individual DVR plan (i.e. software training, JAWS training). In addition to providing the complainant with training using JAWS software, SAAVI also paid for the complainant to have a tutor and for various fees associated with attending the College, including paying for tuition, fees, and books.

In May 2017, the complainant earned an Associates of Applied Science degree, having met the program requirements while also achieving an overall grade point average of XXXX.

Appropriate Legal Standards

The Section 504 implementing regulation at 34 C.F.R. § 104.4(b)(1)(ii) and the Title II implementing regulation at 28 C.F.R. § 35.130(b)(1)(ii) prohibit recipients or public entities from affording a qualified person with a disability an opportunity to participate in or benefit from the entity's aid, benefit, or service that is not equal to that afforded to others.

A person with a disability is defined, in relevant part, as a person who has a physical or mental impairment which substantially limits one or more major life activities. 34 C.F.R. § 104.3(j)(1)(i). A person with a disability is "qualified" with respect to postsecondary education services if the person meets the essential eligibility requirements for the receipt of such services. 34 C.F.R. § 104.3(l)(3).

In addition, the Section 504 regulation provides, at 34 C.F.R. § 104.44(a), that a recipient 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 student with a disability. The Title II regulation requires that public entities such as the College make reasonable modifications in policies, practices, or procedures when necessary to avoid discrimination on the basis of disability. 28 C.F.R. § 35.130(b)(7). Title II also requires, at 28 C.F.R. § 35.160(a), that public entities take appropriate steps to ensure that communications with those with disabilities are as effective as communications with others.

The Section 504 regulation provides, at 34 C.F.R. § 104.44(d)(1), that a recipient shall take such steps as are necessary to ensure that no person with a disability 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 Title II regulation, at 28 C.F.R. § 35.160(b), requires that a public entity furnish appropriate auxiliary aids and services where necessary to afford qualified individuals with disabilities, including applicants, participants, companions, and members of the public, an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity. The Title II regulation requires that the type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place; and that, in order to be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability. The regulation further states that, in determining what types of auxiliary aids and services are necessary, a public entity shall give primary consideration to the requests of individuals with disabilities. 28 C.F.R. § 35.160(b)(2).

Students with disabilities, especially those with visual impairments, are to be afforded the opportunity to acquire the same information, engage in the same interactions, and enjoy the same services as sighted students. Educational institutions must ensure that students with disabilities can access the educational opportunity and benefit with substantially equivalent ease of use as students without disabilities. Should the educational institution use a device that is not fully accessible, the institution must provide

accommodations or modifications that permit students with disabilities to receive all the educational benefits provided by the technology in an equally effective and equally integrated manner.

For technology to be accessible, a person with a disability must be afforded the opportunity to acquire the same information, engage in the same interactions, and enjoy the same services as a person without a disability in an equally effective and equally integrated manner, with substantially equivalent ease of use. The person with a disability must be able to obtain the information as fully, equally and independently as a person without a disability. Although this might not result in identical ease of use compared to that of persons without disabilities, it still must ensure equal opportunity to the educational benefits and opportunities afforded by the technology and equal treatment in the use of such technology.

Postsecondary education institutions do not have a duty to identify students with disabilities. Students in institutions of postsecondary education are responsible for notifying institution staff of their disability should they need academic adjustments. Postsecondary schools may require students with disabilities to follow reasonable procedures to request an academic adjustment. Students are responsible for knowing and following those procedures.

If an auxiliary aid is necessary for classroom or other appropriate (nonpersonal) use, the institution must make it available, unless provision of the aid would cause undue burden. A student with a disability may not be required to pay part or all of the costs of that aid or service. An institution may not limit what it spends for auxiliary aids or services or refuse to provide auxiliary aids because it believes that other providers of these services exist, or condition its provision of auxiliary aids on availability of funds. In many cases, an institution may meet its obligation to provide auxiliary aids by assisting the student in obtaining the aid or obtaining reimbursement for the cost of an aid from an outside agency or organization, such as a state rehabilitation agency or a private charitable organization. However, the institution remains responsible for providing the aid.

For OCR to find that the College discriminated against a student on the basis of disability by failing to provide academic adjustments or auxiliary aids and services, the evidence must demonstrate that: (1) the student is a qualified individual with a physical or mental impairment that substantially limits one or more major life activities; (2) the student notified the recipient of his/her disability and need for academic adjustments, including auxiliary aids; (3) there is an academic adjustment or auxiliary aid that, if provided, would allow the student to participate in the recipient's educational program; and (4) the recipient failed to provide appropriate and effective academic adjustments or auxiliary aids.

Analysis and Conclusion

Allegation #1

In addition to the concerns addressed through a 302 Resolution Agreement, the complainant also alleged the College failed to afford her timely, adequate, and appropriate auxiliary aids and services leading to effective communication, with respect to required course reading assignments, homework assignments and supporting materials, library catalog and other library resources, learning management software (LMS), examinations, and in other contexts.

The complainant alleged broadly that throughout her enrollment in the College, the College regularly failed to provide course reading assignments, homework assignments with supporting materials, and examinations, in an accessible format; regularly failed to ensure that a library computer designated as ADA accessible was in fact accessible; failed to ensure the library catalog and other library resources were accessible; and failed to ensure learning management software was accessible.

Library Resources and Learning Management Software

Under 108(h) of our *Case Processing Manual*, OCR will dismiss allegations when the same or similar allegation based on the same operative facts has been filed either by the complainant or someone other than the complainant against the same recipient with state or federal court. An OCR complaint may ordinarily be re-filed within 60 days following termination of the court proceeding if there has been no decision on the merits or settlement of the complaint allegations. Dismissal with prejudice is considered a decision on the merits.

During our investigation of this complaint, OCR learned that on September 18, 2014, the Maricopa Community College District (MCCD), of which the Phoenix College is one of 10 member community colleges, entered into a settlement agreement to resolve a court action filed against the MCCD and a sister community college within the MCCD by the American Federation for the Blind on behalf of a blind student on April 30, 2012. The settlement agreement required the MCCD to conduct a technology accessibility audit of student email systems, learning management systems (LMS), its library websites, the public Maricopa.edu website, and the student information system. Upon completion of its audit, the MCCD was required to develop a corrective action strategy plan (CAS) that, once approved by the plaintiffs in the case, would be implemented within 24 months.

On February 15, 2015, the MCCD shared the results of the technology audit with the plaintiffs in the case. With respect to MCCD's LMS, Canvas, the audit noted that the LMS meets accessibility standards, but MCCD needed to develop a plan for auditing the content within this system and remediating as necessary. Regarding library resources and systems, the audit noted several deficiencies. Based on the results of the technology audit, the College developed a list of 25 CAS items intended to address the LMS and library resource deficiencies, among others.

The College indicated to OCR during OCR's February 2018 site visit that efforts to comply with portions of the settlement agreement relating to technology relevant in this case, the library systems and learning management software, were still ongoing. The College later reported to OCR that as of March 8, 2018, the CAS was fully completed.

We determined through our review of the documentation provided by the College that the complaint and subsequent settlement agreement addressed the same complaint allegations raised in OCR case 08-16-2070 relating to library systems and learning management software; that although the review was not based on a complaint initiated by the complainant, the settlement agreement benefits the complainant and addresses her concerns; and the remedy, including the audit and the CAS, are similar to that which would have been required if OCR had determined a violation existed. Accordingly, we are dismissing these allegations effective the date of this letter.

Library Resources – ADA Computer

The complainant alleged a computer in the library was inaccessible to blind users. In a later discussion with the complainant, she explained that since filing her complaint with OCR in December 2015, the College made updates to the computer. She stated that although it is now mostly accessible by JAWS once she is logged on, she is still not able to independently access the system because the logon security screen is not readable by JAWS.

OCR staff toured the library during our site visit on February 7, 2018. During our visit, the DRS explained that while JAWS is loaded onto the ADA computer, the program is not actually initiated or

usable until after the user logs onto the ADA computer. We confirmed that the computer has an initial security screen which requires all users to enter credentials. We further confirmed that JAWS is not initiated until a user has successfully logged onto the ADA computer.

Because the DRS identified this as a barrier to access, the College provided for a library aide to be seated outside the ADA computer room whenever the library is open so that when this situation does arise, the aide can assist the user in getting past the initial security logon screen. The complainant confirmed that she has requested the assistance of the aide in the past and the aide has helped her log on to the ADA computer.

Based on the information available, we have determined that there is insufficient evidence to conclude the College discriminates as alleged. The complainant indicated her concerns with the computer's software have been resolved but for the one issue of the initial log on, for which the College provides access through the assistance of a library aide.

Course Reading, Homework, Examinations, and Supporting Materials

The complainant alleged generally that on many occasions course reading, homework, examinations, and supporting materials were provided in inaccessible formats, most often in the online learning management system, the Canvas system. The complainant was unable to provide OCR with specific examples of inaccessible materials. The complainant explained that in instances when the material was inaccessible or unreadable by JAWS, she had to rely on a sighted individual to assist in her in accessing the information. In relying upon a sighted individual, the complainant asserted she did not receive the same benefit as other students who were learning or were able to work independently.

We requested that the complainant and her attorney provide OCR with examples of instances when she was not provided these items in an accessible format. In addition, we also provided the College an opportunity to explain how the College ensured the complainant received these items in an accessible format and if issues arose once provided, how the College, and in particular the DRS, addressed any issues identified with regard to accessibility.

During a call to the complainant she could recall only generally that the PD had provided her with inaccessible reading material (PDFs) during her seminar courses (fall 2016 and spring 2017). When we interviewed the PD, she asserted that she always provided materials to the complainant in an accessible format, as posted in the online Canvas LMS. In addition, she said that she also emailed the complainant any documents she posted in the LMS. The PD stated that even if she had inadvertently provided inaccessible material to the complainant, the complainant had not made her aware of that. The PD contends that if the complainant had informed her of a problem, or any teacher working with the complainant for that matter, she would have either immediately converted the material herself, or would have requested the assistance of the DRS in converting the material. In either case, the PD could not recall when the complainant ever informed her or the DRS of any issues with a particular document or piece of material.

When we questioned the DRS, the DRS confirmed the details provided by the PD when she stated the complainant had not informed them of any issues. The DRS recalled that while his office made every effort possible to continue to provide services to the complainant (e.g. timely notify teachers of approved accommodation, convert text materials to an accessible format, etc.), the complainant had apparently grown frustrated with the DRS and had not been requesting additional assistance from the DRS office or informing the office of any issues related to materials provided by the teachers. OCR notes that during interviews with the complainant and with her aide, both corroborated the DRS beliefs stating that because

of the complainant's frustration over the many perceived failures of the DRS and the College over time, the complainant eventually began limiting her contact with the DRS. Neither the complainant nor her aide could recall when the complainant began limiting her contact with DRS.

Based on the information available, we concluded there is insufficient evidence to establish by a preponderance of the evidence that the College subjected the complainant to discrimination as it relates to course reading, homework, examinations, and supporting materials.

Allegation #3

The complainant and her attorney alleged the College treated her differently than her nondisabled peers by requiring she find her own professional practical experience (PPE) site location.

In evaluating an allegation of different treatment, we determine what action the recipient took against the alleged injured party, whether it followed its policies and procedures for taking such action and whether similarly situated, in this case non-disabled, individuals were treated differently. If the alleged injured party was treated differently, we determine whether the recipient has a legitimate, non-discriminatory reason for the different treatment and, if so, whether the stated reason is a pretext for discrimination.

The College disagreed with the complainant's assertions that she had to find her own placement. According to the PD, although the complainant may have indicated initially during the spring 2015 that SAAVI had sites where she could complete her PPE requirements; the PD assisted the complainant in finding site locations. The PD also noted that even if she had not specifically coordinated a site but the complainant did, that would not be unusual. The PD provided examples of other students who coordinated their individual PPE site placements.

Our review of the evidence found that in the spring and fall semesters of 2016, the PD began attempting to coordinate practicum site locations for the complainant. The PD contacted at least eleven separate potential practicum site locations between March and August 2016. In addition, the complainant was also making recommendations to the PD based on knowledge of locations where she may have opportunities to complete her practicums. Eventually, through the collaborative efforts of the complainant and the PD, the complainant successfully completed 45 hours of practicum experience at one site, 40 hours at a second site, and 65 hours at a third location; thereby meeting the minimum number of required practicum hours (150). The PD was successful in acquiring one location based on the complainant's recommendation, a cancer center, which would provide the complainant the opportunity to complete 40 hours of the program requirement of 150 hours of practicum time.

We provided the complainant an opportunity to respond to the College's position. The complainant recalled that other students had coordinated their own PPE's at their worksites and that although the PD assisted in securing two of her three sites, she asserted that it was she who secured her PPE at the cancer center.

Based on a preponderance of the evidence, we are unable to establish that the complainant was subjected to different treatment based on disability when coordinating for PPE site placements. Consequently, our analysis ends here.

This concludes our investigation of this complaint. We are closing our investigation of this complaint effective the date of this letter. We will continue to monitor the Agreement that was reached regarding accessible-format textbooks and software used by students in the HIM program and in prerequisite Biology courses. This letter addresses only the issues discussed in this complaint and should

not be interpreted as a determination of the College's compliance or noncompliance with Section 504 or Title II, or other Federal civil rights laws in any other regard. The complainant may have a right to file a private suit in Federal court whether or not OCR finds a violation.

OCR routinely advises recipients of Federal funds that Federal regulations prohibit intimidation, harassment, or retaliation against those filing complaints with OCR and those participating in a complaint investigation. Complainants and participants who feel that such actions have occurred may file a separate complaint with OCR.

Please also note that the complainant may have the right to file a private suit in Federal court whether or not OCR finds a violation.

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.

If you have any questions or concerns, please feel free to contact XXXX, Equal Opportunity Specialist and primary contact for this case, at XXXX or by email at XXXX, or me at XXXX.

Sincerely,

/s/

Thomas M. Rock
Supervising General Attorney

Enclosures – Copy of Resolution Agreement

cc (w/o enclosures): Ms. Melissa Flores, Esq. (via email)
Associate General Counsel