



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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April 17, 2017

Dr. Chris Bustamante, President
Rio Salado College
2323 West 14th Street
Tempe, Arizona 85281

Re: **Rio Salado College**
Case Number: 08-16-2082

Dear President Bustamante:

We write to advise you of the resolution of a complaint that was filed with our office against Rio Salado College (“the College”). The Complainant alleged that the College discriminated on the basis of disability. Specifically, the Complainant alleged that: (1) the Manager of Disability Resources and Services (“the Manager”) discouraged the Complainant from taking Biology 100 (“BIO100”) because she, as a qualified student with a disability, needed academic adjustments; and (2) the Faculty Chair of the Biology Department (“the Chair”) refused to allow the Complainant to utilize her adjustments.

We investigated the complaint pursuant to Section 504 of the Rehabilitation Act of 1973 and its implementing regulation at 34 Code of Federal Regulations (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.

Our investigation established that the College: (1) discriminated against the Complainant by advising her differently and counseling her out of BIO100; (2) discriminated against the Complainant by denying her the use academic adjustments in BIO100; and (3) discriminated against the Complainant by requiring her to request permission each time she needed to use an academic adjustment. Upon being advised of this finding, the College voluntarily agreed to enter into a resolution agreement to resolve the matter. A signed original of the agreement is enclosed with this letter.

During our investigation, we interviewed the Complainant, the Manager, and the Chair. We also reviewed documents submitted by the Complainant and the College. The reasons for our conclusions are set forth in this letter.

I. Legal Standards

The Section 504 regulations, at 34 C.F.R. § 104.43(a), provide that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any postsecondary education program of a recipient. The Title II regulations, at 28 C.F.R. § 35.130(a), contain a similar prohibition applicable to public postsecondary educational institutions.

The Section 504 regulations, at 34 C.F.R. § 104.3(j)(1)(i), and the Title II regulations, at 28 C.F.R. § 35.104, define an individual with a disability as one who has a mental or physical impairment that substantially limits one or more major life activities. Under the Section 504 regulations, at 34 C.F.R. § 104.3(l)(3), with respect to postsecondary education services, a qualified individual with a disability is one who meets the academic and technical standards requisite to admission or participation in the college's education program or activity. Similarly, the Title II regulations, at 28 C.F.R. § 35.104, define a qualified individual with a disability as one who, with or without reasonable modifications to rules, policies, or practices, the removal or architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or participation in the college's programs and activities.

a. Advising

Under 34 C.F.R. § 104.4(b)(1) and 28 C.F.R. § 35.130(b)(1), a recipient public college may not, on the basis of disability, provide different or separate aids, benefits, or services, unless necessary to provide qualified disabled individuals with aids, benefits, or services that are as effective as those provided to others. The practice of "counseling out" – in this context, meaning to influence a prospective student with a disability not to enroll in or to withdraw from a course because the student has a disability and needs adjustments – is a form of prohibited different treatment.

b. Adjustments and Modifications

The Section 504 regulations, at 34 C.F.R. § 104.44(a), require recipient colleges to make modifications to their academic requirements that are necessary to ensure that such requirements do not discriminate, or have the effect of discriminating, against qualified individuals with disabilities. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific required courses, and adaptation of the manner in which courses are conducted. However, in providing an academic adjustment, a postsecondary institution does not have to eliminate or lower essential requirements, or make modifications that would result in a fundamental alteration of the programs or activities being offered or impose an undue burden on the institution.

Under the Title II regulations, at 28 C.F.R. § 35.130(b)(1)(ii) and (iii), public colleges may not afford a qualified individual with a disability opportunities that are not equal to those afforded others, and may not provide aids, benefits or services that are not effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of

achievement as that provided to others. Under 28 C.F.R. § 35.130(b)(7), public colleges must make reasonable modifications in policies, practices, or procedures when necessary to avoid discrimination on the basis of disability, unless doing so would fundamentally alter the nature of the service, program, or activity. Section 35.103(a) provides that the Title II regulations shall not be construed to permit a lesser standard than is established by the Section 504 regulations. Therefore, OCR interprets the Title II regulations to require public colleges to provide necessary academic adjustments to the same extent as is required under the Section 504 regulations.

In reviewing an institution'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 specific student with a disability.

II. Investigation

Our investigation focused on obtaining the evidence necessary to determine whether the College complied with these legal standards, or whether the College engaged in disability discrimination as alleged. Specifically, our investigation consisted of interviewing the Complainant, the Manager, and the Chair. We also requested and reviewed extensive documents submitted by the College, including: the College's and the Biology Department's policies and procedures applicable to students requesting academic adjustments based on disability; documents related to the Complainant's requests for academic adjustments applicable to classes starting on or after July 1, 2015; correspondence discussing the Complainant, from or to the Manager or the Chair; other correspondence discussing the availability of academic adjustments in any Biology class or lab, from or to the Manager or the Chair; and a narrative of the College's position regarding the allegation.

III. Evidentiary Standards

OCR applies a preponderance of the evidence standard to determine whether the evidence is sufficient to support a particular conclusion. Specifically, OCR examines the evidence in support of and against a particular conclusion to determine whether the greater weight of the evidence supports the conclusion as alleged.

IV. Findings of Fact

The Complainant was a student at the College during the 2015-2016 school year. She had various medical conditions that made her a qualified individual with a disability. She requested adjustments from the College's Disability Resources and Services (DRS) Office. The DRS Office granted her extra time on exams, testing in a private room, and one- to two-day

extensions, as needed, to submit assignments and complete exams. In fall 2015, she enrolled in Biology 100 (“BIO100”), but withdrew from the course on or about XXXX, 2015.

a. Allegation 1: Discriminatory Advising

The Complainant alleged in her complaint to OCR and in phone interviews with OCR that the Manager “advised [her] that anyone with a disability taking BIO100 is discouraged from taking the class” and encouraged her to take a different course. In other words, she alleged that she was “counseled out” of BIO100 by the Manager. According to the Complainant, the Manager’s rationale for the unsolicited advice was that the Chair generally refuses to allow disability adjustments and modifications.

Records provided by the College to OCR support the Complainant’s allegation that she was urged, at least partially on the basis of her disability and necessary adjustments, not to take BIO100. In the Manager’s contact log entry for XXXX, 2015, she noted that she “again” recommended that the Complainant take a different science course because “due to her conditions, accommodations, and medical issues it will not be a good fit.” In contact log entries for XXXX, 2015, the Manager noted that she recommended to the Complainant that the Complainant withdraw from BIO100: “recommended to stu she W/D and request refund and take another science course” and “told stu the best route is to drop it and get money back.” Additionally, on XXXX, 2015, the Manager emailed to the Chair, “I first recommended she choose another course on XXXX, again on XXXX, and again on XXXX.” Finally, the College’s narrative response to OCR read, in part:

[The Manager] discouraged [the Complainant] from enrolling in BIO 100 Concepts because although [the Complainant’s] approved academic adjustment is ‘1-2 day short extensions as needed’ in completing assignments, on several occasions [the Complainant] asked for month-long extensions and frequently requested extensions of several days. [The Manager] was concerned that [the Complainant] would not be able to complete the Biology assignments and the course in the time allowed.

The College’s narrative response to OCR also read: “[The Manager] recommended that [the Complainant] re-register into a different science on three separate dates (XXXX, XXXX and XXXX[.]”

The College proffered to OCR two arguments, albeit contradictory, in its defense. First, during an interview with OCR on October 13, 2016, the Chair denied that students with disabilities who need adjustments are counseled out of Biology courses. However, the records described above definitively demonstrate that the Complainant was strongly and repeatedly counseled, at least partially on the basis of her disability and necessary adjustments, not to take BIO100.

Second, the College attempted to justify the advising provided to the Complainant by asserting, in an email to OCR, that the Manager: (a) was aware that the Complainant had a history of requesting long extensions, which would not be workable in BIO100; (b) knew that other science courses would be less demanding; and (c) was concerned about the Complainant’s best interests

and well-being, and did not want to see the Complainant fail. During an interview with OCR, the Manager confirmed that she advised the Complainant to take a different science course that would still meet the requirements of the Complainant's program of study, and the Manager asserted similar justifications for her actions.¹ However, the motives of the Manager are not determinative in the discrimination analysis. Even if well-meaning, the Manager provided different advising services to the Complainant (*i.e.*, counseling her out of BIO100), based, at least in part, on the Complainant's disability and need for academic adjustments.

b. Allegation 2: Discriminatory Denial of Academic Adjustments

The Complainant alleged that she was denied the use of her deadline extension adjustment in BIO100. Records provided by the College to OCR support the Complainant's allegation. For example:

- The "Welcome Letter" for BIO100 read: "Please note that during the course, one assignment (not including exams) will be accepted late (up until midnight Monday) without any penalty. Extensions are rarely approved and are *considered only when there is an emergency.*" (emphasis added)
- The Director's contact log entry for XXXX, 2015 read, in part: "called stu to let her know IM about to notify instructors – BIO will be diff / *BIO does not allow short ext as needed* (made that very clear to stu)." (emphasis added)
- The Director's contact log entry for XXXX, 2015 read, in part: "Student asking for extension on assign in BIO – told stu it cannot happen (as I pre-warned her before her courses started) ... explained to stu why *BIO cannot provide extensions* (the due dates are critical to the content)." (emphasis added)
- An email from the Director to the Complainant's professors on XXXX, 2015, read, in part: "[The Complainant's] accommodations include testing issues, which I will handle from this end; however, due to her disability, please allow reasonable, short extensions on assignments when requested (*with an exception to Biology*)." (emphasis added)

Additionally, emails between the Complainant and her BIO100 professor show that, on XXXX, 2015, the Complainant requested a one- to two-day extension to turn in a lab assignment. The Complainant informed the professor that, due to the effects of the weather on the Complainant's condition, the Complainant was unable to walk or get out of bed, and thus, needed an extension. The following day, the Chair emailed to the professor, who presumably inquired earlier about the extension, "All students have a one time, extra extension otherwise, the all normal late policy would apply." The professor then wrote to the Complainant on XXXX, 2015:

¹ During the interview, the Manager stated that, during the 2015-2016 school year, she was the only DRS staff member and that the College had approximately 600 students with disabilities connected with the DRS. The staff-to-student ratio raises questions about the College's capacity to meet the requirements of Section 504 and Title II.

After consultation with the disability office, adherence to the policy is the most accurate response now because it already accommodates for students concerns. In the cases where an entire week is not enough time, we have the one-time extension policy, and in addition to that we even allow late-credit. This is a very lenient policy to my understanding. Also, science classes are organized differently than other disciplines to teach the necessary structure for this field of study.

Then, on XXXX, 2015, the Chair wrote to the professor, “Because meeting strict deadlines is such an important part of all science (which is why we have the policy in the department), please enter lab grade with the late penalty applied at this time. If she contacts them and anything changes, they will let us know.”

In response to the allegation and facts described above, the College made two arguments to OCR. First, the College argued that the Complainant was not denied an extended deadline adjustment because all BIO100 students are given a one week extension on all assignments, as well as a one-time extra extension. The BIO100 “Welcome Letter” read, in part: “Assignments are posted by Sunday and are due immediately thereafter. There is an ‘automatic’ extension until 5:00 p.m. Saturday, the last day of the due date period, for those who find they need some extra time.”

However, for purposes of analyzing alleged discrimination, OCR considers the BIO100 standard due date to be Saturday at 5:00 p.m. Despite the assertions in the “Welcome Letter” and the statements during interviews with OCR, the following evidence overwhelmingly supports the conclusion that all students in BIO100 had approximately one week to complete assignments.

- In an email, on XXXX, regarding the Complainant’s request for an extension, the Coordinator of Instructional Programs in the Biology Department wrote to the BIO100 professor: “please remind her that since *students have an entire week to complete each set of assignments* she already has a built in extension until 5pm on Saturday to submit for full credit therefore no further extensions can be approved.” (emphasis added)
- The College’s narrative response to OCR reads, in part: “*Every student has an entire week to complete each assignment* and is expected to do so within that timeframe.” (emphasis added)
- In response to questions from OCR, the College asserted in an email on July 7, 2016: “*Students have one week to turn in an assignment. An extension is required only if the student can’t complete an assignment by Saturday at midnight when the assignments must be submitted.*” (emphasis added)

If all students may, without penalty, turn assignments by 5:00 p.m. on Saturdays, then the Complainant’s extended deadline that was provided as an approved academic adjustment should have been 5:00 p.m. on Sunday or Monday – *i.e.*, one- to two-days after the standard deadline for every other student. In other words, for purposes of this analysis, an approved academic adjustment of extended time, by definition, necessitates the provision of an adjustment to the

deadline; if all students, on all assignments, are given a week to complete the assignment, then a student with an approved extension should have more than the time provided to all other students.

Second, the College argued that allowing extended deadlines in BIO100 would have fundamentally altered the course. On July 7, 2016, the Assistant General Counsel for the College emailed the following to OCR:

BIO online courses at Rio Salado College cannot provide automatic extensions on assignments as other courses at Rio Salado College because of the 10-15 hours per week required to be devoted to the course, labs, and due “weeks” on assignments. When extensions are requested, the students contact the instructor or faculty chair to work out the logistics moving forward, each done case by case. Extensions requested as an academic adjustment are always granted.

During interviews with OCR on October 13, 2016, the Chair made a similar argument. He argued that Biology lectures and labs go hand-in-hand – *i.e.*, they happen simultaneously, inform one another, and are inextricably linked. They further stated that when students fall behind, there is a domino effect; that is, students experience difficulty catching up with the class and are likely to fall further behind. Finally, the Chair claimed, during his interview with OCR, that most students who take Biology are planning to pursue employment in the medical field, and therefore, must learn to complete tasks in a timely manner.

The College failed to show that the decision regarding essential requirements of BIO100 and academic adjustments was 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 specific student with a disability. In fact, the Chair stated in an interview with OCR that there is no written policy regarding adjustments in Biology courses – only the course “Welcome Letter,” which points to the lack of formality in designating BIO100 its rare, special status.

Moreover, the determination of whether an adjustment or modification would constitute a fundamental alteration must be made and documented on a case-by-case basis. The College, though, has a blanket “policy” in the Biology Department. In its correspondence with the Complainant and OCR, the College repeatedly referred to the Biology Department’s “policy” of not allowing more than one extension, even for qualified students with disabilities who have been granted such an adjustment.

c. Additional Violation: Process for Requesting Academic Adjustments

During an interview with OCR, after the investigation was opened, the Complainant indicated that she was required to request permission to use the deadline extension adjustment each time she needed it. In the course of our investigation, we discovered information suggesting that the Complainant, and other students with disabilities who receive extended deadline academic

adjustments, are indeed made to request the adjustment each time they need to use it. In an email to OCR on July 7, 2016, Assistant General Counsel for the College confirmed that “[w]hen students need extensions on assignments within their course they must request and receive permission for an extension each time one is needed.” During an interview with OCR on October 13, 2016, the Chair confirmed the practice. He explained that each time a student requests the use of an adjustment in a Biology course, the professor notifies the Chair, then the Chair discusses the request with the DRS Office, then the Chair notifies the professor of whether the adjustment may be used, and finally, the professor notifies the student.

Requiring a qualified student to, in effect, get a single academic adjustment approved more than once through more than one authority, including by persons with access to information relevant to the needs of the student and by persons presumably without such access, has the effect of “utiliz[ing] criteria or methods of administration . . . [t]hat have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the public entity’s program with respect to individuals with disabilities.”²

V. Conclusion

In reviewing the documentation, information, and facts that we uncovered in our investigation, OCR determined that the weight of the evidence supported the Complainant’s allegations. Specifically, we find to be discriminatory: (a) the Director counseling the Complainant out of BIO100; (b) the College’s “policy” of categorically denying qualified students with disabilities extended time on assignments, when such students have been granted extended time as an academic adjustment; and (c) requiring that qualified students with disabilities request the use of academic adjustments that they have been granted each time they need to use the adjustments.

As noted previously, the College voluntarily entered into an agreement with OCR to resolve these issues. We thank the College for voluntarily entering into an Agreement to resolve these issues. OCR is closing the investigative phase of this case effective the date of this letter.

The case is now in the monitoring phase. OCR will monitor implementation of this Agreement through periodic reports from the College demonstrating that the terms of the Agreement have been fulfilled. We will provide the College with written notice of any deficiencies regarding implementation of the terms of the Agreement and will promptly require actions to address such deficiencies. The monitoring phase will be completed when OCR determines that the College has fulfilled all of the terms of the Agreement. When the Agreement is fully implemented, the allegations will be resolved consistent with the requirements of Section 504 and Title II and their implementing regulations. When the monitoring phase of this case is complete, OCR will close this case and send a letter to the College, copied to the Complainant, stating that this case is closed. If the College fails to implement the Agreement, we will take appropriate action, as described in the Agreement.

² 28 C.F.R. § 35.130(b)(3)(ii).

This letter addresses only the issues listed previously and should not be interpreted as a determination of the College's compliance or noncompliance with Title II, Section 504, or any other federal law in any other respect.

This letter is a letter of finding(s) issued by OCR to address an individual OCR case. Letters of findings contain fact-specific investigative findings and dispositions of individual cases. Letters of findings are not formal statements of OCR policy and they 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.

Individuals filing a complaint or participating in our resolution process are protected from retaliation by Federal law. Please be advised that 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 investigation. If this happens, the individual 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, personal information, which if released, could constitute an unwarranted invasion of privacy.

Thank you for the courtesy and cooperation you and your staff and counsel extended to us during the investigation of this case. If you have any questions, please contact Jason Langberg, the attorney assigned to the case, at 303-XXX-XXXX or XXXX@ed.gov. You may also contact me at or me at 303-XXX-XXXX or XXXX@ed.gov.

Sincerely,

/s/

Stephen Chen
Program Manager

Enclosure: Resolution Agreement

cc: Rebecca S. Currey, Assistant General Counsel for the College (via email)