



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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August 4, 2016

Dr. Katharine Winograd, President
Central New Mexico Community College
525 Buena Vista Dr. SE
Albuquerque, NM 87106

Re: Central New Mexico Community College
OCR Case Number: 08-16-2108

Dear Dr. Winograd:

We are writing to advise you of the resolution of the above-referenced complaint that was filed with our office against Central New Mexico Community College (College). The Complainant alleged that the College discriminated on the basis of disability. Specifically, the Complainant alleged that the College failed to accommodate her disability, including failing to provide her with accommodations that were effective, during the summer and fall 2015 and spring 2016 semesters. The Complainant also alleged that XXX.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 and its implementing regulation at 34 Code of Federal Regulation Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the U.S. Department of Education; 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 our investigation, we interviewed the Complainant and reviewed documentation and other evidence provided by the Complainant and the College. During the course of our investigation, the College indicated its desire to voluntarily enter into an agreement to resolve the allegations pursuant to Section 302 of our *Case Processing Manual*. We reviewed this request and determined that it was appropriate to enter into an agreement without completing a full investigation of the Complainant's first allegation, of failure to accommodate, only. With respect to the Complainant's second allegation, of XXX, our investigation found insufficient evidence to establish that the College discriminated as alleged. This letter sets forth the reasons for our determinations with respect to both allegations.

Allegation 1: Failure to Accommodate

In the Complainant's complaint and intake interview, she alleged that the College failed to accommodate her disability, including failing to provide her with accommodations that were

effective, during the XXX and XXX 6 semesters. Specifically, she identified issues with her accommodations for a XXX. The Complainant further alleged that the College had directed her to use XXX, which are inaccessible to her. Additionally, the Complainant alleged that she had reported these issues to various staff at the College, but no one had taken action to address these issues.

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. §104.44(a), require recipient colleges and universities 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, academic requirements that recipient colleges and universities can demonstrate are essential to the program of instruction being pursued or to any directly related licensing requirement will not be regarded as discriminatory.

The Section 504 regulations, at 34 C.F.R. §104.44(d)(1), require recipient colleges and universities to take steps 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 for students with impaired sensory, manual or speaking skills. Section 104.44(d)(2) provides that auxiliary aids may include taped texts, interpreters or other effective methods of making orally delivered materials available to students with hearing impairments, readers in libraries for students with visual impairments, classroom equipment adapted for use by students with manual impairments, and other similar services and actions. Recipient colleges and universities, however, need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

Under the Title II regulations, at 28 C.F.R. §35.130(b)(1)(ii) and (iii), public colleges and universities 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 and universities 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. Under 28 C.F.R. §35.135, public colleges and universities are not required to provide disabled individuals with personal devices, individually prescribed devices, readers for personal use or study, or services of a personal nature. 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 and universities to provide necessary academic adjustments to the same extent as is required under the Section 504 regulations.

Prior to receiving the College's request to enter into an agreement to resolve the allegations in this case, we made the following factual findings with respect to this allegation.

Our investigation established that the College had provided accommodations to the Complainant for her visual-related disability, including but not limited to auxiliary aids. We then considered whether those accommodations discriminated or had the effect of discriminating against the Complainant, or were not effective in affording her equal opportunity.

OCR's investigation established that the College's Disability Resource Center (DRC) determined that the Complainant's XXX was deficient for at least XXX to XXX, after which, pursuant to her complaint on XXX, the XXX was replaced. OCR would need further investigation to reach a determination as to the efficacy of the XXX in the XXX, especially in light of the fact that in XXX, the Complainant requested by name her XXX to continue to the XXX semester. OCR would also need further investigation to determine whether the Complainant complained of the deficient notes prior to XXX. The evidence as it stands shows that the Complainant complained to her DRC counselor about XXX twice before XXX, and each time DRC promptly responded: (1) on XXX, she complained that her XXX was absent that week and the week before, but by XXX, the DRC had confirmed that a XXX should be in class that day and for the rest of the semester; and (2) in XXX, she complained that the XXX did not remain in class while she left for doctor's appointments, and DRC made a temporary exception to policy to permit the XXX to remain. The evidence as it stands now does not show any further complaints from the Complainant until XXX. OCR would also need further investigation to determine whether the new XXX who started in XXX was an effective accommodation. The Complainant alleges that she continues to have attendance problems with this XXX, supported with an email where this XXX called in sick on XXX. DRC's documentation of its XXX meeting with the Complainant contradicts this, as it shows that the Complainant stated that XXX was going better and she was satisfied with her accommodations. The investigation also established that DRC has the ability to authorize XXX absences, so OCR would need to investigate as to how this process works and how many absences occurred and were authorized here. Finally, DRC provided a XXX email, where two days after the start of the semester, it informed the Complainant that she would not receive a XXX for at least one class in the XXX semester, so further investigation would be needed to determine whether the Complainant needed and received accommodations in that class and if so, whether they were effective.

In addition, OCR would need further investigation as to the efficacy of the XXX and XXX accommodations. The investigation establishes that the Complainant complained on XXX that the XXX was taken away early from her class, but that by XXX, DRC had confirmed that that the XXX should remain for the duration of the class. The investigation also establishes that there was an eight-week period in the XXX where the XXX was not in class for either the full or partial class period, but that the Complainant did not bring this issue to DRC's attention until the DRC discovered the issue itself on XXX and fixed it that day. The Complainant's DRC counselor telephoned her on XXX to ask about this issue, and she did not bring any other issues

with accommodations to the DRC's attention at that time. The Complainant told the DRC counselor that she did not raise these issues at that time because she thought the counselor was in a hurry.

Further, OCR would need further investigation into the allegation that the Complainant has been directed to use XXX, which are inaccessible to her. The evidence as it stands so far shows that the DRC offered to allow the Complainant to use its XXX equipped with adaptive software. The Complainant alleged that the DRC is not open when she is out of class. Her class schedule for the XXX semester shows that her first class started at XXX and she had no class on XXX. These schedule openings also raise questions about the Complainant's allegations, which the College disputes, that she has been unable to schedule appointments with her DRC counselor, on XXX and before that. Also, when the Complainant filed her complaint, she alleged that she had failed XXX because she had been denied XXX; she also expressed concern that she was receiving poor grades in the XXX semester, but the evidence gathered to date shows that she finished with As and Bs.

The Complainant will remain a student at the College until XXX or XXX, and may be continuing to have problems with at least her XXX. In light of this continuing relationship, the allegation of continuing problems with the XXX, and the College's willingness to enter into a voluntary resolution agreement, OCR has determined a voluntary resolution agreement is appropriate in this case.

Additionally, during the course of the investigation, OCR reviewed the College's policies and procedures relating to complaints of discrimination and harassment and found that those policies and procedures do not designate a Section 504 or Title II Coordinator or include a notice of nondiscrimination that complies with Section 504 and Title II. This constitutes a technical violation of Section 504/Title II and the Agreement addresses this issue.

A copy of the signed Resolution Agreement is enclosed for your records. 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. OCR will monitor implementation of this Agreement through periodic reports demonstrating that the terms of the Agreement have been fulfilled. We will provide written notice of any deficiencies regarding implementation of the terms of the Agreement and will promptly require actions to address such deficiencies. If the College fails to implement the Agreement, we will take appropriate action, as described in the Agreement.

Allegation 2: XXX

X – paragraphs redacted – X

Conclusion

This concludes OCR's investigation of this 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. The case is now in the monitoring phase. The monitoring phase of this case will be completed when OCR determines that the College has fulfilled all terms of the Agreement. When the monitoring phase of this case is complete, OCR will close this case and will send a letter to the College, copied to the Complainant, stating that this case is closed.

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.

Individuals filing a complaint or participating in our resolution process are protected from retaliation by Federal law.

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, especially XXX, extended to us during the investigation of this case. If you have any questions, please contact XXX, Attorney, at XXX, or me at XXX.

Sincerely,

/s/

XXX
Supervisory General Attorney

Enclosure

cc via email (w/enclosure): XXX, Director, Central New Mexico Community College
Disability Resource Center