



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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March 12, 2018

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

Sent by email only to xxxxxxxxxxxxxxxxx

Re: Central New Mexico Community College
OCR Case Number: 08-17-2351

Dear Dr. Winograd:

On September 14, 2017, we received a complaint alleging that Central New Mexico Community College discriminated on the basis of disability. Specifically, the complainant alleges that that in the fall semester of 2017, the College refused to provide the academic adjustment she requested (extended time) for her xxxxxxxxx assignments in her xxxxxxxx courses.

We are responsible for 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.

Legal Standards

The standards adopted by Title II were designed not to restrict the rights or remedies available under Section 504. OCR has determined that the Title II regulations applicable to the issues raised in the complaint do not provide greater protection than the applicable Section 504 regulations. Therefore, the relevant Section 504 standards apply in analyzing the Title II issues raised in the allegations.

Discrimination Generally

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

Academic 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. The Title II regulations, at 28 C.F.R. § 35.130(b)(1)(ii) and (iii), prohibit public colleges from providing a qualified individual with a disability opportunities that are not equal to those afforded others, and from providing 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 the requirements of Section 504 and Title II, a student with a disability is obligated to notify the college of the nature of the disability and the need for a modification, adjustment, aid or service. Once a college receives such notice it has an obligation to engage the student in an interactive process concerning the student's disability and related needs.

However, academic requirements that recipients can demonstrate are essential to the program of instruction being pursued or to any directly related licensing requirement will not be regarded as discriminatory. Section 504 does not require educational institutions to lower or to effect substantial modifications of standards to accommodate individual with disabilities. 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.

The determination that an academic adjustment is a fundamental alteration or would alter an essential requirement is a decision that must be made based on documented evidence on a case-by-case basis. If an institution believes that a requested accommodation would constitute a fundamental alteration of its program, applicable Section 504 and Title II case law requires the institution to make such a determination through a process that includes the following: 1) the decision is made by relevant officials, including faculty members; 2) the decision makers consider a series of alternatives, their feasibility, cost and effect on the academic program, and 3) after a reasoned deliberation, the decision makers reach a rationally justifiable conclusion that the available alternatives would result either in lowering of academic standards or requiring substantial program alterations. In reviewing the decision of the institution, OCR first finds the basic facts, giving due deference to the College, and then evaluates whether those facts add up to a professional, academic judgment that reasonable accommodation is simply not available.

Resolution

During the processing of this complaint, OCR reviewed information provided by the Complainant and the College. On February 21, 2018, the College informed OCR that it wished to resolve the complaint allegations. On March 9, 2018, prior to OCR making any findings of fact,

the College signed an Agreement, which will address the issues raised in the complaint when the Agreement is fully implemented.

In accordance with Section 302 of OCR's *Case Processing Manual*, the provisions of the Agreement signed by the College on March 9, 2018, are aligned with the complaint allegations and the information obtained during OCR's processing of this case, and consistent with the applicable regulations. Therefore, OCR is closing this complaint investigation effective the date of this letter. OCR, however, will actively monitor the College's implementation of the Agreement until the College fulfills the terms of the agreement and is in compliance with the statutes and regulations at issue in this case. If the College fails to implement the Agreement as specified, OCR may initiate administrative or judicial proceedings as described in the Agreement or resume its investigation of the initial allegations. A copy of the Agreement is enclosed.

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 resolution process. If this happens, the Complainant may file another complaint alleging such treatment. In addition, 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. If OCR receives such a request, we will protect personal information to the extent provided by law.

If you have any questions, you may contact Patrick Alexander, the attorney assigned to this case, at (303) 844-3473 or by email at Patrick.Alexander@ed.gov.

Sincerely,

Sandra J. Roesti
Supervisory Attorney

Enclosure: Signed Resolution Agreement

cc: xxxxxxxxxxxx, Executive Director, Student Support Services, *by email only at*
xxxxxxxxxxxxxx