



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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*REGION VIII

ARIZONA
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August 3, 2023

Dr. Amy Diaz
President
Gateway Community College

Via email only to amy.diaz@gatewaycc.edu

Re: Gateway Community College, OCR case number 08-22-2304

Dear President Diaz:

OCR received a complaint of discrimination on the basis of disability (moderate to severe ADHD and depression) filed against the Gateway Community College (College) – Southwest Skills Center on September 14, 2022, alleging that the College:

1. Did not timely approve a request for academic adjustments, resulting in the Complainant's withdrawal from the College, and failed to engage in the interactive process after receiving, and subsequently refusing to consider, the Complainant's request for academic adjustments; and
2. Failed to provide a prompt and equitable response of complaints of disability discrimination.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of federal financial assistance. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 et seq., and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. Additionally, individuals filing a complaint, participating in an investigation, or asserting a right under Section 504 and Title II are protected from intimidation or retaliation by 34 C.F.R. § 104.61, which incorporates 34 C.F.R. § 100.7(e), and 28 C.F.R. § 35.130(a). Because the College receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over this matter pursuant to Section 504 and Title II. Additional information about the laws OCR enforces is available on OCR's website at <http://www.ed.gov/ocr>.

As part of its investigation, OCR reviewed information provided by the Complainant and the College, conducted an interview with the Complainant, and discussed the allegations with counsel for the College.

Academic Accommodations

Section 504 at § 104.44, Academic adjustments, states that a recipient to which this subpart applies 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 applicant or student with a disability. 34 C.F.R. § 104.44(a) requires a postsecondary education recipient institution to make academic adjustments, or modifications, to its academic requirements as necessary to ensure that the requirements do not discriminate or have the effect of discriminating on the basis of disability against qualified individuals with disabilities. Parties must engage in an interactive process when determining whether to grant a student academic adjustment, which is vital in order to provide individualized adjustments for each student's specific disability(ies).

On July 11, 2022, the Complainant started class at the College. She filed an application requesting academic adjustments with the Disabilities Resources and Services Office (DRS) on July 11, 2022, however, she filed it with Estrella Mountain Community DRS and not the College's DRS (Estrella College is part of the Maricopa County Community Colleges District, as is the College). The Complainant filed with the College's DRS on July 21, 2022, though did not upload the required documentation to support her claim of a disability. The College notified the Complainant of this oversight via email on August 1, 2022, and the Complainant provided the requested documentation on August 2, 2022. DRS emailed the Complainant on August 11, 2022, informing her that her documentation had been accepted and that she needed to schedule an intake meeting with DRS. A DRS intake meeting was held on August 15, 2022. On the same date, DRS notified the Complainant of the approval of her academic adjustments, which indicated that she was eligible to receive: alternative testing in the Testing Center or DRS approved location (not including take home tests or online tests); and extra time for tests (1.5 the normal time, not including take home tests/online tests). The Complainant was also advised how to request specific academic adjustments and accommodations for each course every semester.

On August 16, 2022, the Complainant's father left a voicemail for DRS, asking that his daughter receive an additional academic adjustment of being allowed to leave the classroom periodically for a brief period of time. The DRS emailed the Complainant, informing her that her father cannot make requests for academic adjustments for her. The College asserts that the Complainant never made a subsequent request for the academic adjustment, and the Complainant disputes this. The Complainant emailed DRS on August 30, 2022, asking when her academic adjustments will be provided. DRS replied the next day that the Complainant would need to follow the instructions provided in DRS's August 11, 2022 email approving her academic adjustments to log into the system and designate which academic adjustments she needed for each course. The Complainant did not designate the academic adjustments and subsequently withdrew from the College on September 7, 2022.

The College's DRS policies and procedures include a section regarding the use of "Provisional accommodations" which "may be granted to a student by DRS to assist students while they collect appropriate documentation to support their eligibility for accommodations/

academic adjustments. Such provisional accommodations must not exceed thirty (30) days unless such extensions are granted due to extenuating circumstances. In these cases, an additional thirty (30) days of provisional accommodations may be granted. Any extension request, beyond the additional thirty (30) days, must be reviewed by the District ADA/504 Coordinator. Such extension must be based on extenuating circumstances beyond the control of the requesting student and is not guaranteed.”

Although the Complainant’s actions initially delayed the approval of her request for academic adjustments (i.e., mistakenly requesting academic adjustments from Estrella Community College instead of the College and initially not uploading documentation of her disability), once she applied for academic adjustments with the College, the College approved the academic adjustments 25 days after her request was submitted. The “Provisional Accommodations” process was not initiated, and the approval did not include the request of periodic breaks from the classroom. The Complainant was enrolled in two courses. Course MDC103 started July 11, 2022, and ended August 25, 2022, and MDC104 started August 30, 2022, and was to end October 18, 2022. Since the two Compressed Schedule Courses lasted only 45 and 49 days respectively, a 25-day approval time for academic adjustments was not timely.

Complaint of Disability Discrimination

Section 504 at § 104.7 states that a recipient that employs fifteen or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part.

The District’s Grievance Procedure provides: “If a student is not satisfied with either the academic adjustments/ accommodations granted by the DRS office or the denial of academic adjustments/accommodations, the student may file a complaint under the Discrimination Complaint Procedures for Students. The determination generated from the Discrimination Complaint Procedure is final.”

The College asserts it did not receive disability discrimination complaints from the Complainant or her father on July 7, 2022, or August 10, 2022. The College acknowledges receiving an instructional grievance from the Complainant. The Complainant asserts that a meeting was to take place to discuss the concerns but did not occur. The College also provided emails dated August 31, 2022, from the Complainant’s mother indicating she wished to meet to discuss disability discrimination. The College reportedly responded with a link to the College’s online discrimination complaint form.

Agreement

Section 302 of OCR’s *Case Processing Manual* (CPM) provides that a complaint may be resolved at any time when, before the conclusion of an investigation, the recipient expresses an interest in resolving the complaint and OCR determines that such a resolution is appropriate. OCR had not yet reached a full compliance determination. Before OCR completed its

investigation, OCR deemed it appropriate to resolve the allegations under investigation pursuant to CPM Section 302.

The College voluntarily signed and submitted to OCR a Resolution Agreement to resolve the issues under investigation. A copy of the Agreement is enclosed. OCR determined that the provisions of the Agreement are aligned with the allegations under investigation and appropriately resolves them. OCR accepts the Agreement as an assurance that the College will fulfill its obligations under Section 504 and Title II with respect to the allegations under investigation. The dates for implementation and specific actions are detailed in the Agreement. OCR will monitor the College's implementation of the Agreement, and the Complainant will receive a copy of OCR's monitoring letters.

Effective the date of this letter, OCR concludes its investigation of the above referenced allegations. This letter should not be interpreted to address any issues other than those addressed herein.

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.

Please be advised that a recipient 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, an 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 OCR receives such a request, OCR will seek to protect to the extent provided by law personal information that if released, could constitute an unwarranted invasion of privacy. Individuals filing a complaint or participating in our resolution process are protected from retaliation by Federal law.

If you have any questions about this letter, please contact [redacted], the investigator assigned to this complaint, by telephone at [redacted] or by email at [redacted].

Sincerely,

[redacted]
Supervisory Attorney

Enclosure: Resolution Agreement

Cc: Melissa Flores, Senior Assistant General Counsel (melissa.flores@domail.maricopa.edu)