



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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SAN FRANCISCO, CA 94105

REGION IX
CALIFORNIA

January 21, 2016

Dr. Michael White
President
Woodland Community College
2300 E. Gibson Road
Woodland, CA 95776

(In reply, please refer to case no. 09-14-2404.)

Dear Dr. White:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against Woodland Community College (College). The complaint alleged that the College discriminated against the Student¹ based on disability. Specifically, OCR investigated whether during the fall 2014 semester:

1. The College failed to provide the Student with the following academic adjustments: delivery of tests to Disabled Students Programs & Services (DSPS) and a distraction-free environment;
2. The College did not respond adequately to the Student's internal complaints alleging disability discrimination and retaliation for engaging in a protected activity; and
3. The College retaliated against the Student after she made internal complaints alleging that her instructor did not provide her with accommodations and made false accusations.

OCR investigated the complaint pursuant to Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance and Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. The College is a recipient of Federal financial assistance from the Department and a public entity. Therefore, OCR has jurisdiction over this complaint.

OCR gathered evidence through interviews with the Student and by reviewing documents and correspondence provided by the Student and the College. With respect

¹ OCR notified the College of the Student's identity at the beginning of the investigation. OCR is withholding the Student's name from this letter to protect the Student's privacy.

to the allegations, the College expressed interest in resolving the concerns identified by OCR prior to the conclusion of its investigation of the allegations. The applicable legal standards, the relevant facts obtained during the investigation conducted to date, and the reasons for our determination are summarized below.

Allegation 1: The College failed to provide the Student with the following academic adjustments: delivery of tests to DSPS and a distraction-free environment

Legal Standard

The Section 504 regulations, at 34 C.F.R. §104.4(a) and (b), 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 otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance. Under 34 C.F.R. §104.4(b)(1), a recipient college or university may not, on the basis of disability, limit a qualified disabled individual in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit or service.

Relevant Facts

The Student first enrolled in the College in 2007. She registered with DSPS in August 2013 and was provided with the following academic adjustments: priority registration; use of a tape recorder during class and preferential seating in class; a distraction-reduced setting; and, double time on tests. She told OCR that she is an accounting major. Her academic transcript shows that she enrolled in accounting and accounting lab (ACCT-1 and ACCT-1A) in the fall 2014 semester.

Regarding the delivery of tests to DSPS, the Student told OCR that her accounting instructor (Instructor) asked DSPS students to first go to the classroom and pick up their tests and then go to DSPS to take the tests. She said that she lost twenty minutes of test-taking time as a result of first needing to pick up her test in the accounting classroom. She also told OCR that when she asked to schedule a test at an earlier time due to child care responsibilities, the Instructor refused her request.

Regarding a distraction-reduced setting, the Student told OCR that while the accounting classroom was quiet, the accounting lab was noisy. She asked the Instructor if she could use the computer lab rather than the accounting lab and stated that the Instructor refused her request.

In its Data Response to OCR, the College stated, “With respect to test taking accommodations, instructors are notified by DSPS of what accommodations have been granted to which students, and the instructor makes the determination of how the tests will be delivered to DSPS.” The College also stated that the Instructor “requires that students come to her classroom at the beginning of class on the date a test is given, pick up the test, and take it to DSPS, where the test is administered to them in accordance with their accommodations.” The College explained that the Instructor’s rationale for this practice was to first be able to point out any issues that students may have prior to beginning the administration of the test. The College added that the practice of having all students meet in the classroom at the outset “also ensures that all

students receive and begin the test at the same time to avoid someone taking the test early, for example, and then telling classmates what was on the test.”

Regarding a distraction-free environment, the College stated in its Data Response to OCR that all students were provided such an environment in the accounting lab to complete the lab portion for the class, and the Student was given the same opportunity as her peers. The College stated that lab work could not be done outside the lab because “funding requirements mandate that lab work must be done with a qualified instructor present and doing so in the DSPS office was “not possible.”

Analysis

At the postsecondary level, students bear the responsibility for seeking academic adjustments and/or auxiliary aids. When an institution receives a request for an academic adjustment, the student and the institution should engage in an interactive process to examine the nature and functional limitations of the individual’s disability and the appropriate accommodations. This includes the obligation to inform the institution of the student’s disability, identify the requested accommodations and provide supporting documentation. Once a student follows the institution’s established process, then the institution is responsible for ensuring that any necessary and agreed-upon academic adjustments or aids are provided to the student.

OCR identified several concerns in the processes described by the College. Requiring students with disabilities to pick up their tests from the classroom and then go to DSPS to take them puts an additional burden on these students that is not placed on their peers who are not disabled. Moreover, if students with disabilities are asked to pick up their tests in the classroom, walk to DSPS and then begin their exams, while their non-disabled peers in the classroom have already begun their exams, such an action can also result in students with disabilities receiving less time to complete their exams than that received by their peers who are not disabled. Practices such as these, which are subject to professor discretion, preference, or custom, can result in the discriminatory treatment of students with disabilities. As such, it is important to have a universal policy established by DSPS to ensure that all professors follow consistent and uniform standards and to ensure that any academic adjustments provided do not result in a burden being placed on students with disabilities that is not placed on students without disabilities.

In addition, OCR is concerned that the College did not engage in an interactive process with the Student to ensure that she was being provided with a distraction-free environment and the opportunity to take tests in a way that did not cause her additional burden as a qualified individual with a disability. Rather, the College deferred to the Instructor’s preference with regard to test-taking, and an established procedure with regard to the distraction-free environment, without directly engaging with the Student regarding her disability-related needs. OCR notes that an adequate interactive process would have included attempts to locate additional sites at which the Student could have taken exams, explored possible alternative methods of having a qualified instructor present for the exams, and otherwise investigated what potential other alternatives were available in order to provide a distraction-free environment. The investigation into

alternatives may have resulted in no alternatives being found, but the College was obligated to at least engage in a process to determine as much.

Prior to the completion of OCR's investigation of this allegation, the College expressed an interest in resolving the allegation in this complaint through a resolution agreement (agreement) pursuant to Section 302 of OCR's Case Processing Manual. OCR determined that it was appropriate to resolve the complaint under this section, and kept the Student informed during the resolution process. Without admitting to any violation of the law, the College signed the enclosed agreement to resolve the concerns that OCR identified during its investigation of this allegation. Pursuant to the agreement, the College will engage in the interactive process with the Student to determine whether the academic adjustments for which she is approved meet her disability-based needs, revise its discrimination complaint procedures, and develop written guidance that explains the revisions to College staff.

Allegation 2: The College did not respond adequately to the Student's internal complaints alleging disability discrimination and retaliation for engaging in a protected activity.

Legal Standard

The Section 504 regulations, at 34 C.F.R. §104.7(b), require a recipient employing 15 or more persons to adopt grievance procedures that incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints alleging disability discrimination. The Title II regulations, at 28 C.F.R. §35.107(b), similarly require a public entity employing 50 or more persons to adopt and publish prompt and equitable grievance procedures.

The Section 504 regulations, at 34 C.F.R. §104.7(a), require a recipient that employs 15 or more persons to designate at least one person to coordinate its efforts to comply with and carry out its responsibilities under Section 504. The Title II regulations, at 28 C.F.R. §35.107(a), contain a similar requirement for public entities that employ 50 or more persons to designate a compliance coordinator.

Relevant Facts

In its Data Response to OCR, the College provided a copy of correspondence between the Student and College staff during the fall 2014 semester regarding her concerns about the Instructor. On September 10, 2014, the Student met with the Dean of Instruction (Dean) to raise concerns about the Instructor. On September 12, 2014, the Dean e-mailed the Instructor and listed the Student's concerns, including that: the class is not a learning environment and students have been "shut down" or made to feel "stupid;" "DSPS students are purposely inconvenienced;" and, students fear retaliation because of the Instructor's history of calling out students in past classes for having addressed concerns with the Dean.

In her e-mail to the Instructor, the Dean stated that when she received "complaints of this nature, [she] was obligated to investigate them completely." In an e-mail responding to the Dean later the same day, the Instructor asked that the student who raised these

concerns meet informally with her to resolve these issues, or, if the student was unwilling, then the student should file a formal grievance. The Instructor also referenced the language of the College's Administrative Procedure 5530 and wrote that students are to "make a reasonable effort to resolve the matter on an informal basis."

The Dean then exchanged a series of e-mails with the Chief Human Resources Officer (HR Officer) and the Vice President of Academic and Student Services (Vice President) on September 16, 2014, in which she informed them that the Student did not feel comfortable having a face-to-face meeting with the Instructor, and asked for advice. The HR Officer responded,

So....is the [S]tudent still enrolled in the class? The [S]tudent isn't willing to have a face-to-face even if you're involved? So....what does 'success' look like for the student?

The Dean responded by e-mail the same day, stating that she could encourage the Student to participate and assure her that the grade would not suffer, but that she wanted to check with the HR Officer and the Vice President to see if there was "any way to proceed without her."

The HR Officer responded that he felt that they needed for the Student to learn "how to follow an established process to advocate for herself," and that College staff needed "the [S]tudent's involvement." The Dean responded that she planned to schedule a meeting with the Student and DSPS staff and encourage her to speak with the Instructor, and contacted the Student by e-mail the same day. The Student responded later that day to the Dean and stated, "I do not feel comfortable discussing anything with the teacher," and that if she did feel comfortable, she "would have spoken to her about the issues in class." She also suggested in her e-mail that the Instructor learned that it was she who had complained about the Instructor and expressed fear that her grade would be lowered as a result.

The Student Contact Form in the Student's DSPS File shows that the Student met with DSPS staff to address her concerns about the Instructor on September 24, 2014 and October 2, 2014. Regarding the meeting on October 2, 2014 with DSPS staff and the Dean, the Student's Contact Form states that the Student:

...reiterated concerns that teacher was not helpful and was going to lower grade because she complained. Dean mentioned her e-mail to instructor didn't include name or mention gender.

The October 2, 2014 entry on the Student Contact Form also states that the Student said that she did not want to speak with the Instructor.

On October 8, 2014, the Student visited the Dean's office to inform a staff member, who in turn informed the Dean by e-mail, that she was afraid that the Instructor would drop her from the class. The staff member subsequently e-mailed the Dean later that day about the Student's visit, to which the Dean responded that the Student did not

reference that concern in the October 2, 2014 meeting, but that she would arrange for another appointment to be scheduled with the Student.

On October 20, 2014, the Student wrote the following e-mail to the Dean:

So on my way to English class today [I] over[heard] my accounting teacher speaking with another teacher about wanting to strangle me because she [is] sick of having to waste her time dealing with all my problems. I am taking this as a threat, and just so we are clear, [Instructor] is not allowed any[where] near my files. I do not want her knowing my address or any other personal information. She should not be speaking this way about anyone in general.

The College's Data Response does not include any response to this e-mail.

The Student Contact Form in the Student's DSPS file also includes a description of a meeting between DSPS and the Instructor on October 2, 2014. The entry states:

[The Instructor] indicated [Student] had been absent to class 3 times and late 3 times. Left lab early at least on[e] day, but she did not track early labs. Said Student never participates & doesn't answer group questions. [Instructor] said part of course is learning to be interactive w/instructor & groups as these skills translate to business world. Did meeting points for meeting w/teacher during office hours on a monthly basis and participating in class. Student complained teacher not in lab to help, but teacher indicated she was there to help students.

The College's counsel confirmed to OCR that there were no outstanding investigative documents beyond those submitted in the College's Data Response. The Student ultimately withdrew from the Instructor's course and associated lab. Her academic transcript shows two "Ws" (withdrawals) for these courses in the fall 2014 semester. She told OCR that she was adversely affected by her experience in the Instructor's class, and was concerned about how to fulfill her degree requirements. She stated that she needed to complete two accounting courses and their associated labs in order to fulfill her degree requirements. OCR learned that the Instructor is the only faculty member at the College who teaches those courses.

In its Data Response, the College provided three grievance procedures, AP 5530, AP 5141, and AP 3435, in response to OCR's request for its disability discrimination procedures. In addition to the procedures provided by the College, OCR also independently identified another procedure that was inconsistent with all procedures that the College sent. In its course catalog, the College has provided a policy titled "Student Rights and Grievances (Reference: Title IX, Education Amendments of 1972; Education Code Section 76224(a))." The policy states:

The purpose of this procedure is to provide a prompt and equitable means of resolving student grievances. These procedures shall be available to any student who reasonably believes a college decision or action has

adversely affected his or her status, rights, or privileges as a student. The procedures shall include, but not limited to, grievances regarding: Sex discrimination as prohibited by Title IX of the Higher Education Amendments of 1972 (Sexual Harassment, Financial Aid, Illegal Discrimination).

OCR's review of the College's numerous policies designated to address the processing of complaints of discrimination and harassment identified several areas of concern regarding their compliance with the requirements of Section 504, Title II, and their implementing regulations, including: the procedures provided for in each policy are inconsistent with the other policies; the title and publishing or posting of some policies are inadequate to ensure student's awareness of them; some of the policies have overly burdensome requirements placed on those filing grievances; and, the policies fail to identify a Section 504 or Title II coordinator.

Analysis

The Section 504 regulations require that recipients resolve disability discrimination complaints that are brought to their attention. The Student raised a series of concerns to the Dean about her Instructor, including disability discrimination allegations. The College notified the Instructor of those concerns, and the Dean appeared to have been aware of her responsibilities under Section 504 to resolve the complaint when she notified the Instructor via e-mail of the Student's allegations and stated that she had an obligation to investigate them "completely." However, OCR's investigation to date identified significant concerns because the Dean and other College administrators conditioned the resolution of the Student's concerns on an informal conference with the Instructor. After the Student stated that she did not feel comfortable engaging in such a face-to-face conference with the Instructor, the College stopped the investigative process and did not provide a resolution or notice of outcome. The Student subsequently dropped the Instructor's class.

The inconsistent procedures provided for in the College's various policies also raised concerns because they could result in inequitable resolutions for students simply based on which policy the students chose to utilize. The title of one grievance policy (captioned as addressing academic accommodations) and location of some of the policies are confusing. This raised concerns because students may be deterred from filing complaints of discrimination if policies governing the grievance process are not identified in such a way as to alert students that they are discrimination complaint procedures and others are not published or posted in locations at which students would normally expect to find such information. Additionally, OCR is concerned that some of the policies' requirements, such as the requirement that a complainant first engage in an informal resolution process before being permitted to pursue the formal resolution process, may be overly burdensome on potential complainants and could result in deterring them from either initiating or fully pursuing a complaint. However, no finding has been made on this issue.

As part of its investigation, OCR also requested and was provided with the College's various policies and procedures for approving and implementing accommodations for

students with disabilities, including its policies on exam accommodations and recording of lectures. The College provided to OCR two documents related to testing accommodations – one document titled “Request for Test Proctoring Services” and another titled “Alternate Testing Accommodation Policies.” After reviewing the two documents, OCR identified areas of concern that could result in discrimination against students with disabilities.

Specifically, one of the forms permits an instructor to require a student with a disability to pick up an exam from the instructor and take it to the DSPS where it will be administered and to, thereafter, return the exam to the instructor after it has been completed. The form also permits an instructor to require the student to return a completed form to the instructor for the instructor’s files. Both forms prohibit a student with a disability from bringing into the test room a cell phone, a purse or backpack, or any other personal item. OCR was unable to find any provisions that impose the same requirements and prohibitions on students without disabilities anywhere in the College’s course catalog or other similar documents made available to students. Imposition of such additional burdens and prohibitions on students with disabilities in order for them to take an exam with accommodations when similar burdens and prohibitions are not placed on students without disabilities can constitute disparate treatment of students with disabilities, which is not permitted by Section 504, Title II, and their implementing regulations.

Prior to the completion of OCR’s investigation of this allegation, the College expressed an interest in resolving this allegation through an agreement pursuant to Section 302 of OCR’s Case Processing Manual. As stated above, the College signed the enclosed agreement to resolve the concerns that OCR identified during its investigation of this allegation.

Allegation 3: The College retaliated against the Student after she made internal complaints alleging that her instructor withdrew permission to record lectures, made false accusations, and created a hostile environment.

Legal Standard

The Section 504 regulations, at 34 C.F.R. §104.61, incorporate 34 C.F.R. §100.7(e) of the regulations implementing Title VI of the Civil Rights Act of 1964 and prohibit colleges from intimidating, coercing, or retaliating against individuals because they engage in activities protected by Section 504. The Title II regulations, at 28 C.F.R. §35.134, similarly prohibit intimidation, coercion, or retaliation against individuals engaging in activities protected by Title II.

When OCR investigates an allegation of retaliation, it examines whether the alleged victim engaged in a protected activity and was subsequently subjected to adverse action by the college, under circumstances that suggest a connection between the protected activity and the adverse action. If a preliminary connection is found, OCR asks whether the college can provide a nondiscriminatory reason for the adverse action. OCR then determines whether the reason provided is merely a pretext and whether the

preponderance of the evidence establishes that the adverse action was in fact retaliation.

Relevant Facts

The Student told OCR that after she raised concerns with the Dean about the Instructor, she felt singled out in class. She stated that the Instructor often called on her, and she felt put on the spot. She stated that at the beginning of the semester, she presented the Instructor with her DSPS paperwork and asked to record lectures. The Instructor allowed her to record lectures.

After filing complaints with the Dean, the Student said that the Instructor addressed her in front of the class and told her that she could not record lectures. A week after meeting with the Dean about the Instructor, the Student stated that the Instructor complained to the Dean that the Student had left lab early when in fact she had left one or two minutes after the end of class. The Student stated that she subsequently e-mailed the Instructor to correct her. When OCR asked how her learning environment was made hostile, she stated that it got to the point where she could not go to class anymore, as the Instructor had “ruined her whole day.”

The College stated to OCR that the Student was provided all of the academic adjustments for which she had been approved, and the Instructor did not withdraw permission to record lectures. The College stated that students who wish to record lectures generally ask permission of their instructors prior to doing so. The College confirmed that there was one occasion when the Instructor saw the Student with a recorder and advised her that it was customary to discuss that issue with the course instructor prior to beginning to record lectures. But the College maintained that the Instructor did not stop the Student from recording lectures, either that day or afterward.

The College provided a copy of e-mail correspondence between the Student and the Instructor showing that after the Student raised concerns about the Instructor with the Dean, the Instructor did not grant the Student’s request to do accounting lab work at the DSPS office, and alleged that the Student left lab early.

Analysis

The Student engaged in a protected activity when she made a complaint to the Dean about the Instructor that included allegations of disability discrimination. After she made this complaint, the Student alleged to OCR that the Instructor’s subsequent actions toward her – raising an issue with the Student’s recording of lectures during class time, denying her request to do accounting lab work at the DSPS office, alleging that she left lab early, and singling her out in class – constituted retaliation.

The allegations raised concerns for OCR about the College’s actions regarding the recording of the Instructor’s lectures. The College and the Student both agree that one of the Student’s approved accommodations included the authorization to record the Instructor’s lectures. No additional permission or authorization was required from the Instructor after the accommodation was approved by the College’s DSPS. The Student alleged that the Instructor addressed the issue of the Student recording her lecture

while class was in progress and in the presence of the Student's classmates. These actions, if true, potentially served either to highlight the Student's status as an individual with a disability to classmates who were already aware of it or disclose her status to classmates who were not aware of it. If true, the Instructor's desire to gather further information about the Student's accommodation to record lectures does not justify or excuse her having inquired about the Student's accommodation in the presence of the Student's classmates.

Prior to completing the investigation, the College agreed in the enclosed agreement to revise its "Recorded Lecture Policy Agreement" to ensure that students approved by DSPS to record classroom lectures are permitted by their instructors to do so without further review or approval being required by instructors.

Conclusion

This concludes OCR's investigation of the 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. OCR is closing this case as of the date of this letter and notifying the Student concurrently.

When fully implemented, the enclosed resolution agreement is intended to address all of OCR's compliance concerns in this investigation. OCR will monitor the implementation of agreement until the College is in compliance with Title II and Section 504 and their implementing regulations, which were at issue in the case.

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.

OCR routinely advises recipients of Federal funds and public education entities that Federal regulations prohibit intimidation, harassment or retaliation against those filing complaints with OCR and those participating in the complaint resolution process. Complainants and participants who feel that such actions have occurred may file a separate complaint with OCR. 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 records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personal information that, if released could reasonably be expected to constitute an unwarranted invasion of privacy. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

OCR thanks you and your staff for your cooperation and courtesy in resolving this case. OCR also thanks Kellie Murphy, counsel for the College, for her assistance during the investigation. If you have any questions about this letter, please contact Zachary Pelchat, Team Leader, at zachary.pelchat@ed.gov.

Sincerely,

/s/

Zachary Pelchat
Team Leader

Enclosure

cc: Kellie Murphy, Esq. w/ encl.