



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

50 BEALE ST., SUITE 7200
SAN FRANCISCO, CA 94105

REGION IX
CALIFORNIA

September 15, 2015

Dr. Joe Wyse
Superintendent/President
Shasta-Tehama-Trinity Joint Community College District
11555 Old Oregon Trail
P.O. Box 496006
Redding, CA 96049-6006

(In reply, please refer to case no. 09-15-2287.)

Dear President Wyse:

The U.S. Department of Education, Office for Civil Rights (OCR), has resolved the above-referenced complaint against the Shasta-Tehama-Trinity Joint Community College District (the College). OCR investigated whether the College discriminated against the Student on the basis of disability.¹ Specifically, OCR investigated whether the College:

1. failed to provide the Student with extra time on tests and quizzes necessary to ensure that he could participate in the education program in a nondiscriminatory manner, during the fall of 2014; and,
2. retaliated against the Student after he complained of disability discrimination by refusing to grant his petitions for late drops unless he agreed to dismiss his complaint of discrimination.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation. Section 504 prohibits discrimination on the basis of disability in programs and activities operated by recipients of Federal financial assistance. OCR also has jurisdiction as a designated agency under Title II of the Americans with Disabilities Act of 1990, as amended (Title II), and its implementing regulation over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The College receives Department funds, is a public education system, and is subject to the requirements of Section 504 and Title II.

OCR reviewed information provided by the Student and the College, and OCR interviewed the Student. However, prior to the completion of the investigation of this case, OCR and the College resolved the complaint through an Agreement (Agreement) Reached During an Investigation pursuant to Article III, Section 302 of OCR's Complaint Processing Manual. OCR informed the College that resolving the complaint prior to the completion of the investigation was voluntary,

¹ OCR's April 23, 2015, letter to the College provided the identity of the Student. OCR is withholding the Student's identity from this letter to protect the Student's privacy.

and OCR also informed the Student of the discussions with the College to resolve the complaint. After discussions with OCR regarding the terms of the Agreement, the College, without admitting any violations of Federal law, signed the Agreement on September 9, 2015. The evidence OCR gathered prior to resolution of this matter, and the applicable legal standards are summarized below.

Background

The Student attended the College during the fall of 2014, enrolling in three courses: African American History 25 (History 25), Fundamentals of Personal Fire Safety, and Fire Protection Equipment/Systems. The College's Disabled Students Programs and Services office (DSPS) identified the Student in January 2012 as an individual with a disability. The College approved accommodations for the Student that included extra time on tests.

Issue 1: Whether the College failed to provide the Student with extra time on tests and quizzes necessary to ensure that he could participate in the education program in a nondiscriminatory manner, during the fall of 2014.

Legal Standard

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.

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. 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.

Relevant Facts

The Student alleged that his professor for an online course, History 25, did not provide him with extra time on his course quizzes, consistent with his approved disability accommodations. He further alleged that the College's failure to provide him with this accommodation and to address his related complaints caused him to drop out of the other two courses he enrolled in that semester, and prevented him from returning to the College.

The College has policies and procedures in place to provide academic accommodations and modifications to qualified individuals with disabilities. The College's DSPS office handles requests for accommodations from students with disabilities, and coordinates with students, professors, and other staff to implement approved accommodations. The College's DSPS office approved accommodations for the student for the fall of 2014, which included extended time on "all academic tests," for the Student's three courses, including his online History 25 course. On September 18, 2014, DSPS staff emailed a letter stating that it authorized the Student to receive these accommodations as an individual with a disability. The Student was responsible for providing the letter to his professors.

The Student's online History 25 course included regular quizzes that were taken online. The quizzes were open book and open notes, timed, and graded. According to the College, the professor did not believe the quizzes required an accommodation of extra time because they involved answering questions that students should have already answered during their reading assignments (reading assignments included chapter review questions that were similar to the quiz questions).

After the Student allegedly did not receive extra time on quizzes at the beginning of the semester, he emailed the Professor and complained to DSPS staff. The professor's email responses reflect that he did not believe the testing accommodations were applicable to the course quizzes. On October 27 and 29, 2014, DSPS staff contacted the professor to attempt to resolve the issue. However, before the issue was resolved, the Student stopped attending and participating in the course.

On November 21, 2014, the Student requested to withdraw from the three courses he had enrolled in that semester, but he was not able to withdraw because the deadline to do so had passed. The Student later submitted a petition for late withdrawal on January 22, 2015.

Analysis

OCR did not conclude the investigation of this issue because the College requested an Agreement Reached During Investigation. The attached Agreement addresses the concerns raised by the allegations and information OCR gathered. In addition, the College has already taken steps to avoid similar issues in the future, described in further detail below.

Issue 2: Whether the College retaliated against the Student after he complained of disability discrimination by refusing to grant his petitions for late drops unless he agreed to dismiss his complaint of discrimination.

Legal Standard

Retaliation

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 recipient schools 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 school under circumstances that suggest a connection between the protected activity and the adverse action. If a preliminary connection is found, OCR asks whether the school 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.

Grievance Procedures

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.

OCR examines a number of factors in evaluating whether a recipient's grievance procedures are prompt and equitable, including whether the procedures provide for the following: notice of the procedure to students and employees, including where to file complaints; application of the procedure to complaints alleging discrimination by employees, other students, or third parties; adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence; designated and reasonably prompt timeframes for major stages of the complaint process; notice to the parties of the outcome of the complaint; and an assurance that steps will be taken to prevent recurrence of any discrimination and to correct its effects.

Relevant Facts

Retaliation

The Student alleged that after he complained to College administrators that he was denied his approved disability accommodations during the fall of 2014, the College retaliated. According to the Student, the College retaliated by allegedly informing him that it would only grant his petition

to drop his fall 2014 courses (after the course drop deadline) if he would agree to drop any claims of disability discrimination.

The College acknowledged that the Student complained to DSPS staff on October 27, 2014, and later to other administrators that he did not receive approved accommodations in his History 25 Course. However, the College denies retaliating against the Student. The Student did not provide documentation corroborating his allegation that College administrators retaliated and conditioned his petition to drop his courses on the Student waiving any claims of discrimination. The written communications provided by the College to OCR thus far, also did not corroborate or disprove this allegation.

Grievance Procedures

The College has grievance procedures in place that are meant to address complaints of discrimination, including alleged discrimination based on disability. As mentioned above, the Student provided the College's DSPS staff with notice of alleged disability discrimination on October 27, 2014, and complained again of alleged denial of accommodations in a meeting with the Dean of Enrollment Services on November 21, 2014. However, the College did not initiate its grievance procedures to investigate and address the Student's allegations. In addition, an initial review of the College's grievance procedures raised various concerns that are common among California Community College grievance procedures. Specifically, these concerns include that the College's grievance procedures:

- seem to only trigger an investigation by the College and the College's formal grievance procedure if the complaint is filed on a specific form from the California Community College Chancellor's Office;
- require that the person filing the complaint must have personally suffered discrimination;
- seem to require, according to some College publications/website pages, that students go through an onerous informal resolution process prior to filing a formal complaint, which, according to the timelines in the policy, could take approximately ten weeks or more to complete; and,
- do not clearly state that investigative findings in addition to conclusions, will be provided at the conclusion of investigations of alleged discrimination.

In addition, the College's Catalog, website, and other publications do not clearly explain its grievance procedures for addressing complaints of discrimination, nor do they link to the College's policy. These concerns are addressed in the attached Agreement.

Analysis

OCR did not conclude the investigation of this issue because the College requested an Agreement Reached During Investigation. The attached Agreement addresses the concerns raised by the allegations and information OCR gathered.

Conclusion

As explained above, prior to the conclusion of OCR's investigation, the College expressed interest in an Agreement Reached During Investigation pursuant to Section 302 of the CPM, to address the allegations in this case. Without admitting to any violations of law and pursuant to the enclosed Agreement, the College agreed to the following: (1) replace the Student's fall 2014 grades with "Ws" on all of his transcripts; (2) reimburse the Student for the costs of his History 25 fall 2014 course (e.g. cost of textbook, course fees, and any related out-of-pocket costs); and, (3) revise the College's grievance procedures to ensure a prompt and equitable grievance procedure for all complaints of discrimination, and issue a corresponding memorandum to staff regarding the updates. The College has also already provided OCR with documentation that it has implemented several additional positive changes to its DSPS accommodations practices, including the following:

- a process to confirm that professors teaching online courses have received and will implement accommodation information from the College's DSPS office for students with disabilities taking their course(s);
- prompt follow-up by DSPS staff with instructors if students raise concerns about the implementation of accommodations; and,
- a process for DSPS counselors to review course syllabi for DSPS students to ensure that student accommodations clearly match the graded assignments for each course, to avoid confusion in the implementation of accommodations.

Based upon documentation of the steps the College has already taken, and receipt of the signed Agreement, OCR is closing the investigative portion of this case. OCR is notifying the Student by concurrent letter. OCR will monitor the College's implementation of the Agreement.

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, including compliance reviews. Complainants and participants who feel that such actions have occurred may file a separate complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related records upon request. If 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 personal privacy.

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.

OCR would like to thank the College and its counsel, Gabriel Sandoval, for his assistance in resolving this complaint. If you have any questions about the complaint, please contact OCR attorney Brian Lambert at Brian.Lambert@ed.gov or (415) 486-5524.

Sincerely,

/s/

Zachary Pelchat
Team Leader

Enclosure

cc: Gabriel Sandoval, Partner, Atkinson, Andelson, Loya, Ruud, & Romo (email)