



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION IX
CALIFORNIA

December 14, 2015

Mr. Stan Arterberry
Interim Superintendent-President
Solano Community College
4000 Suisun Valley Road
Fairfield, California 94534

(In reply, please refer to case no. 09-15-2290.)

Dear Interim Superintendent-President Arterberry:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against Solano 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 a notetaker to ensure that the Student could participate in the educational program in a nondiscriminatory manner;
2. The College failed to provide the Student access to a speech-to-text program to ensure that the Student could participate in the educational program in a nondiscriminatory manner; and
3. A College Instructor excluded the Student from her course on the basis of disability by intentionally lowering the grades on the Student's assignments and recommending that the Student drop the class.

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.

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.

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

OCR gathered evidence through interviews with the complainant, the Student and College staff. OCR also reviewed documents and correspondence provided by the complainant and the College. With respect to Allegation 1, the College expressed interest in resolving the concerns identified by OCR prior to the conclusion of its investigation of the allegation. With respect to Allegations 2 and 3, based on the information obtained, OCR found insufficient evidence of noncompliance with Section 504 and Title II with respect to the issues investigated. The applicable legal standards, the facts obtained during the investigation, and the reasons for our determination are summarized below.

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.

Allegation 1: During the fall 2014 semester, the College failed to provide the Student with a notetaker to ensure that the Student could participate in the education program in a nondiscriminatory manner.

The Student was enrolled in the College during the 2014-2015 school year, and was approved for auxiliary aids from the Disabled Students Program (DSP) office in August 2014. Her auxiliary aids included notetaking services and a speech-to-text program called Dragon Naturally Speaking (DNS). The Student alleged that during the first few weeks of the fall 2014 semester, she was not provided with notes from a notetaker. She told OCR that although her instructor (Instructor) posted PowerPoint presentations of her lectures on an online portal, these presentations were incomplete accounts of what transpired during class lectures. The Student also alleged that she was not promptly informed by the College when a notetaker was found and expressed concern about the quality of the notes that she received. The College told OCR that there was no notetaker policy governing the steps that instructors, students, volunteer notetakers and the DSP office were to take regarding the provision of class lecture notes to DSP students.

Prior to the completion of OCR's investigation of this allegation, the College expressed an interest in resolving the 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 complainant informed during the resolution process. On November 13, 2015, 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 develop a notetaker policy and provide guidance and training to staff, and hold a meeting with the Student to discuss her auxiliary aids and ensure that her disability-based needs are met. OCR will monitor the implementation of the agreement.

Allegation 2: During fall 2014, the College failed to provide the Student access to a speech-to-text program necessary to ensure that the Student could participate in the education program in a nondiscriminatory manner.

The complainant, the Student's mother, alleged that the Student was denied access to DNS at the beginning of the fall 2014 semester. In particular, she alleged that the staff member in charge of the laboratory (Laboratory) where students could access DNS had resigned, and DNS voice files became unavailable to students for a period of time at the beginning of the semester. The Student told OCR that she used DNS to accomplish the tasks that she would otherwise exercise by hand, including essays, midterms and finals. During the period in which DNS was unavailable, the Student told OCR that she needed to do written work by hand.

The DSP Coordinator confirmed to OCR that although there were staffing changes in the Laboratory, the College kept the Laboratory open at reduced hours during the transition period. The DSP Coordinator also confirmed that DNS was available in other locations on campus, not just the Laboratory, and that DNS had been installed on the Student's own computer long before for the Student's use. While the DSP Coordinator acknowledged the College's discovery, approximately two weeks into the fall 2014 semester, that DNS voice files for DSP students had become unavailable, she stated that these files were quickly recovered and available to DSP students not only in the Laboratory, but in other locations on campus as well.

Analysis

At the postsecondary level, students bear the responsibility of seeking and obtaining approval for 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 auxiliary aids. This includes the obligation to inform the institution of their disability, identify the requested auxiliary aids 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.

The evidence shows that although there was reduced access to DNS in the Laboratory during the first two weeks of the fall 2014 semester, the College promptly took action to restore regular access to the service. The DSP office acknowledged that, shortly after the beginning of the semester, DSP staff discovered that the DNS voice files were missing, which temporarily interrupted student access to DNS in the Laboratory. However, once this was discovered, the College took prompt action to restore the files. OCR recognizes that, in its current state of development, adaptive technology is not flawless. While the Section 504 regulations require colleges and universities to ensure that students with disabilities are not subjected to discrimination because of the absence of educational auxiliary aids, they do not require them to guarantee that technology-based auxiliary aids will operate perfectly at all times. Moreover, the College told OCR that even though the Laboratory was open during limited hours, the

Student had access to the program on her personal computer and elsewhere on campus. Therefore, the Student had access to DNS even while the Laboratory was operating at reduced capacity. OCR did not find evidence that the College acted intentionally to limit or impede the Student's access to the technology. Therefore, OCR finds insufficient evidence of noncompliance by the College with Section 504 and Title II with respect to the issue investigated.

Allegation 3: The College Instructor excluded the Student from her course on the basis of disability by intentionally lowering the grades on the Student's assignments and recommending that she drop the class.

The complainant alleged that the Instructor began to discourage the Student from remaining enrolled in her course after the Student missed several classes and assignments for health-related reasons. She also alleged that the Instructor deliberately failed to give the Student credit for completed assignments.

According to the College's data response, the Instructor e-mailed the Student regularly throughout the semester to send her course materials, monitor her progress, provide her with information about course lectures when she was absent or tardy, and answer any questions she had about the course. The Instructor contacted a DSP Counselor by e-mail and phone at the end of September 2014 to express concern that the Student had missed a lot of classwork due to her health, and was not currently earning a passing grade in the course. The DSP Counselor informed the Instructor that it was in the Student's best interest to drop the course if the Student was unable to attend class and complete the work. Shortly thereafter, the Instructor met with the Student and the complainant and shared the DSP Counselor's recommendation. Both the Student and the complainant agreed with the recommendation, and the complainant asked the Instructor to communicate the recommendation in writing.

On October 1, 2015, the Instructor e-mailed the Student, the DSP Counselor, the Department Coordinator and the Liberal Arts Dean, and informed them that per the complainant's request, she was writing to make a formal recommendation that the Student drop the course due to missed class time and classwork. Ultimately, the Student did not drop the course.

According to the College's data response, the complainant spoke with the Instructor a few days later and alleged that the Instructor had made a mistake in grading one of the Student's homework assignments, which was worth ten points out of 200 available points to date. The Instructor acknowledged the clerical error and made a change to her gradebook.

On October 16, 2015, the Instructor attended a meeting at the DSP office with several individuals, including the complainant, the DSP Counselor and the DSP Coordinator, to discuss the Student's auxiliary aids and progress in the course to date. On November 7, 2015, the Instructor e-mailed the complainant, the Student, the DSP Counselor, the Department Coordinator and the Liberal Arts Dean to set a deadline of December 9, 2014 for the Student to submit work for the semester. The Instructor noted that the first two major assignments, neither of which the Student had completed, were particularly

important, as these assignments comprised 75% of the Student's grade in the course. When the Instructor did not receive a response to that e-mail, she sent a follow-up e-mail on December 5, 2014, reiterating the due dates for the major assignments. She also stated in her e-mail that she had spoken with the Student in person about the third major assignment, due two weeks earlier, and obtained the Student's assurance that the assignment was forthcoming, but had not yet received it. She concluded her e-mail by stating that she would be unable to accept work from the Student after December 15, 2015, given the restrictions in place regarding posting student grades at the conclusion of the semester.

On December 15, 2014, the Instructor e-mailed the Student, the complainant, the DSP Coordinator, and the Liberal Arts Dean with updates on the status of the Student's assignments. She stated that the Student had submitted the first two of four major assignments, the second of the four having been submitted that day, but had not yet submitted the third or fourth assignments. The Instructor stated that she would give the Student an additional day to turn in the last two assignments.

On December 16, 2015, at 3:19 pm, the Instructor e-mailed the same individuals again and notified them that she had not yet received the Student's outstanding assignments. Shortly thereafter, the Student delivered these assignments to the Instructor in person. The complainant subsequently e-mailed the Instructor to thank the Instructor for her "patience, empathy and understanding."

On December 17, 2014, the Instructor e-mailed the same individuals once again to notify them that the Student's submissions did not satisfy the course requirements. The Instructor elaborated by saying, "For her media paper, which needed to be 5-7 pages, she turned in a little over a page, and for the final essay, which needed to be 3-4 pages, she turned in two paragraphs." She expressed her wish that the Student pass the course but reiterated that she needed "to uphold the course standards, as well as college standards when assessing her, so [her] hands are tied to these requirements."

Analysis

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.

The evidence shows that the Instructor diligently monitored the Student's participation and progress in the course. She contacted the DSP office to express concern about the Student's attendance and performance and received a recommendation that the Student drop the course. She contacted the Student and met with her and the complainant in person. She repeated the DSP Counselor's recommendation that the Student drop the course, which the Student and complainant accepted. When the Student decided to remain in the course, the Instructor stayed in close contact with the

Student regarding her performance and progress. When advised of a clerical error in grading, she promptly corrected the error without penalty to the Student. OCR finds no evidence to suggest that the Instructor intentionally lowered the Student's grades or penalized the Student for her late assignments. Rather, the evidence shows that the Instructor made considerable efforts to support the Student's success in the course, providing her periodic updates on her status in the course, granting her extensions to complete her assignments, and ultimately accepting assignments after the end of the grading period. For these reasons, OCR finds that there is insufficient evidence to support a finding of non-compliance with Section 504 and Title II with respect to the issue investigated.

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 complainant concurrently.

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 feels 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. 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 would like to thank you and your staff for your cooperation and courtesy in resolving this case. If you have any questions about this letter, please call Shilpa Ram, Civil Rights Attorney, at (415) 486-5565.

Sincerely,

/s/

Zachary Pelchat
Team Leader