



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

50 UNITED NATIONS PLAZA
MAIL BOX 1200; ROOM 1545
SAN FRANCISCO, CA 94102

REGION IX
CALIFORNIA

May 3, 2017

Loretta P. Adrian
President
Coastline Community College
11460 Warner Ave
Fountain Valley, CA 92708

(In reply, please refer to # 09-17-2063.)

Dear President Adrian:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its resolution of the above-referenced complaint against the Coastline Community College (College). The Complainant alleged that the College discriminated against him on the basis of disability.¹ Specifically, OCR investigated the following issues:

- (1) Whether the College failed to provide the Complainant with extra time on tests and assignments, which were approved academic adjustments that were necessary to ensure that he could participate in an algebra class in a nondiscriminatory manner.
- (2) Whether the Complainant was retaliated against when he was dropped from the algebra class after he complained to the College President regarding the non-provision of the approved academic adjustments.

OCR investigated this complaint pursuant to its authority under Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990. Section 504 and its implementing regulation prohibit discrimination on the basis of disability in programs and activities operated by recipients of Federal financial assistance. Title II and its implementing regulation prohibit discrimination on the basis of disability by public entities. Title II and its implementing regulation prohibit discrimination on the basis of disability by public entities. The College receives Department funds, is a public education system, and is therefore subject to the requirements of Section 504, Title II, and their implementing regulations.

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.

¹ OCR previously provided the College with the identity of the Complainant. We are withholding his name from this letter to protect his privacy.

To investigate this complaint, OCR conducted interviews and reviewed documents and other information provided by the Complainant and the College. However, prior to OCR making a determination, the College voluntarily agreed to take actions that when fully implemented, resolve the issues raised in this case, pursuant to Section 302 of OCR's Complaint Processing Manual. Accordingly, OCR did not complete its investigation of the complaint or reach conclusions regarding the College's compliance with Section 504 and Title II with regard to the allegations in this case. The legal standards, facts gathered, and the reasons for our determinations are summarized below.

Legal Standards:

Academic Adjustments

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 as 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.

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 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 materially 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.

Facts:

The following facts are relevant to OCR's analysis.

- The Complainant registered with the College during the Summer of 2015. He has taken online classes exclusively.
- Prior to the first day of class for the Summer 2015 semester, the Complainant registered with the College's Disabled Student Services (DSS) office. Documentation submitted to the College shows that the Student is diagnosed with: a connective tissue syndrome, a heart rhythm disorder, and anxiety disorder.
- OCR reviewed the Student's July XX, 2015 accommodations plans. The College's DSS office approved multiple academic adjustments for the Complainant, including taking tests in a small quiet room, extra time on tests, and permission to elevate his legs.
- The Complainant told OCR the Student enrolled in Math 0C10, which is a shortened course. The course began on February XX, 2016, and ended on May XX, 2016.
- The Complainant stated to OCR that he was hospitalized from March XX, 2016 to April X, 2016. OCR reviewed correspondence between the Complainant and the College regarding his hospitalization. The Complainant's doctor wrote a letter, April X, 2016, to the College stating that the Complainant was hospitalized and needed additional time to complete his coursework. The Complainant stated that the April X, 2016 doctor's letter was mailed to Director of DSS on or around April X, 2016.
- In early May, 2016, the Complainant's Mother spoke with the College President and complained that the Math 0C10 Teacher (Math Teacher) failed to provide extra time to schedule the midterm exam. The issue was not receiving time and half to take the exam, but rather not receiving additional time to schedule the exam prior to being automatically dropped from the class by the registrar.
- On May XX, 2016, following the Complainant's Mother's complaint to the College President, the Complainant was dropped from the course. The Complainant stated that after being dropped from the course, he could not access his online course work or the online textbook for which he paid.
- The College stated to OCR that the Complainant was dropped from the course because he had not attempted to schedule a date to take the midterm exam. The Complainant stated to OCR that at the time he was dropped, the he received high marks on his assignments and was working diligently, except for the week he was hospitalized. The Complainant's Mother acknowledged that while time and half on exams and assignments was not an issue, the Complainant was dropped from the Math class before he was able to schedule a time to take the midterm. The College stated to OCR that the Complainant received extra time on assignments even though it was not an approved academic adjustment, and that the Student

did not receive additional time on the midterm because, as described above, he had not attempted to take the exam.

- The Complainant is not currently enrolled in school, but hopes to enroll at a different college in the future.

Analysis:

Academic Adjustments

In this case, OCR found evidence that the Student was registered as a disabled student with the College's DSS office and was approved for numerous academic adjustments. During the Spring 2016 semester, he was enrolled in a math class and was unable to schedule a time to take the midterm exam prior to the semester ending due to hospitalization and residual complications related to his disability. OCR is concerned that the College registrar automatically dropped the Student from the class, possibly without considering whether an alternate date to take the exam was appropriate. OCR notes that the Complainant had not yet arranged a time to sit for the midterm prior to being dropped from the class.

Retaliation

In this case, OCR found evidence that the Complainant's Mother complained to the College President in early May 2016 regarding the Math Teacher's failure to allow the Student additional time to schedule his midterm exam, as requested by a an April X, 2016 doctor's note written upon the Student's release from week-long hospitalization related to his disabilities. Just a few days after the Complainant Mother's complaint, the College dropped the Complainant from the same math class. As described above, the College told OCR that the Complainant was dropped from the math course as a result of not taking, and not attempting to schedule, the midterm exam. OCR is concerned that the registrar's action of dropping the Student prevented him from receiving additional time to schedule the math midterm exam after his hospitalization due to documented disabilities.

Conclusion:

As noted above, under OCR's procedures, a complaint may be resolved at any time when, before the conclusion of an investigation, a recipient expresses an interest in resolving the complaint, and OCR determines that it is appropriate to resolve the complaint with an agreement during the course of an investigation. On April 27, 2017, prior to the completion of OCR's investigation, the College requested voluntary resolution. Based on the concerns identified above, OCR determined this was appropriate.

To address the issues alleged in the complaint, the College, without admitting to any violation of law, entered into the enclosed resolution agreement which is aligned with the complaint allegations and information obtained by OCR during its investigation. The resolution agreement provisions include sending a letter to the Complainant reaffirming the College's commitment and obligations to provide qualified students with disabilities approved academic adjustments, providing access to the Complainant's completed online Math OC10 work, and reimbursing the Complainant for the cost of enrollment and materials for Math OC10. The agreement provisions also include issuing a written guidance memorandum and facilitating training for all administrators, faculty, and staff who have responsibility for ensuring that students with disabilities receive academic adjustments.

Based on the commitments made in the enclosed resolution agreement, OCR is closing the investigation of this complaint as of the date of this letter, and notifying the Complainant concurrently. When fully

implemented, the resolution agreement is intended to address all of OCR's compliance concerns in this investigation. OCR will monitor the implementation of agreement until it is fully implemented.

OCR's resolution in this matter 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. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

This letter sets forth OCR's resolution 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.

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.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by the law, personal information that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact Civil Rights Attorney, Rhonda Ngom at (415) 486-5540.

Sincerely,

/s/

Brian Lambert
Acting Team Leader