



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION IX
CALIFORNIA

April 18, 2017

Glenn R. Roquemore, PhD
President
Irvine Valley College
5500 Irvine Center Drive
Irvine, California 92618

(In reply, please refer to OCR Case Number 09-17-2090.)

Dear President Roquemore:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against Irvine Valley College (College). The Complainant alleged that the College discriminated against her daughter (the Student) on the basis of disability.¹ OCR investigated the following issue:

Whether the College failed to provide the Student with a process to request additional time on assignments as an academic adjustment necessary to ensure that the Student could participate in the education program in a nondiscriminatory manner. Specifically, whether the College categorically denied her request for this adjustment without taking into consideration limitations imposed by disability.

OCR investigated the complaint under the authority of Section 504 of the Rehabilitation Act of 1973, and its implementing regulation. Section 504 prohibits discrimination on the basis of disability 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 (ADA), as amended, 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, Title II, and the regulations.

¹ OCR previously identified the Complainant and the Student. We are withholding their names from this letter to protect their privacy.

To investigate this complaint, OCR conducted interviews and reviewed documents and other information provided by the Complainant and the College. After careful review of the information gathered in the investigation, OCR concluded that the College did not fail to provide the Student with a process to request additional time on an Art History assignment or categorically deny her request for this specific adjustment without taking into consideration limitations imposed by disability. However, OCR also found that the College failed to respond appropriately to the Student's subsequent general request for extended time on all assignments as a disability-related accommodation. Finally, OCR determined that certain aspects of the College's Extended Time on Assignments policy are not consistent with Section 504 and Title II standards. The applicable legal standard, the facts gathered by OCR, and the reasons for OCR's conclusions are summarized below.

Legal Standard

Under the requirements of Section 504 and Title II, a student with a disability is obligated to notify the college or university of the nature of the disability and the need for a modification, adjustment, aid or service. Once a college or university receives such notice it has an obligation to engage the student in an interactive process concerning the student's disability and related needs. As part of this process, the college or university may request that the student provide documentation, such as medical, psychological or educational assessments, of the impairment and functional limitations.

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.

Factual Findings

The College's BP and AR 5506 cover Accommodations for Students with Disabilities. The BP provides that the College shall make reasonable accommodations for qualified students with disabilities. It states that students with disabilities have the right to receive reasonable academic adjustments to create an educational environment where they have equal access to instruction without fundamentally altering any course, educational program, or degree. The AR provides that the student bears the responsibility of presenting to Disabled Student Programs and Services (DSPS) verification of disability by an appropriate professional before academic accommodation authorization will be granted. It notes that a DSPS professional will verify, assess, and document the extent and the effects of the current disability and recommend accommodations upon request.

The DSPS Accommodation Verification form lists a series of possible accommodations to check off under the general categories of Testing Accommodations and Classroom Accommodations. The Testing Accommodations section specifically includes an accommodation of extended time; the Classroom Accommodations section does not. Both sections provide a check-off option of "other" and the opportunity to fill in additional accommodations not listed on the form.

The DSPS homepage states that DSPS provides support services, specialized instruction, and accommodations to students with disabilities. It lists various services and supports that are available. The list is not worded in a way that implies that it is exclusive, but it does not specifically include extended time on assignments. Under the section entitled Program Eligibility Criteria, the website states that services and accommodations are based on a verified disability, an interactive process with a DSPS Counselor, and the student's individual needs. It notes that the student must provide current documentation by a licensed professional of a verified disability, including a description of the resulting functional limitations in the educational setting.²

DSPS has a policy entitled Extended Time on Assignments (Policy). It states that extended time on course assignments may be a reasonable accommodation in certain situations because one's medical or clinical situation poses challenges with completing assignments by deadlines with short notice. It provides that assignments with longer notice are a time management issue and not disability related. The Policy notes that DSPS recommends this accommodation for short notice assignment extensions when: an assignment was not listed on the syllabus initially and was given to students with less than a week to complete; or the assignment deadline was listed on the syllabus but students did not receive the necessary information to complete it until there was less than a week to the deadline. The Policy states that extending time on assignments in other situations will be considered only in extremely extenuating circumstances. The Policy specifically provides that assignments with one or more weeks to complete can be done successfully with proper management and planning and do not warrant an accommodation of extended time. The Policy also states that accommodations are not retroactive, and that missed assignments that occur prior to the instructor receiving the accommodation letter are not covered under the accommodation process. The Policy notes that each outstanding assignment should be discussed individually, as reasonable lateness may differ by assignment.

² DSPS also provides notice of its services and process through the College Catalog and in flyers posted on campus. Again, the examples of services and supports listed in these documents do not include extended time on assignments.

The Policy provides that when this type of accommodation is listed on the accommodation letter, instructors are asked to consider whether or not such an accommodation would be reasonable for the class and the assignment(s) in question. It states that DSPS recommends that the student receive one or two additional days at most as an accommodation, when reasonable. It lists the following points for an instructor to consider in making a final decision: assess the average time all students are expected to spend on the project relative to the deadline and whether the disability necessitates an extension beyond this deadline; ask whether it is feasible to assign the project to the student with a disability in advance of other students while keeping the deadline consistent; and understand that the accommodation does not have to be implemented if it becomes a fundamental alteration to the course. Instructors are advised to consult with DSPS if they have questions about how to incorporate this type of accommodation into a class, or if they do not believe an assignment extension is reasonable.

DSPS Counselor 1 told OCR that she thought that the Policy made a good distinction between time management issues and disability issues. She provided the following examples of a time management issue: a student who missed an assignment deadline because their job called them in for extra shifts; or a student who waited until the last minute to start on their assignment and was not able to complete it for reasons other than their disability. Counselor 1 said that an example of a disability related need for an accommodation may be if a student had unpredictable seizures and had started an assignment but was unable to complete it because they had a seizure on the day that it was due. She told OCR that a student could get extended time on an assignment even if it was included on the syllabus, but it needed to be a situation that was disability related and out of the student's control. Counselor 1 said that the student would need at least a week to work on the assignment if it was not on the syllabus. She clarified, however, that even for assignments that were not on the syllabus and for which a student was given more than a week to complete, if the issue is disability related and not within the student's control they should be able to get extended time. Counselor 1 also told OCR that the 1 to 2 day maximum extension recommendation in the Policy should still be viewed on a case-by-case basis; if there was no disability related reason why the student needed longer, it should be 1 to 2 days. She also stated that extended time on assignments as an accommodation would be determined on a case-by-case basis, class by class.

DSPS Counselor 2 told OCR that the purpose of the Policy was to consider an accommodation of extended time on assignments that are given out on short notice, about a week, or are not on the syllabus. He stated that decisions were made on a case-by-case basis and the student would need to meet with a DSPS Counselor and engage in an interactive process to determine whether the need for extended time on assignments is a disability related problem or a time management problem.

The DSPS Counselor/LD Specialist told OCR that the Policy covers an assignment that is not on the syllabus or is given out with less than a week to complete. She stated that she uses the Policy as a guide but still assesses each student individually through an interactive process. She told OCR that DSPS encourages students to use effective time management skills, but that she still makes a decision based on the interactive process. Even though the Policy contains requirements that do not appear to be flexible, such as the short notice/lengthy notice distinction and the two-day extension recommendation/limit, she personally did not think that it is set in stone and reaches her determinations on case-by-case basis. The Counselor/LD Specialist acknowledged, however, that the Policy is provided to students or described to them as written.

The Student enrolled in her current degree program at the College at the beginning of the 2015-16 academic year. The Student registered with DSPS and her physician signed her DSPS Verification of

Disability form on July XX, 2015. The physician reported that the Student's diagnosis is XXXXXXXXXXXXXXXXXXXX XXXXXXXX and noted that she was on medications that caused memory problems and sedation. The physician checked the following functional limitations resulting from the Student's disability: poor concentration; taking class notes; providing written assignments; slow processing of information; processing oral and visual material; and easily distracted.

The Student's Accommodation Plan form for the 2015-16 academic year lists the following as her approved accommodations: priority registration; matriculation administration; a note-taker; a recorder; NCR note-taker paper; breaks during class; a smart pen; 1.5 extended time for taking tests; a distraction reduced environment for taking tests; breaks during tests; liaison with campus services; and extended tutoring. The approved accommodations did not include extended time for assignments. The form was signed by the Student and the DSPS Counselor/LD Specialist. Both confirmed to OCR that all of the accommodations requested by the Student were approved, and that the Student did not request an accommodation of extended time to complete assignments.

The Student's Accommodation Verification form dated July XX, 2016, lists the following as her approved accommodations for the 2016-17 academic year: 1 and 1/2 extended time, reduced distraction environment, and monitored breaks for testing; and a note-taker, the ability to record lectures, and breaks during class as classroom accommodations. The Student's 2016-17 Accommodation Plan listed the following functional limitations: schedule classes for disability management; process class lecture; and difficulty with focus and attention. It included the same approved accommodations as the previous year, and did not list extended time for completing assignments as an approved accommodation. These forms were signed by the Student and DSPS Counselor 1. Counselor 1 told OCR that at the time these forms were completed the Student did not report that her disability caused her to submit assignments late, nor did she request an accommodation of extended time to submit assignments. The only medical verification on record at the time was the documentation submitted by the Student's physician at the beginning of the 2015-16 academic year, referred to above.

The Student originally enrolled in four classes for fall 2016 but reported to OCR that she had to drop the classes because she went into a serious depression that lasted throughout the semester. The Complainant told OCR that this depressive episode was occurring on and off during September, October, and November 2016. On September XX, 2016, the Student sent an email to the DSPS Coordinator and reported that she was experiencing a serious depressive episode, had dropped her classes, would be taking the semester off, planned to take on-campus classes again in a few months, and would be taking online classes in the meantime. The Coordinator replied the same day and asked the Student to let her know if she required a referral or assistance in regards to any academic support for her online courses, or if she would like to schedule an appointment with a DSPS Counselor. The Student did not request a referral or assistance, or schedule an appointment in response.

The online courses that the Student enrolled in were Art History 25, Survey I (ARTH 25); Art History 26, Survey II (ARTH 26); and Bio I, Life Sciences. They each ran from October 17 to December 18, 2016. According to the ARTH 26 syllabus, assignments included a museum visit, chapter modules, visual labs, and quizzes. The syllabus states that each module had a due date and had to be completed no later than midnight on that date. It notes that students were allowed complete the modules at any time prior to the due date, and states that no late submissions would be accepted and no exceptions would be made.

The Student confirmed to OCR that she was aware that Module II in ARTH 26 was due on November X, 2016, but stated that she ended up turning it in late because at the time she was really depressed. The Complainant told OCR that the Student could not get this assignment done on time because she still had a very serious lack of energy and lack of motivation because of her depressive episode. The Student did not recall when she submitted the assignment. The ARTH 26 instructor's (Instructor) records indicate that the Student turned it in three days after the due date.

On November XX, 2016, the Student met with DSPS Counselor 2, who noted in her DSPS Student Contact Log that the Student was concerned about an assignment that she had turned in late. The Log states that she had emailed the instructor but had received no response for over a week. Counselor 2 noted in the Log that he informed the Student to check the class syllabus and look for the late policy for turning in work. Counselor 2 also noted that he told the Student that the fact that she had reached out to the instructor about the situation did not mean that she would receive credit for the late work. Counselor 2 told OCR that he advised the Student to check the class syllabus for the instructor's late policy, told her Student that he did not know if she would get credit for the late assignment or not, and encouraged her to try and email the instructor again in the hope that she might get some points because she had submitted something.

The Student told OCR that she did not remember what she said during this meeting with DSPS Counselor 2. She did not remember if she explained why the assignment was late, and did not recall saying that she needed extended time on this or other assignments because of her disability. Counselor 2 told OCR that the Student did not tell him that the assignment was late because of her disability and did not refer to her disability at all. Counselor 2 also confirmed that during their meeting the Student did not mention anything about having a depressive episode when the assignment was due, and did not tell him that she needed extended time on assignments in general because of her disability.

On November XX, 2016, the Student forwarded to the Instructor an email dated November X at 6:36 PM. It is unclear from the record whether the November X email had actually been sent out on that date and the Student could not recall whether it had or not. The forwarded email states that the Student was unable to finish her Module II assignment due to mental health reasons, was requesting an extension, and offered to provide a doctor's note. The Student and the Complainant confirmed to OCR that up to this point the Student had never requested extended time on assignments as an accommodation for any class. The Complainant told OCR that neither one of them knew that this was an option.

The Instructor replied to the Student's forwarded email on November XX, 2016, stating that without formal documents addressing the issue of mental health problems from DSPS and/or counseling professionals she could not change the rules for the Student based on her email after the assignment deadline. She encouraged the Student to move on to the next assignment to make sure that she completed it on time. The Student replied on the same date, stating that she had already sent the Instructor documentation that described her need for accommodations, which she attached again, and again asked if any doctor's note was needed. The Instructor replied on November XX, stating that she was aware of the attached document which addressed other approved accommodations but did not include extended time to turn in assignments. The Instructor again encouraged the Student to move on to the next assignment to make sure that she completed it on time.

On November XX, 2016, the Student and the Complainant met with the DSPS Counselor/LD Specialist to discuss the Student's request for extended time on the Module II assignment for her ARTH 26 course.

The Counselor/LD Specialist made notes in the Student's DSPS Student Contact Log about the meeting. The notes state that the Student requested extended time on this assignment because of her depressive episodes and that the Instructor had denied her request because it was not an approved accommodation. The Counselor/LD Specialist wrote that she reviewed the Policy during the meeting and explained that waiting until the day the assignment was due to complete it was not an acceptable reason to extend the deadline. The notes state that the Counselor/LD Specialist informed the Student that she wanted to consult with the DSPS Coordinator about whether or not DSPS would contact the Instructor on the Student's behalf. The Counselor noted that she told the Student that in the future she could at any time meet with a DSPS Counselor to discuss an emergency situation in which she could not turn in an assignment because of her disability.

The DSPS Counselor/LD Specialist told OCR that the Student said during this meeting that she had not turned the Module II assignment in on time because she had a depressive episode on the night that it was due. She stated that the Student said that she was fine the weekend before the assignment was due and talked about completing other activities during the day the assignment was due---Monday, November X, 2016. The DSPS Counselor/LD Specialist reported to OCR that the Student said that she had planned to complete the assignment that night but then she had the episode and could not do her homework. It was her understanding that the episode occurred only on November X; she did not recall the Student or the Complainant talked about the episode lasting longer. The Counselor/LD Specialist remembered that the Student said that she experienced such episodes about once per week. She told the Student that if she knew that she would be having these episodes so frequently then she should begin starting her assignments earlier. The Counselor/LD Specialist told OCR that she reviewed the Policy with the Student and the Complainant during the meeting.

The DSPS Counselor/LD Specialist reported to OCR that at the very end of the meeting the Complainant made a general request for extended time on all assignments for the Student and provided a letter from the Student's physician, dated November XX, 2016. The letter states that the Student has cognitive impairments because of her diagnosis and: is significantly impaired in her management and organizational skills; has difficulty with linguistic working memory; has difficulties with planning, prioritizing, and organizing; and has problems with retention of what has been read or listened to, as well as slowed thought processes. To compensate for these deficits the physician recommends extended time on all written exams and quizzes, regardless of format, and extra time to submit assignments and reports. The Counselor/LD Specialist told OCR that she responded by telling the Complainant and the Student that at that point DSPS was focused on the specific request concerning extended time on the Module II assignment for ARTH 26. She suggested that they work on the turning in late assignments in the future as an accommodation on a case-by-case basis. The Counselor/LD Specialist said that she told the Complainant and the Student that if this happened again for the Student to immediately notify DSPS and they would work with her and the instructor involved. She said that they did not seem to have an issue with the case-by-case approach, so she thought they were going forward with that approach. The Counselor/LD Specialist confirmed that she concluded the meeting by telling the Complainant and the Student that she would talk to the DSPS Coordinator and get back with them the next day.

The Student did not remember many specifics about the November XX, 2016, meeting. She did recall saying during this meeting that she had not started the Module II assignment prior to experiencing a depressive episode on November X. The Student confirmed to OCR that she had not started the assignment until the night it was due. She also told OCR that she recalled the DSPS Counselor/LD

Specialist saying that it was very unlikely that the Student would receive an accommodation of extra time to complete assignments and that this type of accommodation was rarely given out.

The Complainant told OCR that at the meeting the Student said that she was having struggles getting Module II completed because of her other classes and her depressed state. She stated that the DSPS Counselor/LD Specialist asked the Student if her disability caused her to have periods of up and down mood swings, and the Student confirmed that it did. The Complainant said that the Counselor/LD Specialist responded by stating that the Student needed better time management---because the Student knew that she was going to go through mood swings, she should get her work done earlier. The Complainant stated that the Counselor/LD Specialist suggested that the Student meet with her at another time to discuss time management. The Complainant confirmed to OCR that the Counselor/LD Specialist said in this meeting that in the future the Student could meet with a DSPS Counselor to discuss emergency situations in which she may not be able to turn in an assignment because of her disability, but the Complainant did not know how this would really work. She stated that the Student's episodes were not necessarily limited to one or two days---sometimes they could last weeks at a time.

The Complainant also informed OCR that the DSPS Counselor/LD Specialist communicated to her and the Student during the meeting that in the last 30 years the accommodation of extra time on assignments had not been given to any student except in extremely rare circumstances. She stated that the Counselor/LD Specialist told them that granting this accommodation would be very unusual, but she did agree to discuss it with her supervisor, the DSPS Coordinator. The Counselor/LD Specialist denied making these statements during the meeting, and noted she had not even been in her field for 30 years. The Counselor/LD Specialist did confirm that she reviewed the Policy with the Student and the Complainant during the meeting. She also stated that she told the Student that she wanted to help her but said that the fact that the Student had come in in for the first time three weeks after the assignment was due and had started it the night that it was due would make it very difficult to get approval.

The DSPS Counselor/LD Specialist told OCR that between November XX and December X, 2016, she consulted with DSPS Counselor 2 and the DSPS Coordinator. She stated that she asked Counselor 2 about his meeting with the Student on November XX and he confirmed that the Student had not mentioned a depressive episode as the reason for why she had not turned the Module II assignment in on time. The Counselor/LD Specialist said that she then met with the Coordinator and shared the following information: that the Student did not start the assignment until the night that it was due; that she was fine the weekend before; and that she waited for three weeks after the assignment was due to request an extension from DSPS. The Counselor/LD Specialist reported that the Coordinator said that accommodations were not meant to be retroactive and noted that the Student had provided no documentation showing that she had been incapacitated on the day the assignment was due or before. The Counselor/LD Specialist stated that the Coordinator advised her not to approve the extension for this one assignment. She confirmed to OCR that she and the Coordinator did not discuss DSPS's response to the November XX, 2016, letter from the Student's physician.

The Student sent the DSPS Counselor/LD Specialist an email dated December X, 2016. She summarized the information she had provided during the November XX meeting, including her general request for extended time on assignments and the physician's letter supporting her request. The Student said that the Counselor/LD Specialist told her that she would consult with the DSPS Coordinator and get back to the Student on November XX, but she still had not heard from the Counselor/LD Specialist. She asked the Counselor/LD Specialist to let her know by December X whether her request for the accommodation of extended time on assignments was approved.

By email also dated December X, 2016, the DSPS Counselor/LD Specialist notified the Student that her request for extended time on the ARTH 26 assignment module was not approved for the following reasons: DSPS did not have documentation that the Student was incapacitated during the time of and/or the time before the assignment due date; the assignment due date was scheduled on the syllabus, giving the Student enough notice to manage her time accordingly; the Student stated that the assignment was not started until the night of it was due; the accommodation was not requested until three weeks after the assignment submission;³ and accommodations were not retroactive. The DSPS Counselor/LD Specialist stated that if this situation occurred again the Student should notify her instructor and DSPS as soon as possible and provide DSPS documentation from an appropriate professional describing the Student's condition and dates of incapacitation. The Counselor/LD Specialist also asked the Student to schedule an appointment with her to discuss time management skills and how to plan the Student's schedule appropriately.

The December X, 2016, email also states that if the Student had documentation from her doctor stating that she was incapacitated at the time that her assignment was due, the DSPS Counselor/LD Specialist would be glad to contact the Instructor and verify the documentation confirming the state of the Student's mental health at the time. She stated in the email that, at that point, the Instructor would make the decision as to whether or not she would extend the assignment deadline. The Counselor/LD Specialist told OCR that the decision about whether to extend the deadline for this particular assignment was left up to the Instructor because DSPS had not approved it as an accommodation. She remained willing, however, to support the Student in going to the Instructor if she provided documentation of the depressive episode because the Instructor would have discretion to grant extended time even if not approved by DSPS.

The Student replied to the DSPS Counselor/LD Specialist's email on December X, 2016. She stated that she did start the assignment but was unable to finish on time due to her mental health. The Student said that she would provide DSPS with a doctor's note concerning the time period of incapacitation. She understood that accommodations were not retroactive, but said that she would like the accommodation of extended time written into her Accommodation Plan in case this happened again. She pointed out that the November XX letter from her physician recommended extra time on all written exams and quizzes, regardless of format, and extra time to submit assignments and reports. The Student stated that she understood that the Counselor/LD Specialist was denying her request.

The Student's DSPS Student Contact Log notes that the DSPS Counselor/LD Specialist called the Student on December X, 2016, and recommended a drop-in appointment on December X to follow up. The Student told OCR that she did not recall this phone call. The Counselor/LD Specialist told OCR that during the December X phone call she requested that the Student come and meet with her. She stated that she wanted the Student to come in and request the more general accommodation for extended time on assignments so that they could engage in an interactive process. She stated that DSPS had the November XX letter from the physician but they still needed to engage in an interactive process with the Student about that request. However, the Counselor/LD Specialist said that she didn't specifically tell the Student that she wanted to discuss the general accommodation request, but rather told Student she wanted her to come in and talk.

³ Note: the DSPS Counselor/ LD Specialist told OCR that she intended to say three weeks after the assignment to due date, not date of submission.

On December X, 2016, the Student sent an email to the DSPS Counselor/LD Specialist, noting that she had contacted the Student about a meeting. The Student asked whether the Complainant could come to the meeting and what the meeting would be about. The Counselor/LD Specialist replied on the same day, stating that her request for the Student to come in during drop-in hours was not an official appointment. She said that she thought that if the Student was on campus that she could come by so that the Counselor/LD Specialist could follow up on her health and wellness. The Counselor/LD Specialist told the Student that she needed to schedule another appointment with DSPS if she was requesting additional accommodations after her last appointment. She asked the Student to either come during her drop-in hours on December X or to make another appointment.

The DSPS Counselor/LD Specialist and the Student confirmed to OCR that the Student did not meet with the Counselor/LD Specialist on December X, 2016, and did not make another appointment. The Student told OCR that she did not attend the drop-in hours or make another appointment because she thought it was optional and did not really know why the DSPS Counselor/LD Specialist wanted to meet with her again.

On December X, 2016, the Student did scan a copy of a letter from her physician of the same date and sent it to the DSPS Counselor/LD Specialist. The letter noted that the Student was suffering through a significant depressive episode during November 2016, had low energy, had difficulty with concentration, and was incapacitated by her depression and not able to complete her assignments. This was in response to DSPS's request for documentation to support it approaching the Instructor on the Student's behalf.

The College reported to OCR that the Student visited DSPS four times during the month of November 2016 and did not appear to be incapacitated. She had appointments on November XX, XX, XX, and XX. The College noted that there were also some inconsistencies between statements made at the November XX meeting and the December X physician's letter, so the DSPS Counselor/LD Specialist wanted to speak to the Student's physician in more detail about her condition in November. The Counselor/LD Specialist emailed the Student on the evening of December X and stated that she needed to obtain additional information from the Student's physician. She asked the Student to sign a form authorizing the physician to release information relating to the December X letter and the Student's disability. The Student did not respond to that request. She told OCR that she did not make a conscious decision not to sign the release, and noted that not signing it may have just been a mistake on her part. Because it did not receive a signed release so that it could obtain clarification from the physician, DSPS did not contact the Instructor on the Student's behalf.

The DSPS Counselor/LD Specialist told OCR that if the Student had provided consent for her to speak with the physician and had engaged in an interactive process with DSPS it was absolutely possible that she could have received extended time on assignments as a general accommodation. She stated that she never denied the general request for extended time on assignments, but understood after the November Xx, 2016, meeting that the general request was going to be dealt with on a case-by-case basis. The Counselor/LD Specialist acknowledged, however, that DSPS never responded in writing to the November XX physician's recommendation that the Student receive extra time to submit assignments and reports, and that she did not communicate to the Student that the meeting she requested in December was for the purpose of engaging in an interactive process about the physician's recommendation.

The Student received zero points for the ARTH 26 Module II assignment and failed the course.

Analysis

Based on its review of the facts gathered during the investigation, OCR found that the preponderance of the evidence supports a conclusion that the College did not fail to provide the Student with a process to request additional time on her ARTH 26 Module II assignment or categorically deny her request for this specific adjustment without taking into consideration limitations imposed by disability. However, the evidence also shows that the College failed to respond appropriately to the Student's general request for extended time on all assignments as a disability-related accommodation because it did not engage in an interactive process with her or reach a determination as to that request. Finally, OCR determined that the Policy, as written, is not consistent with Section 504 and Title II standards because it contains categorical limitations on the circumstances under which an accommodation of extended time on assignments will be considered, approved, and implemented.

At the beginning of the 2015-16 and 2016-17 academic years the Student engaged in an interactive process with DSPS staff based on documentation of her disability and functional limitations provided by her physician in July 2015. The functional limitations listed by the physician, as well as those signed off on by the Student on DSPS forms, did not include the need for extended time to complete assignments. The Student and DSPS staff confirmed that she did not request this as an accommodation during the interactive process at the beginning of either year, and her Accommodation Plans did not include this modification.

In September 2016, the Student notified the DSPS Coordinator that she was having disability-related challenges, was dropping her current courses, and would be taking online courses for a period of time. The Coordinator promptly replied and asked the Student to let her know if she required support for her online courses or wanted to meet with a DSPS Counselor. This provided the Student with another opportunity to notify DSPS if she felt that her disability related needs were not being fully accommodated in her online classes. However, the Student did not inform DSPS at the time of any additional support or accommodations needed, including a need for extended time to complete assignments, or provide any updated documentation to support such a request.

In November 2016 the Instructor denied the Student's request for an extension to submit the ARTH 26 Module II assignment because such an accommodation had not been approved by DSPS. Once the Student notified DSPS of this denial, the DSPS Counselor/LD Specialist met with her and the Complainant and engaged in an interactive process which included discussing in detail the Student's disability-related functional limitations, the circumstances which caused the Student to submit the Module II assignment late, as well as the timing of her request for an extension. The Counselor/LD Specialist also consulted with DSPS Counselor 2 and the DSPS Coordinator before reaching a decision to deny the Student's requested accommodation for Module II. OCR found that the stated reasons for denying the request were for the most part individualized and consistent with Section 504 and Title II standards. Specifically, the Student: had not, at or before the time the assignment was due, provided documentation to support her request; did not begin the assignment until the night that it was due; and did not request the accommodation from DSPS until a number of days after the assignment was due. The fourth reason given, that the assignment due date appeared on the syllabus, may have been viewed as evidence of a categorical denial had it been the only reason provided, but not when taken together with the other reasons cited. Under this set of circumstances, OCR determined that the College did provide the Student with a process to request additional time on her ARTH 26 Module II assignment and did not categorically deny her request without taking into consideration limitations imposed by her disability.

However, OCR did conclude that the College violated Section 504 and Title II when it failed to engage in an interactive process with the Student and reach a determination with respect to her subsequent general request for extended time on all assignments. The College was placed on notice of this general request, supported by documentation from the Student's physician, for the first time in the November XX, 2016, meeting. Even though the Counselor/LD Specialist understood at the conclusion of that meeting that the Student and the Complainant had agreed to go forward with the general request on a case by case basis as the need arose, the Student reiterated her general request in emails dated December X and X, and specifically requested in the latter that this accommodation be formally added to her Accommodation Plan. The DSPS Counselor/LD Specialist subsequently asked the Student to meet with her during walk-in hours or make a new appointment, which the Student did not do. However, the DSPS Counselor/LD Specialist did not communicate that the purpose of the meeting was to engage in an interactive process regarding the general accommodation request. Instead, she told the Student that the meeting would be to discuss time management skills and to follow up on the Student's health and wellness. The evidence shows, therefore, that the College did not offer to engage in an interactive process with the Student regarding her general accommodation requests and never formally responded to the physician's recommendation or the written requests from the Student. As a result, DSPS effectively denied the request without engaging in a process required by Section 504 and Title II.

Finally, OCR determined that a number of provisions of the Policy, as written, are in conflict with the College's obligation under Section 504 and Title II to engage in an interactive process with students who need disability-related academic adjustments or other modifications and to reach an individualized determination on such matters based on the disability, resulting functional limitations, and nature of the adjustment or modification. Specifically, the Policy categorically states that the need for extended time for an assignment with a deadline of one week or more is a time management issue, not a disability issue, and does not warrant an accommodation. It also provides that, except in "extremely extenuating circumstances," DSPS will only recommend extended time for "short notice assignments" if the assignment was not listed on the syllabus initially, or was listed and the student did not receive necessary information to complete it until there was less than one week to the deadline. In addition, even when an extension of assignment due dates is approved by DSPS and listed on a student's accommodation letter, the Policy assigns discretion to the instructor to again determine whether the accommodation is reasonable for the class and the assignment in question. Finally, the Policy states that DSPS recommends that the student receive a maximum of one or two additional days for this type of accommodation in all instances. Although DSPS personnel told OCR that they still engage in an interactive process regarding this type of accommodation request, they were also clear that the Policy is distributed to students with disabilities and faculty, as written. For these reasons, OCR concludes that the Policy, as written, does not comply with Section 504 and Title II requirements.

Conclusion

For the reasons outlined above, OCR found the College in compliance with Section 504 and Title II with respect to its response to the Student's specific request for additional time to complete her ARTH 26 Module II assignment. However, OCR determined that the College did not comply with Section 504 and Title II concerning its response to the Student's general request for extended time on all assignments, and also concluded that a number of provisions of the Policy are not consistent with Section 504 and Title II standards.

To address the identified areas of noncompliance the College, without admitting to any violation of law, entered into the enclosed Resolution Agreement which is aligned with the complaint allegation and the findings made and information obtained by OCR during its investigation. Under the Resolution Agreement, the College agreed to take the following actions: offer to engage in an interactive process with the Student to specifically respond to her pending request for an accommodation of extended time to submit assignments and reports; if the Student agrees, conduct the meeting, consider specified information, and determine whether the accommodation will be granted based on the Student's disability and its impact, her requested accommodation, and any unique characteristics of her course of study and classes; if the accommodation is approved, add it to the Student's Accommodation Plan; and if the accommodation is denied, inform the Student of her right to challenge the decision through the College's disability discrimination complaint procedure.

The College also agreed to: modify the Policy to make it clear that DSPS will determine whether a student with a disability should be provided extended time to submit assignments as an accommodation, including under what circumstances and the amount of extended time necessary, on an individualized basis after engaging in an interactive process with the student and fully considering his/her disability and its impact, his/her request or stated need, and any unique characteristics of his/her course of study and classes; distribute the modified Policy to all DSPS staff persons who interact with students and faculty members regarding accommodations and provide the same staff with effective training to ensure consistent implementation; and modify its DSPS Accommodation Plan and Accommodation Verification forms to specifically list extended time on assignments as an available accommodation and distribute the modified forms to relevant DSPS personnel.

Based on the commitments made in the 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 the Resolution Agreement until the College is in compliance with the statute(s) and regulations at issue in the case 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. 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 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.

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 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 that OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact Julie Baenziger at (415) 486-5502, or me at (415) 486-5555.

Sincerely,

/s/

Kendra Fox-Davis
Team Leader

CC: Elizabeth L. Cipres, Ed.D.
Dean, Counseling Services