



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION IX
CALIFORNIA

July 16, 2019

Ms. Dena P. Maloney, Ed.D.
Superintendent/President
El Camino College
16007 Crenshaw Blvd.
Torrance, CA 90506

(In reply, please refer to OCR Docket Number 09-19-2121.)

Dear Superintendent/President Maloney:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the El Camino College (the College) received on December 31, 2018. The Complainant alleged that the College discriminated against him on the basis of disability.¹ Specifically, OCR investigated whether, during his enrollment in the Heating, Ventilation, Air-Conditioning, and Refrigeration (HVACR) program, the College failed to provide the Complainant with the necessary academic adjustments or auxiliary aids needed to ensure that he could participate in the education program in a nondiscriminatory manner.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. §794, and its implementing regulation, at 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability in programs and activities operated by recipients of federal financial assistance. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation, at 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities. As a recipient of federal financial assistance and as a public education system, the College is subject to Section 504, Title II, and their implementing regulations.

To investigate this complaint, OCR gathered evidence by reviewing documents provided by the College and the Complainant. Prior to OCR completing its investigation, the College requested to resolve the complaint via Section 302 of OCR's Case Processing Manual, and OCR determined it was appropriate to do so. The applicable legal standards, factual findings, and resolution of this matter are summarized below.

¹ OCR previously provided the Recipient with the identity of the Complainant. We are withholding the Complainant's names from this letter to protect his privacy.

Legal Standards

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.

Academic Adjustments

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.

Auxiliary Aids

The Section 504 regulations, at 34 C.F.R. §104.44(d)(1), require recipient colleges and universities to take steps to ensure that no disabled student is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination because of the absence of educational auxiliary aids for students with impaired sensory, manual or speaking skills. Section 104.44(d)(2) provides that auxiliary aids may include taped texts, interpreters or other effective methods of making orally delivered materials available to students with hearing impairments, readers in libraries for students with visual impairments, classroom equipment adapted for use by students with manual impairments, and other similar services and actions. Recipient colleges and universities, however, need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

Under the Title II regulations, at 28 C.F.R. section 35.160(b) a public college or university shall furnish appropriate auxiliary aids and services where necessary to afford qualified individuals with disabilities, including applicants, participants, companions, and members of the public, an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity and that the type of auxiliary aid or services necessary to ensure effective communication will vary in accordance with the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place. In determining what types of auxiliary aids and services are necessary, a public entity shall give primary consideration to the requests of individuals with disabilities. In order to be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability.

However, pursuant to the regulations, at 28 C.F.R. §35.135 and 34 C.F.R. §104.44(d)(2), colleges and universities are not required to provide disabled individuals with personal devices, individually prescribed devices, readers for personal use or study, or services of a personal nature. In addition, a public college or university is not required to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program or activity or in undue financial and administrative burdens; however, it must make a written showing of such burden or alteration, after considering all resources available for use in the funding and operation of the services, program or activity in question.

Facts Gathered

The following facts are relevant to OCR's analysis:

Policies and Procedures

The College's "A Student's Guide to the Special Resource Center" (the Guide)² reflects that in order to be eligible for accommodations, a student with a disability's impairment is verified either by (i) documentation, (ii) an assessment by Special Resource Center (SRC) staff, or (iii) observation of the SRC staff. As it relates to testing accommodations, the Guide describes that students use a Request for Tests Accommodations form. The form notes that professors should contact SRC for questions or concerns regarding accommodations.

ESCO Group Certificates

ESCO Group is an organization that provides certifications, accrediting, and credentialing for HVACR programs.³ ESCO Group certification tests were used until recently, as described below, for some of the College's HVACR final exams.

² See <http://www.elcamino.edu/student/studentservices/src/docs/ECCSRC-Student-Handbook-030619.pdf>

³ See <https://www.escogroup.org/default.aspx>.

The Complainant's Fall 2018 Accommodations

During the Fall 2018 semester, the Complainant was enrolled in several HVACR classes, two of which he raised concerns about. On July X, 2018, prior to the beginning of the Fall 2018 semester, the Complainant submitted an SRC Disabled Students Programs and Services Application and a Request for Verification of Disability form signed by his physician. The recommended accommodations are: allowing the Complainant to sit in the front of the class, to record lectures, and to be provided with books in audio and PDF format. A Fall 2018 SRC Support Services Request reflects that the Complainant was to receive “alternative media” and the ability to record lectures. He also had testing accommodations for the two classes he raised concerns about.

ACR XX is an eight-week class, and according to the syllabus, “[n]otebooks may be used when taking quizzes and test[s].” OCR reviewed a Request for Test Accommodations form for the class which included: the test would be in the classroom or the SRC; 100% extra time; and, use of notes for the final exam. The SRC specialist signed the form on November XX, 2018, however, the Complainant’s signature is not on the form. In the third section, completed by the HVACR instructor (the Instructor) regarding the parameters of the test for all students, he checked off the “Other” box and wrote “hand written notes only – extra time = 2 hours only – test taken at CAT bldg. only.” The Instructor signed and dated the form on November XX, 2018.

ACR X is an eight-week class, and according to the syllabus, tests are open note, and “a student’s original notes are acceptable”, but photocopies of notes are not permitted. OCR reviewed a Request for Test Accommodations form for the class which included: the location of the test would be in the classroom or the SRC, though a note indicates “will take w/ Prof in lab”; 100% extra time; and, use of notes for the final exam. The SRC specialist signed the form on November XX, 2018; the Complainant did on November XX, 2018. In the third section, completed by the Instructor regarding the parameters of the test for all students, he checked off use of calculator and scratch paper. He also wrote: “Final is an industry controlled test – no notes or open book” and that “test time is unlimited/controlled by ESCO Institute. Location is CAT bldg. only as I am only proctor for ESCO.” No other part of the third section was filled out; the Instructor signed and dated the form on November XX, 2018.

As it relates to ACR XX, on November XX, 2018, the day the SRC counselor (the Counselor) signed the form, SRC staff told the Complainant the “use of notes is entirely up to the [I]nstructor. I cannot authorize but only ask.” Shortly thereafter, on November XX, 2018, SRC staff became aware that the Instructor told the class use of hand-written notes was permitted for the final exam. The Counselor emailed the Instructor that the Complainant types his lecture notes from his lecture recordings (an accommodation) and asked that he be allowed to use his typed notes for the final exam. The Instructor responded the following day, November XX, 2018, to both the Counselor and the Complainant that normally no notes are allowed on HVACR finals, but that he “made an exception to this final because of [the Complainant’s] ‘verified disability’ and ‘education limitations’”, and that the Complainant was told about the note policy a month prior. He wrote that “the only alternative that would be fair is to make the Final ‘No Notes’.”⁴ The Complainant disputed this and explained to the Counselor that the Instructor had only mentioned use of notes

⁴ It is unclear whether the open notebook policy for tests outlined in the syllabus includes lecture notes and applies to the final exam.

generally the month prior and had not specified the format. Later that day, the Counselor emailed the Complainant that based on the Instructor's email, "I do not believe that the accommodation that you requested is reasonable. The [I]nstructor notified the class well in advance for you to prepare your notes in hand-written format for the exam." She wrote to the Complainant and Instructor that she was withdrawing her request for the Complainant to use typed notes on the exam.

The next day, November XX, 2018, the Complainant wrote to the Counselor that it was the Counselor's idea to request use of typed notes, and wrote: "Preparing handwritten notes is not feasible for me as I explained how I take notes so you have only caused for me me [sic] with your request." The next day, the Counselor responded that "writing is not a [functional] limitation so justifying the need to have SRC transcribe your notes into written format is not a reasonable accommodation. So I made a recommendation to ask the [I]nstructor to allow you to use your typed notes for the exam. . . . Keep in mind that identifying reasonable accommodations is an interactive process between the student, instructor and SRC."

With respect to ACR X, on December X, 2018, the Instructor emailed the Counselor and the Complainant that after speaking with the College's Dean of the Industry and Technology Division (the Dean) which oversees the HVACR program, he could accommodate the Complainant, but that the Complainant "will have to sign a letter before the test acknowledging that his accommodation request to use computer-generated notes will not allow him to receive any industry certificates from this program."

On December X, 2018, the Counselor emailed the Director asking for his thoughts on the Instructor's proposal for the test. The Director responded that "[t]he email as it is, appears to be illegal. One cannot provide an accommodation, and for having that accommodation, be 'punished', and not receive a certificate from the program. More information is needed here as to the basis of this 'condition'." That day, the Counselor responded to the Instructor:

"After speaking with your Dean, did you have an interactive dialog with the student or were these accommodation parameters determined solely by you and your Dean? Please provide your rationale for why you believe allowing a student to use typed notes is not an appropriate accommodation versus using hand-written notes? Please clarify if the rest of the class will still be allowed to use notes for the Final. If so, what are the parameters. The purpose of accommodations is to create equal access to education for students with disabilities and such accommodations should not interfere with the integrity of the course objectives. If an accommodation is determined appropriate based on the functional limitations as it relates to the student's disability and the accommodation doesn't interfere with the academic integrity of the class, the student should not be denied the same opportunities as the rest of the class (i.e. obtaining a certificate)."

The Instructor replied, copying the Counselor, the Director, and the Dean that ACR X is the only class that would receive a certificate for testing and that the Complainant said he did not "care about an industry certification." He wrote that everyone in ACR XX would be allowed to use notes because of the Complainant, and that "the only accommodation I made was for [the

Complainant] to use typed notes.” He reiterated that “notes are normally NEVER allowed for the Final” and wrote that the Complainant received an A+ on a final for another HVACR course, without notes and within the 2-hour time limit. He said that for ACR X, because it’s an “Industry Certification” exam, no other student will be allowed to use notes.

The Dean replied that the ESCO exam rules “mandate that notes cannot be used” and that the Instructor could “provide the [Complainant] an alternate exam that would permit the use of notes”, but that the Complainant would not be eligible for the ESCO industry certificate. In response, the Director asked “how are students with disabilities able to obtain a certificate if they require an accommodation?”

The following morning, the Instructor replied that the Complainant would be able to take the ESCO exam anytime while a student, and attached the letter the Complainant signed, which states the extra time and use of notes accommodations were approved, but that:

“[The Complainant’s] notes will be inspected before the test and cannot include any copies, hand-outs, or text book pages. These accommodations are not consistent with industry standards and your completion of the final with these accommodations will not be considered for any industry certificates. These accommodations will be implemented and effective on XX December for ACR X and XX December for ACR XX.”

The Complainant wrote on the letter “I understand all” and signed it.

On December XX, 2018, a different counselor (Counselor 2) emailed the Instructor, copying the Complainant and the Director, and wrote that the Complainant reported he was rushed through his exams and did not receive double time. The Instructor responded that the Complainant turned his tests in when he was done, that he was not rushed, and that the Complainant received an “A” and could not receive anything higher. SRC notes from the same day reflect that the Complainant no longer wanted to pursue the testing accommodation since he passed the exams.

The Complainant also reached out to the vice president of academic affairs (the Vice President) concerning his accommodations, and on December XX, 2018, the Vice President wrote to the Dean, the Director, Counselor 2, and the Director of Staff and Student Diversity asking that his testing accommodations be resolved for the spring semester. A phone meeting was held on December XX, 2019 with the Complainant. Based on notes from the meeting and a follow up email the Dean sent, the Dean was to meet with the Instructor regarding the Complainant’s concerns; the Complainant would make an appointment with the SRC in mid-January to create his Spring 2019 accommodations agreements, which the Dean would review with the Instructor; and the Complainant would contact the Dean if he felt his accommodations were not being provided.

The Complainant received A’s for ACR X and ACR XX, as well as another class he took, ACR X.

The Complainant's Spring 2019 Accommodations

On January XX, 2019, the Complainant and the Director met. The Director indicated that some tests for the Spring 2019 HVACR classes would be without notes “per ESCO standards”, and “advised the [Complainant] that he may need to contact the ESCO Corp directly and inquire about further accommodations.” The Director indicated that he’d find out which classes the Complainant would be allowed to test in the SRC’s testing center and which he could not test there. On February X, 2019, the Director followed up with the Complainant and told him that because some of the classes are part of the ESCO certification, those tests could only be proctored by the Instructor.

On February XX, 2019, the Complainant requested and was granted accommodations for the Spring 2019 term, which included alternative media, assignments at the High Tech Center, and the ability to record lectures. That day, SRC staff directed the Complainant to the Director and the Dean regarding testing locations and indicated that for exams the Instructor was required to proctor (which OCR assumes to be ESCO tests), that those tests would be done in the classroom, regardless of what was checked off on the Request for Test Accommodations form (described below).⁵

OCR reviewed the Request for Test Accommodations form for ACR XX, which included: the location of the test would be in the classroom, the Instructor’s office, or the SRC; and 100% extra time. The “In Classroom” location is circled and initialed by the Instructor. The SRC specialist and the Complainant signed it on February XX, 2019. The third section, to be completed by the Instructor, is crossed out, though a note reads “prof. email 2-XX-19”, and the third section appears to reflect that exams are one hour and the final is two hours. The Instructor signed and dated the form on February XX, 2019.

On February XX, 2019, the Director emailed the Dean that according to the Complainant, ESCO Group would not require him to take his tests with the Instructor and that they could be administered in the SRC testing center. On February XX, 2019, the Complainant contacted the Director of Strategic Partnerships at ESCO Group (the ESCO Director), and she requested that he submit a written request of his testing accommodations and would then “see what provisions can be made.” He responded requesting “extra time if the test is long (example: 60+ questions & 1 hour)”, a reduced distraction environment, and that he wanted to take two tests, though not immediately. On February XX, 2019, the ESCO Director emailed the Instructor that “we would need to try to accommodate [the Complainant’s] request”.

On February X, 2019, the Complainant took an ACR XX exam in the SRC, as he was told he couldn’t take it in the class. Later that morning, the Director emailed the Dean requesting a meeting with the Complainant and the Instructor to discuss testing accommodations, including to “clarify testing and choices.” After including the Instructor, the Instructor responded that he didn’t feel he could guarantee the Complainant a quiet testing area considering the Complainant’s accommodation of additional time, and inquired whether the Complainant gets to decide where his

⁵ During his meeting with SRC staff, the Complainant brought up that the Instructor didn’t allow extra time on his final from the Fall 2018 semester and the Counselor responded that based on his correspondence with the Instructor, “the [I]nstructor stated the additional time accommodation was met.”

accommodation is provided. He also communicated that ESCO approved extra time for ESCO tests.

Subsequently, on March XX, 2019, after inquiring who to send the Complainant to “to discuss his testing options”, the ESCO Director wrote to the Instructor and the Dean describing the Complainant’s request, and that she’d communicate to the Complainant that he should make his testing arrangements with the SRC, which she did.⁶ Later on March XX, 2019, the Dean updated the Vice President on what had been going on, including that they agreed to have the SRC approved by ESCO to proctor exams for the Complainant and future students who need testing accommodations, that the Instructor “removed the ESCO certification exams from his syllabus (there is a \$35 fee for ESCO testing)”, and that all of the testing going forward will come from the textbook. Students would be directed to make arrangements directly with ESCO Group for certificate tests.

On March XX, 2019, the Complainant emailed the Director that the Instructor told him he must take his next test and the final exam in the SRC, and “he is not honoring the terms of the agreement that he has made. I would like to remind you that he circled and initialed the part that says that I would take the test in the class.” The Director responded that the Dean and he would like to meet with the Complainant regarding his concerns. The next day, the Complainant responded that he did not want to meet and that he would take the remaining tests in the classroom. The Director reached out to the Complainant a number of additional times requesting to meet, however the Complainant continued to refuse, requesting that information be shared via email.

The Complainant wrote to the Director again on March XX, 2019 that he did not trust him or the Dean, and referenced calling the police if he was prohibited from taking his final exam in the classroom. The Dean forwarded the email to the Vice President on March XX, 2019 expressing concern that if the Complainant tests in the classroom and students make noise, he may call the police causing a disruption for the other students. On March XX, 2019, the Director wrote to the Complainant reiterating that they tried to meet and “have an interactive process to resolve these matters.” He wrote that “[a]t this time, we are unable to provide a reasonable accommodation as it relates to taking the test in class based on” the Complainant’s request for 100% extra time, and that the SRC testing center is a reduced distraction environment. He wrote that they cannot guarantee a reduced distraction environment in the classroom or provide the extra time in the classroom. On March XX, 2019, the Complainant was administered a test in the SRC testing center, missing instruction to take the test. He took only a few minutes to complete the test, writing “don’t know” below each of the questions. It is OCR’s understanding that the Complainant is no longer enrolled with the College at this time.

Based on the facts gathered to date, OCR identified the following possible compliance concerns: the College’s failure to provide the Complainant with testing accommodations including modifications of the accommodations and prohibiting the use accommodations for technical certification tests. In order to complete the investigation and therefore reach a conclusion as to the College’s compliance, OCR would conduct interviews of various college staff, review additional

⁶ She subsequently communicated with the Dean regarding how to have SRC personnel become proctors for administering ESCO exams, and the Dean forwarded the application to the Director. In late March 2019, the SRC submitted an ESCO Group Application for Test Administrator so that the SRC could proctor ESCO tests.

documentation related to the tests the Complainant took, and investigate at what point HVACR classes stopped using ESCO tests as the classes' final exams. As mentioned above, prior to OCR completing its investigation, including reviewing what transpired at the end of the Spring 2019 term, the College requested to resolve the complaint.

Overall Conclusion

This concludes the investigation of this complaint. 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 allegation and the information obtained by OCR during its investigation. Pursuant to the resolution agreement the College will: offer the Complainant the opportunity to retake final exams for ACR X, ACR XX, and ACR XX, as well as any ESCO Group tests administered in those classes; develop and implement policies and/or procedures regarding the provision of accommodations for certification and other testing administered as part of a College class and/or for a class grade or credit, involving an outside entity such as ESCO Group; conduct Section 504 and Title II training of SRC staff and the Instructor.

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 the complaint allegation. OCR will monitor the implementation of the resolution agreement until the College is in compliance with the terms of the resolution agreement. Upon completion of the obligations under the resolution agreement, OCR will close the case.

OCR's determination 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 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, retaliate, 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, 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 Shana Heller, Attorney, at (415) 486-XXXX or at Shana.Heller@ed.gov.

Sincerely,

/s/

James Wood
Team Leader

cc: Jaynie Ishikawa
Director, Staff & Student Diversity