

Merritt College
Resolution Agreement
OCR No. 09-19-2167

Merritt College ("College") agrees to implement the following Resolution Agreement (Agreement) to resolve the issues investigated by the U.S. Department of Education (Department), Office for Civil Rights (OCR), under Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (Title II or ADA) and their implementing regulations in the above-referenced OCR case number.

I. Development of Protocol for Failures to Provide Approved Academic Adjustments and Accommodations

A. By June 1, 2020, the College will provide to OCR for review and approval a protocol that will be used as an effective and efficient means of resolving disputes about, denials of, and other limitations placed on students' receipt of academic adjustments and accommodations. The protocol, at a minimum, will include: reasonable mandatory deadlines by which actions must conclude and by which the process must conclude so as to provide resolution in a manner that has the least detrimental impact on the student; advisement to the student that grievances related to the provision of academic adjustments and accommodations are subject to the provisions of AP 3435; use of the protocol may be terminated at any time by the student, is not a prerequisite to pursuing a grievance pursuant to AP 3435, and any determination made pursuant to the protocol may be appealed or reviewed by filing a grievance pursuant to AP 3435; and, a requirement that the student will fully receive his or her approved accommodations during and throughout the protocol process.

B. Within thirty (30) days of OCR's approval of the protocol developed pursuant to paragraph I(A) of this Agreement, the College will formally adopt, implement, and publish the protocol. The publication of the protocol will include posting to the Section 504/Title II of the ADA webpage of the College and posting to the webpage for the College Student Accessibility Services (SAS).

C. Within thirty (30) days of adopting and implementing the protocol as required by paragraph I(B) of this Agreement, the College will disseminate the protocol to the College's Student Accessibility Services (SAS), Section 504 and Title II coordinator, and Deans of Instruction along with a memorandum or similar document that summarizes and explains the protocol, the reasons for it, and provides a designated point of contact to whom questions or concerns may be addressed along with the individual's contact information.

Reporting Requirements

D. Within fifteen (15) days of adopting, implementing, and publishing the protocol as required by paragraph I(B) of this Agreement, the College will provide to OCR verification of the adoption, implementation, and publishing of the protocol.

E. Within fifteen (15) days of disseminating the protocol as required by paragraph I(C) of this Agreement, the College will provide verification to OCR of the dissemination including a copy of the memorandum or similar document that accompanied the protocol.

II. Development and Institution of Internal Controls and Oversight of Internal Grievance Procedures

A. By June 1, 2020, the College will develop a written protocol that provides for a system of internal controls and oversight of internal grievances submitted to the College by students and submit it to OCR for review and approval. The protocol will include, at a minimum: the creation of a system to track complaint receipts, complaint status and age of complaint, and complaint resolution; an auditing system to audit complaint processing; and identification of an individual administrator above the position of the Deans of Instruction who will receive reports of every internal complaint received and its resolution and who will ensure that the protocol is implemented.

B. Within thirty (30) days of OCR's approval of the protocol required by paragraph II(A) of this Agreement, the College will formally adopt and implement the protocol and all its component parts.

C. Within fifteen (15) days of adopting and implementing the protocol as required by paragraph II(B) of this Agreement, the College will disseminate the protocol to all administrators, the staff in the SAS, the Section 504/Title II coordinator, the administrator designated pursuant to section II(A) of this Agreement to ensure effective implementation, and the Deans of Instruction along with a memorandum or similar document that summarizes and explains the protocol, states the reasons for it, and provides a designated individual to whom questions or concerns may be addressed along with contact information for the individual.

D. Within a reasonable time, subsequent to adopting the protocol but, in no event, later than the time of implementing the protocol, the College will provide necessary training to all key personnel who have a role in running, administering, overseeing, and auditing the protocol.

Reporting Requirements

E. Within fifteen (15) days of adopting and implementing the protocol as required by paragraph II(B) of this Agreement, the College will provide to OCR verification of the adoption and implementation of the protocol.

F. Within fifteen (15) days of disseminating the protocol as required by paragraph II(C) of this Agreement, the College will provide to OCR verification of the dissemination including a copy of the memorandum or similar document.

III. Training

A. By June 1, 2020 the College will provide training, to all administrators responsible for addressing disability discrimination complaints, the staff in the SAS, the faculty and staff of the XXXXXXXX Department including its adjunct instructors, the Section 504/Title II coordinator, and the Deans of Instruction. The training will include, at a minimum:

(i) A description of the SAS, its role and functions, and a specific acknowledgment of its ultimate obligations and responsibilities to students to fully arrange for, provide, and ensure receipt of academic adjustments and accommodations.

(ii) A description of the process used by SAS to determine what adjustments and accommodations a student will receive (e.g., the application process, the documents and other information considered in making determinations and how it is used and the interactive process, etc.).

(iii) A description of accommodation letters including how they are created, what they mean, and how they are used.

(iv) A summary of the responsibilities and obligations of instructors, faculty, and staff when presented with an accommodation letter or otherwise informed of a student's approved academic adjustments or accommodations including their requirement to provide the approved adjustments and accommodations. The information stated in section II(B)(3) of AP 5140 will be included.

(v) A description of the obligations and responsibilities of instructors, faculty, and staff when they disagree with a student's approved academic adjustments or accommodations, cannot fully implement them, or believe they change the requirements of their course, including identification of an individual or position in SAS to whom concerns may be addressed and the contact information for the individual. The information stated in section II(B)(4) of AP 5140 will be included.

(vi) A description of the concept of fundamental alteration including a statement that only the College, and not an instructor, can deny an accommodation if it results in a fundamental program alteration and that the determination of whether an accommodation results in a fundamental alteration is made through an interactive process with the student.

(vii) Information that explains the potential consequences to instructors and others who improperly deny or refuse to provide approved academic adjustments and accommodations to students including that they may be subject to referral for personnel action.

(viii) A thorough description and explanation of the new protocols developed pursuant to paragraph I(A) and II(A) of this Agreement including distributing a copy of each to the attendees.

The training will be given by an individual who is knowledgeable about the subject matter or by an outside third-party expert. The College may also request that a representative from OCR provide the training at no expense to the College.

Reporting Requirement

B. Within thirty (30) days of completing the training required by paragraph (III)(A) of this Agreement, the College will provide to OCR written verification that the training has taken place. The verification will state the date(s) on which the training occurred, the number of faculty, staff, and administrators who attended on the date(s), and the name of the individual(s) who provided the training and his or her qualifications for providing the training. The College will also provide a copy of the sign-in sheet for the training and all documents provided to the attendees.

IV. Individual Remedies

A. When the complainant enrolls again in XXXX X (XXXXXX), the course that was the subject of the complaint in this matter, the College will waive the tuition and any other costs associated with the course so that the complainant may retake the course without additional expense to her.

B. By December 31, 2019, the College will meet with the complainant, in an interactive manner, to communicate to and discuss with her what occurred at the October X, 2018 meeting and the resolution developed at the conclusion of the meeting. The College will, in good faith, fully consider the complainant's perspective of the resolution and any objections or revisions to it that she may have. The College will reach an agreement with the complainant about the reasonableness of the resolution and whether she agrees with its implementation. The College will thereafter document the agreed upon resolution in all relevant SAS records for the complainant and ensure that all the complainant's instructors are aware of the resolution, when applicable.

C. The College will remove entirely any reference to XXXX X (XXXXXX) from the complainant's transcript and all other official educational records for the complainant maintained by the College.

Prior to doing so, by December 31, 2019, the College will provide written notification to the complainant of the precise records that will be revised and how they will be revised and provide her with a thirty (30) day period of time to respond or object to the proposed revisions, if she so desires.

If the complainant does not respond within thirty (30) days of the College's notification to her or responds by not objecting to the proposed revisions then the College will complete the revisions within fifteen (15) days after expiration of the 30 days by which the complainant must respond or after the complainant states her nonobjection to the revisions, whichever is earliest.

If the complainant responds with an objection to the proposed revisions within 30 days of the College's written notification to her then the College will not proceed with the revisions and will, instead, engage the complainant in a good faith discussion to resolve the complainant's objections or concerns. The College will immediately make any revisions to which the complainant consents. If the College is unable to reach an agreement with the complainant after making reasonable efforts to obtain her consent, then only the revisions to which she has consented will be made and no revisions will be made without the complainant's consent.

In the event that consent is not fully provided by the complainant, the College will report to OCR the revisions to which the complainant provided consent and those to which she did not provide consent.

Reporting Requirements

D. Within fifteen (15) days of providing the waiver of tuition and other costs as required by paragraph IV(A) of this Agreement, the College will provide to OCR verification that the waiver of tuition and other costs was done.

E. Within fifteen (15) days of completing the actions required by paragraph IV(B) of this Agreement, the College will provide to OCR verification that the meeting occurred, an agreement regarding implementation of agreed to resolution was reached, and that the agreement was properly documented.

F. Within fifteen (15) days of completing the actions related to the revision of the complainant's educational records that is required by paragraph IV(C) of this Agreement, the College will provide to OCR verification of completion of the actions. Verification will include a copy of the written notice sent to the complainant, a copy of any response received from the complainant or a written statement that no response was received from the complainant, a copy of all records that were revised prior to the revisions being made, and a copy of all records that were revised after the revisions were made.

In the event that the College is unable to obtain the consent of the complainant to the proposed revisions then the College will provide to OCR a narrative that fully states all of the actions it took to obtain the complainant's consent and that details the complainant's response, if any, to the College's actions.

Monitoring

The College understands that by signing this Agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this Agreement. Further, the College understands that during the monitoring of this Agreement, if necessary, OCR may visit the College, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the College has fulfilled the terms and obligations of this Agreement. Upon the College's satisfaction of the commitments made under the Agreement, OCR will close the case.

The College understands and acknowledges that OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of this Agreement and/or the applicable statute(s) and regulation(s). Before initiating such proceedings, OCR will give the College written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

By: _____/s/ _____ Date: 10/21/2019
Peralta Community College District (Merritt College)