



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

REGION IX
CALIFORNIA

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

December 20, 2019

VIA ELECTRONIC MAIL

President Schulz
Fullerton College
321 E. Chapman Ave.
Fullerton, CA 92832

(In reply, please refer to OCR Docket Number 09-19-2191.)

Dear Dr. Schulz:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed against Fullerton College (the College). The Complainant alleged that the College discriminated against him on the basis of disability.¹ Specifically, OCR investigated whether the College discriminated against the Complainant when it failed to provide him with the accommodations necessary to ensure that the Complainant had an equal opportunity to participate in a disciplinary hearing in a non-discriminatory 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 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 college, 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 and statements provided in the College's data response. Prior to the conclusion of the investigation, the College expressed an interest in voluntary resolution pursuant to Section 302 of OCR's Case Processing Manual, and OCR determined it was appropriate to do so. The applicable legal standards, facts gathered to date, and resolution of this matter are summarized below.

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

Legal Standards

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 limitation.

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. Section 34 C.F.R. §104.44(b) prohibits recipient colleges and universities from adopting rules that have the effect of limiting participation in college and university programs on the basis of disability.

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.

Facts Gathered to Date

The Complainant is an individual with Autism Disorder who initially enrolled in the College for the Fall 2003 semester. He registered with the College's Disability Support Services office (DSS) the same year. In 2012, the College suspended the Complainant for a period of two years due to disruptive behavior resulting from excessive communications with College employees. The Complainant did not seek to enroll in classes at the College again until the Spring 2019 semester. In order to return for the Spring 2019 semester, the College required the Complainant to sign an agreement (the Agreement) outlining behavioral requirements and conditions, including specific limitations on his communications with College staff, faculty, and other College employees, that he was expected to follow.

On January XX, 2019, the Vice President of Student Services (the Vice President) sent a letter to the Complainant informing him that the College was suspending him for violating the Agreement and disruptive behavior relating to excessive communications sent from the Complainant to the College's employees. He was given the opportunity to request a formal hearing, which he did on

January XX, 2019. A formal hearing regarding the Complainant's suspension was scheduled for February XX, 2019.

On January XX, 2019, the Complainant sent an email to the Vice President's office requesting accommodations for the hearing. Specifically, the Complainant requested that he be allowed to attend the hearing telephonically as an accommodation for his autism and social anxiety disorder. He also requested that he be provided with a copy of all notices and reports regarding the hearing as well as his discipline file in pdf format as an accommodation for his visual impairment.

On January XX, 2019, the Complainant emailed the College's Office of the President (Office of the President) to again request to appear telephonically at the hearing and for pdf copies of documents related to the hearing as accommodations for his disabilities. The Office of the President denied the Complainant's request in an email sent a few minutes later, stating that the President determined the meeting would proceed in-person. The Complainant responded shortly thereafter requesting an explanation of why he would not be allowed to attend the hearing telephonically, but the College provided no response. The same day, the Complainant sent the Office of the President documentation of his autism and visual impairment for his request to participate in the hearing telephonically, and requested to bring a support person to the hearing as an accommodation.

On February X, 2019, the Complainant sent an email to the Office of the President requesting that the College also provide him with a pdf containing the names of witnesses and the evidence packet that would be presented by the College at the hearing as an accommodation of his disability. The College did not respond to this email.

On February X, 2019, the Vice President emailed the Student, notifying him that he could bring a support person to the hearing, provided a pdf copy of his discipline file, wrote that they were working to get a closed circuit television (CCTV) for his use during the hearing, and requested more information regarding the font size he needed for large print documents.

On February XX, 2019, the Vice President responded to further emails from the Student informing him that they would provide a CCTV to accommodate his visual impairment and denying his request for a witness list and evidence packet in advance of the hearing. On February XX, 2019, the Complainant again sent the Vice President an email requesting an explanation regarding why he would not be allowed to participate at the hearing by phone, noting that his autism and social anxiety make it difficult for him to attend the hearing in-person and that he cannot drive due to his autism and visual impairment.

The College held the disciplinary hearing on February XX, 2019, without the Complainant in attendance. The College ultimately determined to uphold their decision to suspend the Complainant for a period of 2.5 years.

The College's Board Policies (BP) and Administrative Procedures (AP) contain the College's policies and procedures for student conduct and disciplinary hearings, however they do not provide any information relating to requests for reasonable accommodations in the context of a disciplinary hearing.

Analysis

As the College requested to resolve the complaint, OCR did not conclude its investigation. However, based on the investigation thus far, OCR has concerns with respect to whether the College appropriately responded to the Complainant's requests for accommodations for the disciplinary hearing. These concerns relate to whether the College denied the Complainant's requested accommodations without engaging in an appropriate process with the Complainant, including providing the Complainant with an explanation as to why his requests were being denied and providing him the opportunity to provide additional information or explanation as to why the accommodations were necessary for him to access the disciplinary hearing.

In order to complete the investigation and therefore reach a conclusion as to the College's compliance, OCR would need to conduct interviews of various College administrators and staff.

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 (Agreement) which is aligned with the complaint allegation and the information obtained by OCR during its investigation. Pursuant to the Agreement, the College will develop procedures regarding the provision of accommodations for students with disabilities participating in a disciplinary process and offer that the Student may request a new disciplinary hearing after requesting accommodations pursuant to the College's new procedure.

Based on the commitments made in the enclosed 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 Agreement is intended to address the complaint allegation. OCR will monitor the implementation of the Agreement until the Complainant is in compliance with the terms of the Agreement. Upon completion of the obligations under the 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.

If you have any questions regarding this letter, please contact Robert Paping, at (415) 486-XXXX or at robert.paping@ed.gov, or Shana Heller, at (415) 486-XXXX or at shana.heller@ed.gov.

Sincerely,

/s/

Zachary Pelchat
Team Leader

Enclosure

cc: Sharon J. Ormond
Counsel for the College