



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

March 21, 2023

VIA ELECTRONIC MAIL

Mr. Bill Brown
Director
Brownson Technical School
1110 South Technology Circle
Anaheim, CA 92805

By email only to: Bill@brownson.edu

Re: Brownson Technical School
OCR Complaint No. 09-22-2243

Dear Director Brown:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the Brownson Technical School (School). The complainant alleged that the School discriminated against him on the basis of disability.¹ Specifically, OCR investigated the following issues:

- 1) Whether the School did not engage in an interactive process after the Complainant notified the School that he had a disability and requested academic adjustments; and,
- 2) Whether the School failed to respond adequately to an internal complaint the Complainant made on March XX, 2022, alleging discrimination on the basis of disability.

To investigate this complaint, OCR interviewed the complainant and reviewed documents and other information provided by the complainant and the School. Prior to OCR completing its investigation and making a compliance determination, the School expressed an interest in voluntary resolution pursuant to section 302 of OCR's Case Processing Manual (CPM),² and OCR determined it was appropriate to do so. The legal standards, facts gathered to date, and resolution are summarized below.

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

² See OCR's Case Processing Manual (July 18, 2022), <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

- 1) Issue 1: Whether the School did not engage in an interactive process after the Complainant notified the School that he had a disability and requested academic adjustments.

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 Section 504 regulations, at 34 C.F.R. § 104.44(a), require a recipient School to make modifications to its 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 a recipient 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 requirements of Section 504, a student with a disability is obligated to notify the school of the nature of the disability and the need for a modification, adjustment, aid, or service. Once a school 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 school may request that the student provide documentation, such as medical, psychological, or educational assessments, of the impairment and functional limitation.

Factual Findings to Date

The following facts are relevant to OCR's analysis:

The School is a private vocational school that provides heating, ventilation, and air conditioning (HVAC) training and certification (HVAC program). The Complainant is X XXXXXX with a disability. He started the HVAC program in August 2021 and completed the program in July 2022. While he was there, he made oral and written requests for accommodations to the School in March 2022 and when they did not provide them, he asked to file a grievance. The Complainant states that he never received responses to his requests for accommodations or the grievance he filed regarding this issue.

The School provided email communications to OCR between different School administrators, staff, and the Complainant about the Complainant's requests for accommodations. The data shows that in a March X, 2022 email, after the Complainant informed an instructor about his

XXXX and how he could not focus, the instructor contacted the School Registrar, informing her that the Complainant “asked that the school give him some ADA stuff.” The instructor further stated how he was not sure what can be done by the School to help, and that the school will probably only be able to offer some minor accommodations.

In an email dated March XX, 2022, from the Complainant to the School’s Registrar and Reception offices, the Complainant stated that he told the admissions officer in January that he had a mental disability which made school difficult for him to finish. The Complainant further stated in the email that now that he had opened up about his disability, he wanted to know if the school offered “any sort of ADA accommodations for students with disabilities.”

On March XX, 2022, the Complainant sent an email to the School president (Director), requesting reasonable accommodations. He outlined the numerous School staff and administrators who he informed about his disability and the treatment and discrimination he said that he experienced. Specifically, he stated that in January 2022, he notified two office personnel via email that school could cause certain stressors that would trigger his disability. The following modifications were requested by the Complainant: preferred seating chart (especially near door to allow leaving for class breaks.); prearranged or frequent breaks when needed; phone usage/ tape recorder for notes and lecture; availability of course materials ahead of time (lecture materials, handouts, PowerPoints, etc.); extended time for exams; segmented exams; permitting exams to be individually proctored when possible; advance notice of assignments and tests, to include dates; substitute assignments in certain circumstances; note taker or photocopy of another student’s notes; the ability to stay in with his current class.

According to the Complainant, no response was made by the School to his written or prior oral request for accommodations.

According to the School, it did not refuse to honor the Complainant’s request for accommodations and it did everything the Complainant requested. The School submitted a document titled “Incident Report” regarding a meeting with the Complainant that led to the School granting the Complainant’s request for accommodations. The document is dated March XX, 2022; it is signed by the Director with a date of March XX, 2022. The Director stated to OCR that he drew up the contract agreeing to the Complainant’s requests and when they met on March XX, the Complainant agreed to sign it. However, as the meeting started, the Complainant broke down and had to take a walk with the lead instructor in which the Complainant and the lead instructor agreed to the items on the list. The Director stated that he felt the “oral agreement was sufficient.”

The School provided an “Incident Report” dated March XX, 2022, in which the Director documented that the head instructor made Zoom available in some classes/lab shop hours for the Complainant so that the Complainant would not run into the Director and others. The

Director concluded that it appeared that the Complainant was trying to keep up with his assignments with the head instructor's assistance.

On August XX, 2022, OCR informed the Complainant that according to the School, it provided accommodations for the Complainant. The Complainant denied having any knowledge of the accommodation request being approved or any document relating to this.

The School provided to OCR its website address that explains the process for students with disabilities to request academic adjustments or accommodations. The School also provided a copy of the information on the website that discusses students seeking reasonable accommodations.

In the course of our investigation, OCR reviewed the School website and could not readily find a statement of nondiscrimination on the basis of disability or any information for students with disabilities to request and receive reasonable accommodations.

Analysis and Conclusion

Based on the information obtained to date, the Complainant requested accommodations from the School and met with various administrators and staff about his accommodations. The information also showed that the Director believed the accommodations were granted to the Complainant. However, the Complainant denies having any knowledge that his request for accommodations was approved. OCR has a concern that the School does not have a process for students to request accommodations. In order to make a determination with respect to whether the School failed to provide accommodations to the Complainant, OCR would need to gather additional information from School witnesses on whether the accommodations were provided. Prior to the conclusion of OCR's investigation, the School expressed an interest in resolving this matter pursuant to section 302 of the CPM and OCR determined that it was appropriate to do so.

Issue 2: Whether the School failed to respond adequately to an internal complaint the complainant made on March XX, 2022, alleging discrimination on the basis of disability.

Legal Standards

The Section 504 regulations, at 34 C.F.R. § 104.7(b), require a recipient School employing 15 or more persons to adopt grievance procedures that incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints alleging disability discrimination.

In evaluating whether a School's grievance procedures provide for a prompt and equitable resolution, OCR will examine, for example, the extent to which notice of the procedures has been provided to students, parents, and employees of the school; whether the procedures afford an opportunity for an adequate, reliable, and impartial investigation; whether

reasonably prompt timeframes have been established for the various stages of the complaint process; whether notice of the outcome of the complaint has been provided to the parties; and whether there is an assurance that any violations will be addressed, and steps will be taken to prevent a recurrence.

The Section 504 regulations, at 34 C.F.R. § 104.7(a), require a recipient that employs 15 or more persons to designate at least one person to coordinate its efforts to comply with and carry out its responsibilities under Section 504.

Factual Findings to Date

The following facts are relevant to OCR's analysis:

The Complainant stated that he was never provided the School's grievance procedures and could not locate the procedures on the School's website. The Complainant stated that the first time he attempted to file a written formal grievance was when he contacted the School Director on March XX, 2022. The Director responded the same day and asked the Complainant to meet him at the School that afternoon. According to the Complainant, the Director's lack of professionalism and understanding of how to communicate with a student with a disability caused that meeting to end without the grievance paperwork. According to the Complainant, the Director admitted that this was the first time he had to deal with a student with a disability. The Complainant stated that on March XX, 2022, he emailed the lead instructor to request information on how to file a written formal grievance with the School and did not receive any information.

In response to OCR's request, the Director stated that he was unaware of any further concerns or complaints the Complainant raised after a meeting between the Complainant, the lead instructor, and the Director on March XX, 2022.

The School provided to OCR the School's catalog that included a section labeled "grievance procedure."

In the course of our investigation, OCR reviewed the School's website and could not readily find a statement of nondiscrimination on the basis of disability or any information for students with disabilities, the identity of the Section 504 compliance coordinator, or information or a link to the School's Section 504 grievance procedure.

Analysis and Conclusion

The Complainant alleges that he wanted to file a grievance with the School and the School did not provide him with information on how to do so. The Director responded that he was not

aware of any additional concerns after the March XX meeting with the Complainant. However, there is evidence that the Complainant requested information on how to file a grievance on March XX and XX. While the School has grievance procedures in its catalog, OCR has a concern that the School may have failed to respond to the Complainant's requests for information on how to file a grievance alleging disability discrimination. Additionally, the grievance procedure listed in the catalog does not appear to address disability discrimination complaints. In order to make a determination with respect to whether the School failed to respond the Complainant's internal grievance, OCR would need to gather additional information from School witnesses on whether they were aware of his complaint and requests to file a complaint and how they responded. Prior to the conclusion of OCR's investigation, the School expressed an interest in resolving this matter pursuant to section 302 of the CPM and OCR determined that it was appropriate to do so.

Overall Conclusion

To address the complaint allegations and OCR's concerns identified in the investigation, the School, without admitting to any violation of law, entered into the enclosed resolution agreement. The agreement provides that the School will develop Section 504 policies and procedures for responding to requests for accommodations and how to file disability-related grievances with the School. The agreement also provides for School staff to be trained in these areas and that all the School's publications be updated to reflect the Section 504 policies and procedures.

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 evidence obtained and all of the allegations investigated. OCR will monitor the implementation of the resolution agreement until it is in compliance with the terms of the resolution agreement and the statutes and regulations at issue in the case.

OCR's determination in this matter should not be interpreted to address the School'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 School must not harass, coerce, intimidate, discriminate, or otherwise retaliate against any individual because that individual asserts a right or privilege

under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a separate retaliation complaint with OCR.

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

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact Investigator Robert Danese at robert.danese@ed.gov.

Sincerely,

/s/

Anamaria Loya
Chief Attorney