



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

915 2<sup>ND</sup> AVE., SUITE 3310  
SEATTLE, WA 98174-1099

April 25, 2014

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Via U.S. Mail and Facsimile ((503) 842-8334)

Dr. Connie Green  
President  
Tillamook Bay Community College  
4301 Third Street  
Tillamook, Oregon 97141

Re: Tillamook Bay Community College  
OCR Reference No. 10142011

Dear Dr. Green:

The Office for Civil Rights in the U.S. Department of Education (OCR) is discontinuing its investigation of the above-referenced complaint filed against Tillamook Bay Community College on November 8, 2013. The complaint alleged that the college discriminated against a student on the basis of disability when the college:

1. denied the student accommodations for the summer 2013 term of (a) extended time for tests and assignments; (b) recorded lectures; (c) use of the testing center or another quiet testing environment; (d) tutor and reader; and (e) memory aids and strategies for tests, such as study guides and outlines;
2. subjected the student to disability-based discrimination by the college's student services director during the summer 2013 term when the director made changes to the student's approved accommodations and withheld necessary information from the student; and
3. failed to provide a prompt and effective grievance procedure for the complaint the student filed with the college's Americans with Disabilities Act Title II coordinator on August 15, 2013, about the student services director's disability-based discriminatory treatment of her.

OCR accepted the complaint for resolution under the authority of section 504 of the Rehabilitation Act of 1973 and title II of the Americans with Disabilities Act of 1990 and those statutes' implementing regulations at 34 CFR Part 104 and 28 CFR Part 35.

In accordance with Section 302 of OCR's Case Processing Manual a complaint may be resolved at any time when, before the conclusion of an investigation, the institution expresses an interest in resolving the complaint. In such a case, the provisions of an agreement to resolve the complaint must be aligned with the complaint allegations or any information obtained during the discontinued investigation and be consistent with applicable regulations. Here, the college requested to resolve the complaint prior to the conclusion of OCR's investigation. Subsequent discussions with the college resulted in the college signing the enclosed agreement.

The Section 504 regulation at 34 CFR 104.43(a) prohibits a recipient of financial assistance from the U.S. Department of Education from excluding a qualified student with a disability from participating in, denying the student the benefits of, or otherwise subjecting the student to discrimination in any postsecondary education aid, benefit, or service on the basis of disability. The Title II regulation at 28 CFR 35.130(a) similarly prohibits discrimination by a public entity against a qualified individual with a disability.

The Section 504 regulation at 34 CFR 104.44(a) requires a recipient to make modifications to academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating against a qualified student with a disability. However, academic requirements that the recipient can demonstrate are essential to the instruction being pursued by such student or to any directly related licensing requirement will not be regarded as discriminatory within the meaning of 34 CFR 104.44. Similarly, the Title II regulation at 28 CFR 35.130(b)(7) requires a public entity to make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

The Section 504 regulation at 34 CFR 104.7(b) requires a recipient that employs 15 or more persons to adopt grievance procedures that incorporate due process standards and that provide for the prompt and equitable resolution of complaints alleging violations of the Section 504 regulations. The Title II regulation at 28 CFR 35.107(b) similarly requires a public entity that employs 50 or more persons to adopt and publish grievance procedures comparable to those required by the Section 504 regulation. OCR has identified a number of elements in evaluating whether an institution's grievance procedures provide for prompt and equitable resolution of grievances and those elements have been included in section III.B. of the enclosed agreement.

Effective the date of this letter, OCR considers that the enclosed agreement, when fully implemented by the college, will resolve the issues raised by the complaint. OCR will monitor the college's implementation of the agreement, and when OCR concludes the college has fully implemented the terms of the agreement, OCR will terminate its monitoring and close the case. If the college fails to implement the agreement, OCR may resume the investigation.

Please be advised that the college or other person may not harass, coerce, intimidate, threaten, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Section 504 or Title II or those statutes' implementing regulations or because he or she has filed a complaint or participated in the complaint resolution process. See 34 CFR 104.61 (incorporating the prohibition against retaliation at 34 CFR 100.7(e)) and 28 CFR 35.134. If this happens, the individual retaliated against may file a complaint with OCR alleging such retaliation.

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 the assistance the college and its counsel extended to OCR in resolving this complaint. We look forward to receiving the college's first report on its implementation of the agreement by June 30, 2014. If you have any questions, please contact Noel Nightingale, lead attorney, by telephone at (206) 607-1632 or by e-mail at [noel.nightingale@ed.gov](mailto:noel.nightingale@ed.gov).

Sincerely,

/ s /

Barbara Wery  
Team Leader

Enclosure: Resolution Agreement

cc: College's counsel, Garrett Hemann Robertson P.C.