



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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April 13, 2018

Dr. Linda Kaminski  
President  
Yakima Valley Community College  
P.O. Box 22520  
Yakima, Washington 98907-2520

Re: Yakima Valley Community College  
OCR Reference No. 10162080

Dear Dr. Kaminski:

This is to inform you that the U.S. Department of Education (Department), Office for Civil Rights (OCR), is discontinuing its investigation of the above-referenced discrimination complaint against Yakima Valley College (college). As explained below, prior to the completion of OCR's investigation, the college expressed an interest in voluntarily resolving the complaint and signed the enclosed Voluntary Resolution Agreement (agreement) to address the complaint allegation.

The complaint alleged that the college discriminated against XXXXXXXXXXXXX (hereinafter, "the student"), based on disability, when the college failed to provide auxiliary aids and services that effectively addressed her communication disability during the 2015-2016 academic year.

OCR accepted this complaint for resolution under the authority of section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 CFR Part 104; and title II of the Americans with Disabilities Act of 1990 and its implementing regulation at 28 CFR Part 35 (Title II). These laws prohibit discrimination on the basis of disability in programs and activities receiving federal financial assistance, and by public entities, respectively. The college receives federal financial assistance from the Department and is a public entity; therefore, it is required to comply with these laws.

The regulation implementing Section 504 at 34 C.F.R. §104.44(a) requires a recipient postsecondary institution to make such modifications to its academic requirements as are necessary to ensure that such requirements do not discriminate, on the basis of disability, against qualified students with disabilities, unless the institution can demonstrate that the adjustment will alter an academic requirement that is essential to the instruction being pursued by the student. The Section 504 regulation at 34 CFR 104.44(b) states that a recipient must take such steps as are necessary to ensure that no disabled student is discriminated against because of the absence of educational auxiliary aids. In accordance with these regulations, schools may set reasonable standards for documentation and may require documentation prepared by an appropriate professional regarding how a student's disability affects a major life activity and how the disability affects the student's academic performance. The documentation should provide enough information for the student and the school to decide what is an appropriate academic adjustment

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for the student's disability-related needs. The regulation implementing Title II provides, at 28 CFR §35.160(b)(1), that a public entity shall furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity conducted by a public entity. In determining what type of auxiliary aid and service is necessary, a public entity shall give primary consideration to the request of the individual with a disability.

The investigation to date indicated that the student enrolled into the college in 2014. The student has a hearing impairment and has used American Sign Language (ASL) interpreters since high school. Upon enrollment, the college evaluated the student's request for an ASL interpreter and approved her use of an ASL interpreter for her classes beginning in the fall 2014. In the fall 2015 quarter, based upon the student's request, the college approved her use of an FM audio transmitter to replace the ASL interpreter.

Following the student's approval and use of the FM audio transmitter, during the fall 2015 quarter, the student expressed to administrators at the college's Disability Support Services Office (DSS), her need to return to using an ASL interpreter in the upcoming winter 2016 quarter because of certain inefficiencies with the FM audio transmitter. The college denied the student's request on the grounds that the student had not demonstrated a need for an ASL interpreter. Beginning in the fall, 2015 quarter, the student repeatedly requested a meeting with the Dean of Student Support, whose responsibilities included oversight of the DSS, to explain her reasoning for requesting an ASL interpreter for winter, spring, and fall 2016. It was not until October 11, 2016, during the fall 2016, quarter, that the Dean of Student Support met with the student and approved her request for an ASL interpreter for the remainder of the fall 2016 quarter. The student graduated from the college in the fall 2016 quarter.

In accordance with Section 302 of the OCR *Case Processing Manual*, a complaint may be resolved at any time when, before OCR issues a final determination letter, a recipient expresses an interest in resolving the complaint allegations and OCR determines that it is appropriate to resolve the issues under investigation with an agreement. In this case, the college requested to resolve the complaint prior to OCR completing its factual investigation and issuing a final determination letter.

OCR determined that a voluntary resolution agreement was appropriate in this case. Subsequent discussions with the college resulted in the college signing the enclosed agreement.

The actions the college will take under the agreement include:

- reviewing and revising its policies, procedures, and practices regarding the provision of academic adjustments and auxiliary aids, specifically interpreter services, for students with disabilities;
- providing notice of its revised policies, procedures, and practices to pertinent staff;
- extending an offer to the student to select one of three options as an individual remedy. The first option will be for the student to retake with an ASL interpreter, at no cost to the student, any classes the student took in the winter 2016, spring 2016, and fall 2016, quarters, and have the grades earned in the retaken classes be the official grades on the student's transcript. The second option will be for the student to be provided the opportunity to take any additional courses at the college with an ASL interpreter, at no cost to the student, and earn a total number

of credits equivalent to the total number of credits the student took in the winter 2016, spring 2016, and fall 2016, quarters. Regarding the first and second options, if the student has relocated, the college will offer to pay the tuition costs at a comparable institution. The third option will be for the college to remove the grades the student earned for the winter 2016, spring 2016, and fall 2016, and fully refund the tuition costs for the courses removed.

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.

This concludes OCR's investigation of the complaint. The complainant may have the right to file a private suit in federal court regardless of OCR's determination.

Please be advised that the college may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the complainant 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, 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.

OCR will monitor the implementation of the agreement and will close the complaint when OCR determines that the terms of the agreement have been satisfied. The first report under the agreement is due by May 23, 2018.

Thank you for the cooperation that you and your staff extended to OCR staff in resolving this complaint. If you have any questions, please feel free to contact Kwame Amoateng, Attorney, by telephone at (206) 607-1602, or by e-mail at [kwame.amoateng@ed.gov](mailto:kwame.amoateng@ed.gov).

Sincerely,

Sukien Luu  
Supervisory Attorney

Enclosure: Voluntary Resolution Agreement