



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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October 16, 2018

Dr. Patty Scott
President
Southwestern Oregon Community College
1988 Newmark Avenue
Coos Bay, Oregon 97420

Re: Southwestern Oregon Community College
OCR Reference No. 10182065

Dear Dr. Scott:

This letter is to inform you of the disposition of the above-referenced complaint filed against Southwestern Oregon Community College (college) with the U.S. Department of Education (Department), Office for Civil Rights (OCR). The complaint alleged that the college discriminated against a student, on the basis of disability, when:

1. the college did not provide the student's academic adjustments of extended time on tests and quizzes in a Humanities, Mythology and Religion class;
2. the college retaliated against the student when the student's mother raised disability related concerns, resulting in the professor of the above mentioned class becoming more hostile towards the student, including grading the student more harshly; and,
3. the college did not provide a prompt and equitable grievance process when the student filed an internal grievance as to allegations Nos. 1 and 2, on December 13, 2017.

As explained below, prior to 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 allegations.

OCR investigated this case under the authority of Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (Title II). These federal civil rights laws prohibit discrimination on the basis of disability in programs and activities receiving federal financial assistance and by public entities, respectively. The implementing regulations of Section 504 and Title II also prohibit retaliation by intimidation, threats, coercion, or discrimination against any person for the purpose of interfering with any right or privilege secured by these federal civil rights laws or because an individual has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under OCR regulations. The college receives federal financial assistance from this Department and is a public entity and is therefore, subject to Section 504 and Title II.

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

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The Section 504 regulation implementing non-discrimination at 34 C.F.R. §104.4(a) and 104.43(a), provides 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 504 at 34 C.F.R. §104.44(a), requires recipient colleges and universities to make modifications to their academic requirements that are necessary to ensure that such requirements do not discriminate, or have the effect of discriminating, against qualified individuals with disabilities. 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 this section. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted. The Title II regulation at 28 C.F.R. §35.130(b)(7) requires 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.

The Section 504 regulation at 34 C.F.R. §104.61, incorporates 34 C.F.R. §100.7(e) of the regulations implementing Title VI of the Civil Rights Act of 1964 and prohibits recipients from intimidating, coercing, retaliating or discriminating against individuals for the purpose of interfering with any right or privilege secured by Section 504 or because the individual testified, assisted, or participated in any manner in any investigation, hearing, or proceeding under the applicable regulation. Title II and its implementing regulation at 28 C.F.R. §35.134, prohibits intimidation, coercion, or retaliation against individuals engaging in activities protected by Title II.

The Section 504 regulation at 34 C.F.R. §104.7(b) require a recipient 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. The Title II regulation at 28 C.F.R. §35.107(b), similarly require a public entity employing 50 or more persons to adopt and publish prompt and equitable grievance procedures.

OCR's investigation to date included receipt and review of documents provided by the college and interviews with the student and college staff. OCR has identified a concern that the college may not have provided the student a prompt and equitable grievance procedure in terms of notice to the parties, as required under Section 504 and Title II. OCR also has concerns that the college may have failed to provide the student his approved academic adjustment and retaliated against the student.

In accordance with Section 302 of the OCR *Case Processing Manual*, a complaint may be resolved at any time when, before the conclusion of an investigation, the 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 during the course of an investigation. In this case, the college requested to resolve the complaint prior to the conclusion of OCR's investigation. In light of the college's willingness to address the concerns identified by OCR comprehensively without further investigation, OCR determined that entering into a Voluntary Resolution Agreement was appropriate. Subsequent discussions with the college resulted in the college signing the enclosed agreement.

The actions the college will take under the agreement include the development and dissemination of a memorandum regarding extended time and retaliation, reviewing and revising its Section 504/Title II grievance procedures, and an individual student remedy.

This letter sets forth OCR's determination in an individual OCR case and should not be interpreted to address the district's compliance with any other regulatory provisions or to address any issues other than those addressed in this letter. 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. Although the agreement provides that the first report is due on September 30, 2018, OCR has granted a one month extension to October 31, 2018, and we look forward to receipt of the report by such date.

Thank you for the cooperation you and your staff extended to OCR staff in resolving this complaint. If you have any questions regarding this letter, please feel free to contact Alexander Choi, Attorney, by telephone at (206) 607-1625 or by e-mail at alexander.choi@ed.gov.

Sincerely,

Barbara Wery
Team Leader

Enclosure: Voluntary Resolution Agreement