



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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August 31, 2018

Ms. Suzette Robinson  
Interim Chancellor  
Leeward Community College  
96-045 Ala Ike  
Pearl City, Hawaii 96782

Re: Leeward Community College at University of Hawaii  
OCR Reference No. 10182085

Dear Interim Chancellor Robinson:

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 Leeward Community College (the 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 XXXXXXXXXX (hereinafter, "the student"), based on disability, when the college failed to implement the student's approved accommodations of 1) a separate room for testing during the Dining Room class final examination 2) extra time on tests during the Dining Room class final examination; and 3) preferential seating during an off-campus Dining Room class session.

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 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.

*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 investigation to date indicated that the student was an individual with disabilities, who enrolled into the college in 2015. During the fall 2017 semester, the student's classes consisted of: Culinary 160 (Dining Room Operations); Culinary 223 (Contemporary Cuisines); and Culinary 271 (Purchasing and Cost Control). The student had been approved by the college to receive several accommodations, which during the fall 2017 semester included: tutoring, priority registration, tape recording of class lectures, one-and-half times of extended time on quizzes, tests, and examinations.

Following a Dining Room Operations examination in the fall 2017 semester, the student raised concerns with the college about the instructor for the class failing to allow the student an opportunity to take the examination at a different location as required under the student's documented accommodations. The student raised further concerns that, during the December 12 examination, the instructor denied the student an opportunity to use his approved accommodations of extra time. The student also maintained that during an off-campus Dining Room Operations class, which was held at a local restaurant, the instructor denied the student the opportunity to exercise an approved accommodation of preferential seating.

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. 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.

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 October 14, 2018.

Page 3 – OCR Reference No. 10182085

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