



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVE. S.W.,
WASHINGTON, DC 20202-1475

REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, D.C.

October 9, 2014

Dr. Gary M. Green
President
Forsyth Technical Community College
2100 Silas Creek Parkway
Winston-Salem, North Carolina 27103

Re: OCR Complaint No. 11-14-2247
Letter of Findings

Dear Dr. Green:

This letter is to notify you that the Office for Civil Rights (OCR) of the U.S. Department of Education (Department) has completed its investigation of the above-referenced complaint filed on April 15, 2014, against Forsyth Technical Community College (the College). Specifically, the Complainant alleged that the College discriminates against some students with disabilities by requiring that they provide neuropsychological or psycho-educational assessments to rule out other diagnoses, such as learning disabilities, to determine whether the students are qualified individuals with disabilities.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 *et seq.*, and its implementing regulations, at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public educational systems, regardless of whether they receive Federal financial assistance from the Department. The College is a recipient of Federal financial assistance from the Department and a public entity and, therefore, is subject to the provisions of Section 504 and Title II.

As discussed more below, OCR substantiated the complaint allegation. On October 9, 2014, the College entered into a Resolution Agreement to resolve the compliance concerns identified. Below is a discussion of OCR's specific findings.

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

Legal Standard

The regulation implementing Section 504, at 34 C.F.R. Section 104.4(a), states that no qualified person with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance. The Title II regulation is interpreted consistent with the Section 504 regulation.

Under Section 504, postsecondary institutions do not have a duty to identify students with disabilities. Students in institutions of postsecondary education are responsible for notifying institution staff of their disability should they need academic adjustments. The disclosure of the disability is voluntary; however, if the student wants an institution to provide an academic adjustment or auxiliary aid, the student must identify himself or herself as having a disability and request academic modifications or auxiliary aids as needed by providing required medical documentation to the institution's disability services office. The postsecondary institution may require that the student follow reasonable procedures, and students are responsible for knowing these procedures and following them. Also, Colleges may set reasonable standards for documentation and must inform students of the documentation required.

Background

In XXXX, the Complainant sought academic adjustments and auxiliary aids (hereinafter accommodations) from the College based on documentation from a primary care physician. <XXXX TWO SENTENCES REDACTED XXXX> The primary care physician diagnosed the Complainant with ADHD. The documentation provided does not indicate that there was any assessment conducted to support the ADHD diagnosis.

When the Complainant met with DSO staff, DSO staff informed him that his evaluation should be completed pursuant to the DSO's documentation guidelines as contained in the College's DSO Student Guide. According to the DSO's documentation guidelines, students with ADHD, Bipolar Disorder, Blind or Low Vision, among several other disability classifications, must use the ADHD documentation guidelines as well as the guidelines for documentation of learning disabilities to complete their request for accommodations. The DSO's documentation guidelines for learning disabilities states that "Testing **must** involve a comprehensive psycho-educational evaluation," including assessment of aptitude, achievement and information processing.

In XXXX, the Complainant sought testing from a psychologist. The psychologist informed the Complainant that the College's requirement for additional psycho-educational testing was an additional cost that was not necessary to the ADHD diagnosis. The psychologist did not complete the additional testing as required by the DSO's guidelines, but did complete the DSM-IV-TR Code for ADHD, and provided a clinical summary and other documentation for an ADHD diagnosis. The Complainant provided the testing results to the College. The report noted that the Complainant will benefit from accommodations, such as testing in a quiet area free from distraction, extra test time, priority seating in classes and opportunities for consultation with his teachers about other "work around" for his condition yet which maintain adherence to high

academic standards and expectations. The Complainant was also determined to be an appropriate candidate for medication treatment and is currently taking medication.

On XXXX, the College's DSO denied the Complainant's request for accommodations stating that (1) the testing was not in conformity with the DSO's documentation guidelines¹ in that additional psycho-educational or neuropsychological assessments were not conducted, and (2) the College only received the front side of the Request for Services and the Complainant did not put his name on the form.

On April 15th, the Complainant filed this OCR complaint alleging disability discrimination. On May 15th, the Complainant's psychologist sent the College a letter regarding its requirement of additional testing. The letter stated that the College's documentation guideline requirement for "an intelligence and achievement test" was unduly burdensome and wasteful. The letter further stated that the College's requirement was not a requirement of Section 504, the NC Board of Community Colleges or the Association of Higher Education and Disability (AHEAD). Nevertheless, the Complainant returned to his psychologist and completed the additional psycho-educational testing to meet the College's requirement. The Complainant reported that the psycho-educational assessment cost \$1,XXX. On XXXX, the Complainant submitted the additional testing to the College and his request for accommodations was approved for the XXXX.²

Discussion

There is no dispute that the Complainant's initial request in February was accompanied by insufficient documentation, i.e., a diagnosis without any assessment. However, in XXXX, the Complainant did pursue and later received documentation that met documentation guidelines for ADHD by a qualified evaluator.

The College's position is that its requirements that students provide psycho-educational and neuropsychological assessments for many disability classifications meet Federal and state standards. A DSO full-time staff member informed OCR that she reviews the Requests for Accommodations on an individual basis. She stated that although the documentation guidelines are from an older 2009 document that preceded her hire and were written with such specificity, in reviewing Requests for Accommodations, she does not require the stated documentation for all student requests. The DSO staff gave an example of a student with low vision who had a birth certificate stating that the student was born with vision problems. The DSO staff member did not require any additional documentation to approve the accommodations. OCR was informed by DSO staff members that there were approximately six students who were denied

¹ College personnel informed OCR they contacted the psychologist after identifying concerns with the validity of the diagnostic documentation that the College received from the Complainant. According to College personnel, the psychologist allegedly stated that the XXXX diagnosis of ADHD was not complete as the Complainant needed additional testing to confirm this diagnosis. OCR's review of the documentation provided to the DSO staff and OCR's interview with the psychologist confirmed that he was able to make a diagnosis based on the interview and evaluations conducted in XXXX. As a result, OCR determined that the College received adequate documentation to support the Complainant's diagnosis of ADHD in XXXX.

²The Complainant confirmed to OCR that he had received the accommodations after submitting the required additional testing.

accommodations over the past two years under the College's documentation guidelines. OCR sought this list of students along with the reasons for the accommodations request denial, and whether the student was asked for any additional documentation. The College's response revealed sixteen (not six) students who were denied accommodations over the past two school years, after submitting a request for services form. For the sixteen students' files, OCR's review did not indicate any other concerns related to requiring additional documentation in order to receive accommodations.

OCR concludes that the College inappropriately denied the Complainant's second request for accommodations in March when he provided the DSM-IV-TR Code for ADHD, a clinical summary and other documentation for the ADHD diagnosis from a psychologist. A postsecondary institution is required to establish reasonable procedures and set reasonable standards for documentation. OCR further concludes that the written requirement that students of varying disability classifications submit extra neuropsychological assessments in order to rule out other diagnoses is unreasonable. As a result, OCR determined that the College subjected students with disabilities to unreasonable standards to determine whether they are eligible for accommodations.

On October 9, 2014, the College entered into a Resolution Agreement to resolve the compliance concerns identified.³ OCR will monitor the College's compliance with the Agreement.

Conclusion

Please be advised that the College may not retaliate against an individual who asserts a right or privilege under a law enforced by OCR or who files a complaint, testifies, or participates in an OCR proceeding. If this happens, the individual may file a retaliation complaint with OCR. Also, under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the College's compliance with any other regulatory provision or to address any issues other than those addressed in this letter.

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. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

³ OCR notes that the Resolution Agreement does provide for individual remedies for the Complainant – namely, the Complainant will receive compensation for any unnecessary assessments that he was required to obtain. OCR discussed other possible remedies with the Complainant (specifically, removing the courses that he was enrolled in in March 2014 from his transcript and either retaking those courses free of charge or receiving reimbursement for costs incurred as related to those courses). However, the Complainant informed OCR that he was not interested in either of these options. And, as such, OCR did not include these terms in the Resolution Agreement.

If you have any questions, feel free to contact Lorraine Irier at (202) 453-5787 or Lorraine.Irier@ed.gov or Selena Fox at (202) 453-5910 or Selena.Fox@ed.gov.

Sincerely,

/S/

Kay Bhagat
Team Leader
District of Columbia Office
Office for Civil Rights

Enclosure