



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVENUE, SW
WASHINGTON, DC 20202-1475

REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, DC

XXXX

Dr. David R. Shockley
President
Surry Community College
630 S. Main Street
Dobson, North Carolina 27017

Re: OCR Complaint No. 11-16-2165
Letter of Findings

Dear Dr. Shockley:

The Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) has completed its investigation of the complaint we received on XXXX against Surry Community College (the College). The Complainant alleged that the College discriminated against the Student on the basis of disability. Specifically, the complaint alleges that the College failed to provide the Student with the necessary academic adjustment of extended time on tests and assignments in an online course, XXXX (the Course), during the XXXX semester.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104, which prohibit 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) and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive Federal financial assistance from the Department. Because the College receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

In reaching a determination, OCR reviewed documents provided by the Complainant and the College, and interviewed the Complainant, the Student, and College faculty and staff. After carefully considering all of the information obtained during the investigation, OCR identified a violation of Section 504 and Title II. The College agreed to resolve the concern through the enclosed resolution agreement pursuant to Section 303 of OCR's *Case Processing Manual*. OCR's findings and conclusions are discussed below.

Background

During the XXXX academic year, the XXXX.¹ The Student is a student with a disability, including XXXX, which she disclosed to the Director (the Director) of the College’s Office of Disability Services (ODS) on XXXX. The College approved a plan (the Plan) for the Student to receive academic adjustments and auxiliary aids (also referred to as accommodations)² in the form of extended time on tests; a low distraction, quiet setting; counseling; breaks during class; extended time for assignments and projects; and a note taker. For the XXXX semester, the Student registered for XXXX courses, including the Course, XXXX of which she took at the College, while the Course was online. XXXX SENTENCE REDACTED XXXX.

The Student’s Plan did not limit use of the extended time accommodation to classes taken in-person or to a particular type of assignment, and the Director confirmed that the accommodation could be used in online classes. The Director stated that if an instructor was unclear about a student’s accommodations, the instructor was to contact ODS for additional information. The Plan did not specify how much extended time the Student would receive for tests, assignments, and projects; however, the Student understood the time to have been “XXXX,” based upon XXXX. The Director explained that the Student was expected to work out with her instructors what amount or type of extended time she needed. However, the Director confirmed that providing extended time was not optional on the part of an instructor.

According to the Course syllabus, the Course objectives included preparing and delivering well-organized speeches, participating in group discussion, and using audiovisual support for various types of speeches. The Course “met” for three hours each week, which included reading and participating in discussion forums as well as viewing videos and online links. In addition, the Course included approximately six hours of homework per week, comprised of reading and written assignments. The writing assignments consisted of answering discussion questions that correlated to assigned readings, which were posted weekly on Sundays at 12:00 a.m. and were due the following week on Saturdays by 11:55 p.m. Students were to complete the assignments electronically using a platform called “Moodle” to submit Word documents. The syllabus indicated that there were no tests or exams in the Course.

On XXXX, the Student emailed the Course instructor (the Instructor) asking if he had received information regarding her disability accommodations. She stated that she was having difficulty submitting her assignment using the Course’s electronic platform and suggested that because she received extended time as an accommodation, this might allow her “a few extra days” to submit the assignment. The Instructor responded by email that “it doesn’t seem that the ‘extended time on assignments/projects’ would be applicable in the online setting because the course is set up in such a way that you have a full week to submit individual assignments.” He noted that she already had XXXX days to complete XXXX assignment but wrote that he would grant the Student a one-time exception to turn in the first assignment late.³

¹ XXXX 2 SENTENCES REDACTED XXXX.

² The College and the Complainant frequently refer to academic adjustments and auxiliary aids as “accommodations.” The Section 504 regulation addressing post-secondary education refers to “academic adjustments and auxiliary aids,” while the Title II regulation refers to “reasonable modifications.” When the term “accommodations” is used in this document, it refers to academic adjustments and auxiliary aids as those terms are used in 34 C.F.R. § 104.44 and reasonable modifications as that term is used in 28 C.F.R. § 35.130(b)(7).

³ As discussed below, the Instructor ultimately did not give the Student credit for the assignment.

Thereafter, the Student emailed the Instructor on XXXX at XXXX., submitting XXXX assignments (the XXXX due on XXXX and XXXX due on XXXX at 11:55 p.m.), and stating that she XXXX; should be given extended time as an accommodation, even in online classes; and that her accommodation should not be taken from her. She noted that she has received extended time in XXXX other online classes. XXXX SENTENCE REDACTED XXXX. The Instructor responded, “As I stated in my last email, I will not accept late work. Individual instructors make the final determination on the exceptions that will be honored. I do not find it appropriate to give extended time for assignments that are given a full week (or more) to complete.”

The Director subsequently met with the Instructor on XXXX, after emailing him about the difficulties the Student was having in the Course due to her disability. In her email, the Director told the Instructor to work with the Student “in turning in assignments or allowing additional time.” According to the Instructor, he and the Director determined that the Student would come to his office before each assignment to request extended time.

The Student again had technological difficulty submitting the assignment on XXXX, and the Instructor again responded that he would not accept late work. The Student submitted the next XXXX assignments (over the course of four weeks) in a timely manner.

On XXXX, the Student met with the Director, who told her that her computer difficulties with submitting assignments were not disability-based reasons for receiving extended time on assignments. The Director’s summary of the meeting concluded that extended time on assignments was determined on a case-by-case basis, and the College was willing to work with the Student to meet her needs.

Then, on XXXX at XXXX., the Student emailed the Instructor stating XXXX and would submit her assignments the next day. The Instructor did not respond to the Student regarding this issue and informed OCR that the Student did not submit the assignments or the XXXX assignments of the Course. XXXX SENTENCE REDACTED XXXX.

Legal Standards

The Section 504 regulation, at 34 C.F.R. § 104.43(a), provides that a qualified person with a disability may not be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in any postsecondary aids, benefits, or services on the basis of disability. The Section 504 regulation at § 104.44(a) requires a college to modify its academic requirements as necessary to ensure that such requirements do not discriminate or have the effect of discriminating on the basis of disability against a qualified student with a disability. OCR interprets the Title II regulation to require public colleges to provide academic adjustments and auxiliary aids to the same extent as required under Section 504.

Colleges may establish reasonable requirements and procedures for students to provide documentation of their disability and request academic adjustments and auxiliary aids and services. Students are responsible for obtaining disability documentation and for knowing and following the procedures established by the college. Once the student has provided adequate notice and documentation of his/her disability and the need for modifications due to the

disability, the college must provide the student with appropriate academic adjustments and auxiliary aids and services that are necessary to afford the student an equal opportunity to participate in the college's program. However, the college is not required to make adjustments or provide aids or services that would result in a fundamental alteration of the college program or impose an undue burden.

In determining what modifications are appropriate for a student with a disability, the college should familiarize itself with the student's disability and documentation, explore potential modifications, and exercise professional judgment. The question of whether a college has to make modifications to its academic requirements or provide auxiliary aids is determined on a case-by-case basis. Both Section 504 and Title II envision a meaningful and informed process with respect to the provision of modifications, e.g., through an interactive and collaborative process between the college and the student. If a college denies a request for a modification, it should clearly communicate the reasons for its decision to the student so that the student has a reasonable opportunity to respond and provide additional documentation that would address the college's objections.

Section 504 and Title II do not require a college to modify academic requirements that are essential to the instruction being pursued by the student or to any directly related licensing requirement. In reviewing an institution's determination that a specific standard or requirement is an essential program requirement that cannot be modified, OCR considers whether that requirement is educationally justifiable. The requirement should be essential to the educational purpose or objective of a program or class. OCR policy requires, among other factors, that decisions regarding essential requirements be made by a group of people who are trained, knowledgeable and experienced in the area; through a careful, thoughtful, and rational review of the academic program and its requirements; and that the decision-makers consider a series of alternatives for the essential requirements, as well as whether the essential requirement in question can be modified for a specific student with a disability. OCR affords considerable deference to academic decisions made by post-secondary institutions, including what is or is not an essential program requirement.

Analysis

The Complainant alleged that the College discriminated against the Student on the basis of disability by failing to provide the Student with extended time for tests and assignments in the Course, an academic adjustment the Student required, during the XXXX semester.

Based on the evidence obtained above, OCR determined that there were no tests or exams administered in the Course; therefore, OCR's investigation focused on Course assignments only. OCR also determined that the Instructor stated that he would not provide the Student with extended time to complete assignments, despite the Director/ODS having granted the Student the accommodation of extended time for submitting her tests and assignments, among other accommodations, for the XXXX semester. Specifically, on XXXX, the Instructor informed the Student via email that extended time did not apply to online classes or to assignments for which the Student had a week to complete. Thereafter, on XXXX, the Instructor asserted that he would make the final determination about what accommodations to provide and that he would not allow extended time. Finally, on XXXX, the Instructor repeated to the Student that he would not accept late work.

OCR has determined that the Instructor's statements to the Student, and his corresponding actions to deny her extended time as an accommodation, were contrary to ODS's determination that the Student was entitled to extended time on assignments to accommodate her disability. Therefore, OCR determined that the Instructor acted in violation of Section 504. Section 504 requires an individualized determination of appropriate academic adjustments through an interactive process. The Student and College engaged in this process, and an individual instructor may not override ODS's determinations that the Student was permitted accommodations. The College provided materials that emphasize this point; that is, that the Director is the only individual at the College who is qualified to make a determination about the accommodations that are appropriate for a particular student.

OCR also determined that, although the College used an appropriate interactive process to determine the accommodations necessary for the Student, ODS left the Student and the Instructor to determine how much extended time the Student required, thereby placing an unreasonable burden on the Student to request her accommodation before each assignment. When the Student had concerns about implementation of her approved accommodations, she sought assistance from the Director, as was appropriate. In response, the Director contacted the Instructor. However, rather than clarifying how the accommodation was to be implemented, the Director allowed the Instructor the option of "working with [the Student]" *or* providing additional time. Then, the Director and Instructor added an additional requirement that the Student go to the Instructor's office each week to request extended time on weekly assignments. Although the Director told OCR that the Instructor must have misinterpreted their discussion, OCR found the statements about what was required to be inconsistent: namely, the Director told OCR that giving extended time was required and not optional, but she then stated that the Student and the Instructor needed to figure out whether the Student was entitled to one extra day, two extra days, or some other amount of time.

The Director stated that she did not tell the Instructor that the Student needed to come to his office before every assignment was due, but she also said that the Student needed to talk to the Instructor about her needs because extended time is not given automatically for every assignment. The Instructor, in turn, believed that the Student was to come to him at his office before every assignment to request extended time. Meanwhile, the Student understood that every time she turned in an assignment late because of her disability, she would need to tell the Instructor in advance. However, the Student was unclear whether the Director meant she needed to do so if her disability impacted her that week or that particular day, or if she meant only while the Student was working on or turning in her assignment. The Student told OCR that she did not know how she was to forecast whether her disability would be an "issue" in advance of a due date because it was always an "issue." OCR determined that this requirement was unreasonable given that the Director already had determined that the Student was eligible to receive extended time as an accommodation. Furthermore, the Student's disability, and the fact that the Course was an on-line course, did not necessarily lend to the Student making an in-person visit to the Instructor to tell him in advance whether she required extended time.

The College emphasized that the Student did not appear to start assignments until the day they were due. However, OCR determined that this information was irrelevant to whether the Student was entitled to extended time to complete her assignments due to her disability. The Student

attended other classes at XXXX, like other students, including students without disabilities, did not have unlimited hours during the week to complete assignments for the Course.⁴

In determining the impact that the Instructor’s refusal to provide extended time on assignments had on the Student, OCR reviewed the Student’s communications with the Instructor. OCR found that the Student wrote to the Instructor by email to express the need for extended time for disability-related reasons on two occasions; however, the Instructor denied the Student extended time, giving her no credit, in the XXXX of the XXXX instances. He did not respond to the Student in the XXXX instance, resulting in the Student not submitting the assignment. On the XXXX occasion, the Student’s email to the Instructor explained XXXX. XXXX SENTENCE REDACTED XXXX. With respect to the XXXX occasion, the Student wrote to the Instructor XXXX, stating that XXXX. The Instructor did not respond acknowledging her circumstances. The Student told OCR that she did not submit the assignment because she believed that the Instructor’s lack of response meant he would not provide extended time and she would be unable to attain a passing grade. OCR finds that the College failed to provide the Student with necessary academic adjustments on these occasions.⁵

OCR notes that the Student turned in XXXX assignments in a timely manner and received credit for them from the Instructor. When OCR asked why she turned in these assignments on-time, the Student said she realized at that point that the Instructor would give her a “zero” if she did not submit assignments on time. Based on the Instructor’s statements and actions, the Student instead chose to attempt timely submission at the expense of other courses and at great effort because there did not seem to be a point in requesting more time. The Student further described how her falling grade negatively impacted her grades in other classes and her XXXX. As a result, OCR finds that the Instructor’s clear statements that he would not accept late work or provide the Student the approved accommodation deterred her from continuing to seek extended time.

Based on the foregoing, OCR determined that the College discriminated against the Student on the basis of her disability and violated Section 504 and Title II, by denying the Student extended time for completing assignments in the Course.⁶

Conclusion

⁴ Further, the College was concerned about the implications of granting the Student extended time XXXX. The College suggested that granting XXXX would result in the Student taking a semester and a half to complete the Course, which appears to be inaccurate. Providing 10 days (or some other amount beyond one week) to complete assignments would not result in 1.5 semesters. Nothing in the Student’s Plan indicated she could work on only one assignment at a time or suggested that the Instructor would need to delay assigning new work until the Student submitted the previous assignment.

⁵ OCR also found that the Student submitted XXXX other assignments late because of computer difficulties, not because of disability-related need. The Student acknowledged that these XXXX assignments were late, not because of her disability, but because of difficulties using the online platform with XXXX issued computer. The Student also did not submit XXXX, and she did not receive credit for the assignment. The Student provided information that her reason for failing to submit the assignment was unrelated to her disability. OCR finds that denying extended time with respect to the XXXX late assignments and denying credit for XXXX was appropriate.

⁶ Additionally, during the course of the investigation, OCR learned that the College changed its policy and practice for granting the accommodation of extended time to students, resulting in changes to the Student’s accommodations for the XXXX semesters, and limiting the Student’s ability to use the accommodation. OCR addresses the policy change in the attached Resolution Agreement.

On December 12, 2017, the College agreed to implement the enclosed Resolution Agreement (the Agreement), which commits the College to take specific steps to address the identified areas of noncompliance. The Agreement entered into by the College is designed to resolve the issues of noncompliance. Under Section 303(b) of OCR's *Case Processing Manual*, a complaint will be considered resolved and the College deemed compliant if the College enters into an agreement that, fully performed, will remedy the identified areas of noncompliance (pursuant to Section 303(b)). OCR will monitor closely the College's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively. OCR may conduct additional visits and may request additional information as necessary to determine whether the College has fulfilled the terms of the Agreement and is in compliance with Section 504 and Title II with regard to the issues raised.

As stated in the Agreement entered into the by the College on December 12, 2017, if the College fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings, including to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10) or judicial proceedings, including to enforce the Agreement, OCR shall give the College written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

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.

Please be advised that the College must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, or participates in an OCR proceeding. If this happens, the individual may file a retaliation complaint with OCR.

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.

We appreciate the College's cooperation in the resolution of this complaint. If you have any questions regarding this letter, please contact Amy S. Williams, the OCR attorney assigned to this complaint, at 202-453-5933 or amy.williams2@ed.gov.

Sincerely,

/s/

Letisha Morgan
Team Leader, Team II
Office for Civil Rights
District of Columbia Office

Enclosure

cc: Dr. Jami Woods, Vice President, Academic Affairs