



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 DATE REDACTED XXXX

Mary Rittling, President
Davidson County Community College
P.O. Box 1287
Lexington, North Carolina 27293

Re: OCR Complaint No. 11-17-2219
Resolution Letter

Dear President Rittling:

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 Davidson County Community College (the College). The Complainant alleged that the College discriminated against XXXX (the Student) on the basis of disability (XXXX) by requiring the Student to repay the College the amount of a XXXX she received for the XXXX semester despite the fact that, as a result of her disability, she could not attend classes or complete course requirements.

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. The laws enforced by OCR prohibit retaliation against any individual who asserts rights or privileges under these laws or who files a complaint, testifies, or participates in an OCR proceeding. 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.

Before OCR completed its investigation, the College expressed a willingness to resolve the allegation by taking the steps set out in the enclosed Resolution Agreement. The following is a discussion of the relevant legal standards and information obtained by OCR during the investigation that informed the development of the Resolution Agreement.

Background

The Student has XXXX. The College accepted the Student into its XXXX Program on XXXX. As of XXXX, the College had been on notice that the Student is an individual with a disability (R's Exhibit 3). She completed XXXX credit hours during the XXXX semester and received XXXX in XXXX funds (R's Exhibit 6).

The College's XXXX semester started on XXXX. The Student was eligible to receive XXXX in XXXX funds for this semester as a full-time student. However, as a result of complications relating to XXXX and was therefore unable to attend classes. Because the Student was unable to attend classes, she informed the College, in a XXXX email, that she was withdrawing from all of her courses. College Exhibit 10. Neither the College's nor the Complainant's submissions include any evidence indicating that the College considered modifying its tuition policies to accommodate the Student's disability.

Legal Standards

The Section 504 regulation includes the following broad nondiscrimination provision for postsecondary education:

No qualified [student 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 academic, research, occupational training, housing, health insurance, counseling, financial aid, physical education, athletics, recreation, transportation, other extracurricular, or other postsecondary education program or activity to which this subpart applies.

34 CFR § 104.43(b)(1).

Additionally, colleges may establish reasonable requirements and procedures for students to provide documentation of their disabilities and request accommodations (which term will be used instead of the longer but technically more accurate "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 a student has provided adequate notice and documentation of his/her disability and need for accommodations, the college must provide the student with appropriate accommodations that are necessary to afford the student an equal opportunity to participate in the college's programs, e.g., its housing program. However, the college is not required to provide accommodations that would result in a fundamental alteration of the college's program or impose an undue burden.

In determining what accommodations are appropriate for a student with a disability, a college should familiarize itself with the student's disability and documentation, explore potential modifications, and exercise professional judgment. The question of whether the college has to provide accommodations is determined on a case-by-case basis. OCR generally does not substitute its judgment for that of qualified educators and professionals regarding accommodations that are academic in nature. Instead, OCR reviews relevant factual evidence to determine whether the college acted in a reasonable manner and whether it took appropriate steps consistent with Section 504 in making decisions regarding a student's eligibility for accommodations. Section 504 envisions a meaningful and informed process with respect to the provision of accommodations, e.g., through an interactive and collaborative process between the college and the student. If the college denies a request for an accommodation, 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.

The Title II regulation includes prohibitions that are similar to those of Section 504.

Discussion

The Complainant's and College's submissions indicate that the College has received multiple notices of the Student's disability. The record also demonstrates that the College was aware that the Student wanted the fact that she was unable to attend classes due to her disability reflected in her account, i.e., in the tuition the College wanted the Student to pay for the XXXX semester.

Nevertheless, neither the College's nor the Complainant's submissions provided to date include any evidence indicating that the College considered modifying its tuition policies to accommodate the Student's disability.

Conclusion and Resolution

Pursuant to OCR's *CPM*, at Section 302, the College signed the enclosed Resolution Agreement which, when fully implemented, will resolve the above allegations and OCR's compliance concern. The provisions of the Agreement are aligned with the allegations and the information that was obtained during OCR's investigation, and are consistent with applicable laws and regulations. OCR will monitor the College's implementation of the Agreement until the College is in compliance with the statutes and regulations at issue in this case. Failure to fully implement the Agreement could result in OCR reopening this complaint.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the 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 regardless of OCR's findings.

Please be advised that the the College may 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.

If you have any questions, you may contact Peter Gelissen, the OCR attorney assigned to this complaint, at 202-453-5912 or peter.gelissen@ed.gov.

Sincerely,

/s/

David Hensel
Supervisory Attorney, Team III
District of Columbia Office
Office for Civil Rights