



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

September 20, 2019

Dr. J. Keen, Ed.D.
President
Fayetteville Technical Community College
2201 Hull Road
Fayetteville, NC 28303

Re: OCR Complaint No. 11-19-2142
Letter of Findings

Dear Dr. Keen:

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 March 23, 2019, against Fayetteville Technical Community College (the College). The Complainant alleges discrimination based on her disability (Bipolar Disorder). Specifically, the Complainant alleges that on XXXX, 2019, the College discriminated against her based on her disability when the Office of Disability Services (ODS) denied her request for academic adjustments for her XXXX course (the Course) within the XXXX (the Program) without engaging in an interactive process.

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.

During the investigation, OCR reviewed information provided by the Complainant and the College and interviewed the Complainant.

Facts

The Complainant identifies as an individual with Bipolar Disorder. On XXXX, 2018, the Complainant enrolled in the Course, which was scheduled to run from XXXX, 2018 to XXXX, 2018. On or around XXXX, 2018, the Complainant contacted the Program to request an extension of the Course as a disability related accommodation. On XXXX, 2018, the College provided the Complainant with information on the process for requesting disability related accommodations.

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

On XXXX, 2018, the College informed the Complainant that the Program approved her for an extension of the Course and gave her until XXXX, 2018 to complete it.

On XXXX, 2018, the Complainant again requested an extension of the Course as a disability related accommodation. The Complainant was ultimately granted an additional extension by the Program, with a new completion date set for XXXX, 2019.

On XXXX, 2019, the Complainant requested a third extension of the Course. That same day, the College explained the process for requesting disability related accommodations and provided her with the necessary forms for requesting such accommodations. The Complainant submitted a completed packet to the College on XXXX, 2019. On XXXX, 2019, College found the Complainant eligible for disability related accommodations such as extended time on tests, a separate setting for tests, use of a recorder, and preferential seating, but an extension of the Course was not included as one of the College's approved accommodations.

The Complainant did not complete the course by XXXX, 2019, and OCR determined that the Complainant is not currently enrolled in the College.

Allegation: *On XXXX, 2019, the College discriminated against the Complainant based on her disability when the Office of Disability Services (ODS) denied her request for academic adjustments for the Course within the Program without engaging in an interactive process.*

Legal Standard

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 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. The regulation at § 104.44(d) requires a college to ensure that no qualified individual with a disability is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination because of the absence of educational auxiliary aids for students with impaired sensory, manual, or speaking skills. 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 a school'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. OCR generally does not substitute its judgment for that of qualified educators and professionals regarding modifications. Instead, OCR reviews relevant factual evidence to determine whether a college acted in a reasonable manner and whether it took appropriate steps consistent with Section 504 and Title II in making decisions regarding a student's eligibility for academic adjustments. 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.

Analysis

The Complainant alleges that the College discriminated against her based on her disability when it denied her XXXX, 2019 request for disability related accommodations. Specifically, the Complainant alleges that the College denied her request for an extension of the Course even though she was approved for an extension on two other occasions.

According to the College's policies and procedures, the College requires students who need disability related accommodations to submit an intake form and provide the College with supporting medical documentation. The College's Academic Procedures Manual (the Manual) outlines four "reasonable accommodations" that should be "routinely made." These include assisting the student with registration and scheduling, allowing the use of tape recorders, selective seating, and substitution of courses. The Manual also states that "additional accommodations may be authorized where it has been determined that the accommodation is educationally sound, essential to the successful matriculation of the student, and does not present an 'undue hardship' on the College." The Manual includes "alterations to the program requirements" as one example of what an "additional accommodation" may look like.

OCR found that on XXXX, 2019, the Complainant submitted a request for disability related accommodations, which included (a) a third extension of the Course; (b) leeway to make-up assignments and an opportunity to do makeup work; (c) possible absences or periods of reduced functioning; (d) the provision of class notes; and (e) extra tutoring. The Complainant provided the College with an impact statement and medical documentation from her psychiatrist. OCR found that the medical documentation states that the Complainant would benefit from extra time to make up assignments, an opportunity to do makeup work, copies of class notes, and extra tutoring. The College provided OCR with the list of disability related accommodations that they granted to the Complainant on XXXX, 2019, stating that the accommodations would be in place should the Complainant enroll at the College. Neither this letter nor any other documentation provided to date indicated that the College contemplated whether to provide the Complainant's request for

extra time for assignments/an extension of the Course, provision of class notes, providing the Complainant with tutoring services, or an extension of the Course completion deadline.

Based on the information OCR obtained during its investigation thus far, OCR has concerns that the College may have failed to fully engage in an interactive and collaborative process regarding the Complainant's XXXX, 2019 request. Specifically, the evidence reviewed to date raises concerns about whether the College considered the Complainant's request to extend the Course deadline, as there is no documentation that shows the College discussed an extension of the Course before making its final decision. Moreover, the accommodations approved by the College on XXXX, 2019, do not address any of the accommodations requested by the Complainant outlined in the materials she submitted in support of her request for disability related accommodations. As such, OCR had concerns that the College may not have tailored the approved accommodations to the Complainant's specific needs, pursuant to §104.44.

Before OCR completed its investigation, however, the College expressed a willingness to resolve the allegation pursuant to Section 302 of OCR's Case Processing Manual, which states that allegations may be resolved prior to OCR making a determination if the College expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified issues that can be addressed through a resolution agreement.

Conclusion

On September 20, 2019, the College agreed to implement the enclosed Resolution Agreement (Agreement), which commits the College to take specific steps to address the identified areas of noncompliance. Under Section 304 of OCR's *Case Processing Manual*, a complaint will be considered resolved and the College deemed compliant when the College enters into and fulfills the terms of a resolution agreement. 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 visits and may request information as necessary to determine whether the College has fulfilled the terms of the Agreement. If the College fails to implement the Agreement, OCR may initiate proceedings to enforce the specific terms and obligations of the Agreement. Before initiating such proceedings, OCR will 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, assists, or participates in a proceeding under a law enforced by OCR. 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 Eugene Sowa, the OCR attorney assigned to this complaint, at 202-453-6869 or eugene.sowa@ed.gov, or Tracey Solomon, the OCR investigator assigned to this complaint, at 202-453-5930 or tracey.solomon@ed.gov.

Sincerely,

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

Enclosure

cc: David Sullivan, VP Legal Services and Risk Management, *via email*