



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

August 19, 2021

By Email: XXXXX

Krishna Maddipatla, President
A. Christine Carroll, Former President and Board of Managers Member
Eastern Virginia Career College
10304 Spotsylvania Ave. Suite 400
Fredericksburg, VA 22408

Re: OCR Complaint No. 11-21-2118
Resolution Letter

Dear President Maddipatla and Ms. Carroll:

This letter is to advise you of the outcome of the complaint that the Office for Civil Rights (OCR) of the U.S. Department of Education received on XXXXX against Eastern Virginia Career College, which we will refer to as “the College,” particularly its XXXXX. The Complainant alleged that the College discriminated on the basis of disability, beginning in July 2020. Specifically, the complaint alleged that:

1. After the XXXXX, the College discriminated against the Complainant on the basis of his disability, when the College XXXXX request for academic adjustments and/or auxiliary aids and services (also referred to as “accommodations”¹) and therefore failed to engage in the interactive process in July 2020.
2. After XXXXX, the College discriminated against the Complainant on the basis of his disability, when it failed to conduct a prompt and equitable investigation of his complaint of disability-based discrimination.
3. The College discriminates against individuals on the basis of disability, because it does not maintain grievance procedures that provide for the prompt and equitable resolution of complaints of disability discrimination, as required by the regulation implementing Section 504, at 34 C.F.R. §104.7(b).

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of

¹ The Complainant and the College frequently referred to academic adjustments and auxiliary aids as “accommodations.” The Section 504 regulation addressing post-secondary education refers to “academic adjustments and auxiliary aids.” 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.

disability in programs and activities that receive federal financial assistance. Because the College receives federal financial assistance from the Department of Education, OCR has jurisdiction over it pursuant to Section 504.²

Summary of Investigation

During OCR's investigation, OCR reviewed information provided by the Complainant and the College and interviewed the Complainant. OCR completed its investigation of Allegations 1 and 2 and found insufficient evidence to substantiate those allegations, pursuant to Section 303(a) of OCR's *Case Processing Manual*.

In addition, before OCR completed its investigation of Allegation 3, which pertains to Section 504 grievance procedures, the College expressed a willingness to resolve Allegation 3, 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 concerns that can be addressed through a resolution agreement. OCR also identified an additional concern regarding whether the College has provided adequate notice of the individual designated to coordinate its efforts to comply with Section 504.

OCR's findings and conclusions regarding Allegations 1 and 2 are discussed below, as well as a summary of the evidence obtained by OCR to date regarding Allegation 3.

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.

Post-Secondary Academic Adjustments and Auxiliary Aids

The Section 504 regulation, at 34 C.F.R. § 104.44(a), requires a college or university 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 Section 504 regulation, at 34 C.F.R. § 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.

² OCR notes that when it issued the Notification Letters to the Complainant and the College, dated May 25, 2021, we erroneously stated that OCR also had jurisdiction over the College, pursuant to Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131 et seq., 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 of Education. Because the College is *not* a public entity, OCR does not have jurisdiction over it pursuant to Title II.

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's 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 in making decisions regarding a student's eligibility for academic adjustments. The college and the student should engage in an interactive process to determine appropriate modifications. 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.

Response to Section 504 Complaints/Grievances and Section Grievance Procedures

The Section 504 regulation prohibits discrimination on the basis of disability, as specified above. Colleges are required to provide a prompt and equitable grievance process to address complaints of disability discrimination.

The Section 504 regulation, at 34 C.F.R. § 104.7(b), requires colleges that employ 15 or more people to adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints of Section 504 violations.

Designation of Section 504 Coordinator and Notice Thereof

The Section 504 regulation, at 34 C.F.R. § 104.7(a), requires a college that employs 15 or more persons to designate at least one person to coordinate its efforts to comply with Section 504. The Section 504 regulation, at 34 C.F.R. § 104.8(a), also requires such a college to take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of disability in violation of Section 504. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its program or activity. The notification shall also include an identification of the responsible employee designated to coordinate its efforts to comply with Section 504.

Findings of Fact

The Complainant and the College provided OCR with information and documentation that the Complainant XXXXX

Background

The College provided OCR with documentation XXXXX.

OCR reviewed the College’s policies and procedures for requesting accommodations, particularly its “Students Requesting ADA Accommodations” informational sheet, which states that:

Students requesting accommodations must provide documentation of the conditions that inhibit their ability to function fully in an academic environment. This documentation must be provided by the student’s healthcare provider on letterhead or other formal document bearing the name of the healthcare facility, organization, or medical practice. It must be dated no earlier than two years before the date on this application, and must specify the accommodations that will help the student succeed as recommended by the healthcare provider.

Students can apply for accommodations at any time during their enrollment, but should be aware that accommodations cannot be applied retroactively. Students will need to meet with the Registrar/Disability Resource Coordinator to register for accommodations.

The Complainant XXXXX

In an accommodation letter, dated August 26, 2019, the College had granted XXXXX

The College informed OCR that during this period, and due to the COVID-19 pandemic, the College and the Program moved several aspects of course instruction from an in-person to a virtual format.

XXXXX

XXXXX

On December 15, 2020, counsel for the Complainant, whom we will refer to as “the Counsel,” filed an “appeal/grievance” XXXX stating that the College’s failure to provide the Complainant with the accommodations XXXXX The letter added:

[The College], in violation of Section 504 of the Rehabilitation Act and other applicable laws, did not afford [the Complainant] a fair opportunity to access the curriculum like his non-disabled peers. [The College] failed to provide him with reasonable and appropriate accommodations required in order for him to [sic] appropriate access the curriculum. Quite to the contrary, [the College’s] actions and inactions hindered [the Complainant’s] ability to succeed and situated him for failure. It was reasonably foreseeable by [the College] that

its disregard of [the Complainant’s] rights as a student with a disability would cause him to struggle with his classwork, interfere with his access [sic] the curriculum, and deny him an appropriate opportunity to demonstrate his knowledge.

XXXXX

In the interim, in an email sent to XXXXX on January 20, 2021 XXXXX Counsel requested a copy of the College’s Section 504 grievance procedures. XXXXX responded in an email on the same day, stating that the College’s process is an administrative one, and in an email sent on January 21, 2021, XXXXX responded by providing Counsel with a copy of the College’s statement of non-discrimination. Neither the XXXXX nor the XXXXX provided Counsel with the requested grievance procedures.

In further email correspondence with XXXXX on January 21, 2021, Counsel again requested the College’s Section 504 grievance procedures, noting that he could not find them on the College’s website, and that the Complainant may wish to file a Section 504 grievance. XXXXX subsequently provided a statement directing students to report discrimination to the XXXXX XXXXX, who would “advise the student on how to submit a formal grievance on grounds of discrimination.” OCR also reviewed the College’s website, Course Catalogue, and Student Handbook, but could not locate the College’s Section 504 grievance procedures. In addition, although OCR requested the Section 504 grievance procedures from the College as part of our request for data, the College did not provide any such grievance procedures for OCR’s review.

XXXXX

Analysis

Allegation 1

XXXXX

Based on the evidence obtained, neither the College nor the Complainant provided OCR with any information or documentation indicating that the Complainant specifically requested a meeting to discuss XXXXX or that the Complainant provided the College with adequate notice that he required additional/different accommodations XXXXX. For example, OCR found no evidence indicating that the Complainant completed an updated “Disability Disclosure and Accommodations Request” form XXXXX, or that the Complainant explained to an individual responsible for the accommodations process, XXXXX that he required additional accommodations beyond what had previously been provided. Rather, contemporaneous evidence indicates that the Complainant requested the accommodations that he was previously receiving, the College promptly provided those very accommodations, and the Complainant thanked them for doing so. Therefore, based on the foregoing, OCR found insufficient evidence to substantiate the Complainant’s allegation XXXXX failed to engage in the interactive process, as alleged. Accordingly, OCR will take no further action regarding Allegation 1.

Allegation 2

Regarding Allegation 2, the Complainant alleged XXXXX the College discriminated against him on the basis of his disability, when it failed to conduct a prompt and equitable investigation of his complaint of disability-based discrimination. XXXXX

A preponderance of the evidence, however, indicates that the College did promptly and equitably respond to the Complainant's/Counsel's concerns. XXXXX Ultimately, the College determined that it did not fail to meet with the Complainant or provide accommodations XXXXX. Based on the foregoing, OCR found insufficient evidence to substantiate the Complainant's allegation that the College failed to conduct a prompt and equitable investigation of his complaint of disability-based discrimination. Accordingly, OCR will take no further action regarding Allegation 2.

Allegation 3

With respect to Allegation 3, the Complainant alleged that the College discriminates against individuals on the basis of disability, because it does not maintain grievance procedures that provide for the prompt and equitable resolution of complaints of disability discrimination, as required by the regulation implementing Section 504, at 34 C.F.R. §104.7(b).

Both the Complainant and the College provided OCR with email correspondence indicating that the College failed to provide Counsel with a copy of or access to the College's Section 504 grievance procedures, despite his request for the same on January 20 and 21, 2021. Instead, the College provided its general non-discrimination statement and stated that the Complainant should contact the XXXXX XXXXX for additional details. Moreover, the College did not provide, and OCR did not otherwise find, the College's Section 504 grievance procedures for the processing of complaints of discrimination on the basis of disability.

Additionally, during the course of OCR's investigation, OCR determined that the College has designated at least one person to coordinate its efforts to comply with Section 504, as required by 34 C.F.R. §104.7(a). However, OCR found no information to indicate that the College has provided adequate notice of its designated Section 504 Coordinator, as required by the regulation implementing Section 504, at 34 C.F.R. §104.8(a).

Based on OCR's investigation to date, OCR has concerns about whether the College maintains grievance procedures and whether it has provided adequate notice of the designated Section 504 Coordinator, as required by Section 504. Therefore, OCR has determined that it is appropriate to resolve Allegation 3 pursuant to Section 302 of OCR's *Case Processing Manual*.

Conclusion

On August 19, 2021, the College signed the enclosed Resolution Agreement which, when fully implemented, will address Allegation 3. The provisions of the Resolution Agreement are aligned with Allegation 3 and the information obtained during OCR's investigation, and are consistent with applicable laws and regulations. The Resolution Agreement requires the College to provide adequate notice of its designated Section 504 Coordinator, and to draft and adopt grievance procedures that provide for the prompt and equitable resolution of complaints of disability

discrimination, as required by the regulation implementing Section 504. Please review the enclosed Resolution Agreement for further details. OCR will monitor the College's implementation of the Resolution Agreement until the College has fulfilled the terms of the Resolution Agreement.

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 complaint. 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. OCR would like to make you aware that individuals who file complaints with OCR may have the right to file a private suit in federal court whether or not OCR finds a violation.

The Complainant has a right to appeal OCR's determination regarding Allegations 1 and 2 within 60 calendar days of the date of this letter. The Complainant must submit an online appeal form (<https://ocrcas.ed.gov/content/ocr-electronic-appeals-form>) or a written statement of no more than 10 pages (double-spaced, if typed) by mail to the Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue SW, Washington, D.C. 20202; by email to OCR@ed.gov; or by fax to 202-245-8392. The filing date of an appeal is the date that the appeal is submitted online, postmarked, submitted by email, or submitted by fax. In the appeal, the Complainant must explain why he believes the factual information described here was incomplete or incorrect, the legal analysis was incorrect, or the appropriate legal standard was not applied, and how the correction of any error(s) would change the outcome. Failure to provide this information may result in denial of the appeal. OCR will forward a copy of the appeal to the College. The College has the option to submit a response to the appeal to OCR within 14 calendar days of the date that OCR forwarded a copy of the appeal to the College.

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, please contact the OCR attorneys assigned to this complaint: Abony Alexander at abony.alexander@ed.gov, and Arati Jain at arati.jain@ed.gov.

Sincerely,

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

Enclosure

cc (Via Email): XXXXX