



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION XV

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MICHIGAN
OHIO

July 1, 2015

Patric A. Parker, Esq.
Simen, Figura & Parker, P.L.C.
Suite 200, Gateway Financial Centre
5206 Gateway Centre Blvd
Flint, Michigan 48507

Re: OCR Docket #15-15-2033

Dear Mr. Parker:

This letter is to notify you of the disposition of the complaint filed against Baker College (the College) with the U.S. Department of Justice, which was then transferred to the U.S. Department of Education's Office for Civil Rights (OCR) and received on xxxxx. The complaint alleged that Baker College (the College) discriminated against a student based on her disability xxxxx. Specifically, the complaint alleged that in xxxxx, the College denied the request of a student with a disability (the Student) for xxxxx. During the course of its investigation, OCR clarified that the services requested related to xxxxx.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance from the U.S. Department of Education. As a recipient of such financial assistance, the University is subject to Section 504. OCR therefore had jurisdiction to investigate this complaint.

Based on the complaint allegation, OCR investigated the following legal issues:

- whether the College failed to provide an effective auxiliary aid or service to ensure that a student with a disability was not denied the benefits of, excluded from participation in, or otherwise subjected to discrimination under its educational program and activities in violation of Section 504's implementing regulation at 34 C.F.R. § 104.44(d);
- whether the College failed to ensure that a qualified student with a disability was not excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under its academic program in violation of Section 504's implementing regulation at 34 C.F.R. § 104.4 and 104.43(a); and
- whether the College failed to afford a qualified student with a disability an equal opportunity to participate in or benefit from the College's programs, activities, aids,

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benefits, or services, or provided the student with an aid, benefit, or service that was not as effective as that provided to others, in violation of 34 C.F.R. §104.4(b)(1)(ii) and (iii).

Summary of OCR’s Investigation:

In its investigation of this complaint to date, OCR interviewed the Student; the Disability Services Coordinator (DS Coordinator) xxxxx; the xxxxx Director of Advising and Academic Resources and Disability Service Coordinator (DS Coordinator 2), and an xxxxx. OCR also reviewed documentation provided by both parties. Prior to the completion of OCR’s investigation, the College asked to voluntarily resolve the complaint pursuant to Section 302 of OCR’s *Complaint Processing Manual* and signed the enclosed resolution agreement (the Agreement), which, once implemented, will fully address the complaint allegation. We set forth below a summary of OCR’s investigation to date.

X—paragraph deleted –X

The Student stated that she enrolled in Baker College to pursue a xxxxx degree. The parties do not dispute that the Student is a student with a disability or that the College approved xxxxx.

The Student informed OCR that she realized in the xxxxx semester that she needed xxxxx course. She also stated that the instructor of that course xxxxx. The Student explained that she xxxxx.

X—paragraph deleted –X

The College informed OCR that the DS Coordinator had not denied the Student services; rather, it was engaging in an interactive process to determine appropriate services, and the Student xxxxx.

OCR interviewed the DS Coordinator. He recalled that the Student was xxxxx.

The DS Coordinator recalled xxxxx from the Student for xxxxx. She made the request xxxxx. The DS Coordinator informed OCR that xxxxx. He responded to the Student’s request by saying that they would xxxxx.

The DS Coordinator said the Student did not say that his suggestions would not work, nor did she say that she had tried these things but needed more. To his knowledge, xxxxx.

X—paragraph deleted—X

When asked whether he was aware of students using services to xxxxx, but he is sure this has occurred. When asked whether the DS office would provide services to a student with xxxxx; everything the College offers has accommodations available with it.

The xxxxx clarified to OCR that he had no personal knowledge of the events at issue in this complaint. He stated that there is no log or other record documenting when students with disabilities visit the Disabilities Services office. When asked whether he could think of any alternatives to xxxxx.

The College provided OCR with e-mail messages that confirm that xxxxx.

Finally, OCR interviewed the xxxxx for the xxxxx course, which the Student was taking during the semester at issue. The xxxxx stated that she was familiar with the Student's disability and her accommodations. The xxxxx class.

Applicable Legal Standards - Academic Adjustments and Auxiliary Aids and Services

The Section 504 regulation provides that 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 aid, benefits, or services, or under any program or activity which receives Federal financial assistance. 34 C.F.R. §§ 104.4(a) and 104.43(a).

In addition, the Section 504 regulation provides, at 34 C.F.R. § 104.44(a), that a recipient shall make such modifications to its academic requirements as are 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 implementing regulation at 34 C.F.R. § 104.44(d)(1) also requires a recipient to take such steps as are necessary to ensure that no student 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. The regulation further states that auxiliary aids may include taped texts, interpreters, or other effective methods of making orally delivered materials available to students with hearing impairments, readers in libraries for students with visual impairments, classroom equipment adapted for use by students with manual impairments, and other similar services and actions. 34 C.F.R. § 104.44(d)(2). A recipient need not provide a particular auxiliary aid or service that would be a fundamental alteration in the nature of a service, program, or activity, but a recipient still has an obligation to provide, to the maximum extent possible, an effective auxiliary aid or service.

The institution must analyze the appropriateness of an aid or service in its specific context. Decisions about such services must be individualized and made on a case-by-case basis. Aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for students with disabilities and students without disabilities but must afford students with disabilities equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs. 34 C.F.R. § 104.4(b)(2).

Compliant Resolution

As stated above, prior to the conclusion of OCR's investigation, the College expressed interest in voluntarily resolving this complaint pursuant to Section 302 of OCR's *Case Processing Manual*. Such a request does not constitute an admission of liability on the part of the College, nor does it constitute a determination by OCR that the College has violated any of the laws that OCR enforces. The resolution agreement (Agreement) is aligned with the complaint allegation and the information obtained to date during OCR's investigation and is consistent with applicable regulations. The Agreement requires the College to offer to xxxxx and to permit xxxxx. If the Student xxxxx, the College will xxxxx. The Agreement also requires the College, should the Student xxxxx, to meet with her prior to taking the course to ensure that she receives effective auxiliary aids and services xxxxx. Should the Student xxxxx, the Agreement requires the College to xxxxx as described. OCR also provided technical assistance to relevant College personnel during the course of its investigation as to the requirements for auxiliary aids and services under Section 504, xxxxx.

Conclusion

This concludes OCR's investigation of the complaint and 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.

Please be advised that the College may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, a complainant may file another complaint alleging such treatment.

A complainant may have the right to file a private suit in Federal court, whether or not OCR finds a violation.

OCR appreciates the District's cooperation during the investigation of this complaint. If you have any questions about this letter or OCR's resolution of this case, or for questions relating to implementation of the Agreement, please contact Ms. Karla Ussery at (216) xxx-xxxx, or at Karla.Ussery@ed.gov. We look forward to receiving the College's first monitoring report by xxxxxx.

Sincerely,

/s/

Kelly M. Johnson
Supervisory Attorney/Team Leader