



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

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REGION XV
MICHIGAN
OHIO

February 23, 2016

xxxxx x. xxxxx, Esq.
xxxxxxxxxxxxxxxx, P.C.
xxxx xxxxxx xxxxxxxxxxx
Harper Woods, Michigan 48225

Re: OCR Docket #15-15-2222

Dear xxx xxxxxx:

This letter is to notify you of the disposition of the complaint filed on xxxx x xxxxx, with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against the Wayne County Community College District (District). The complaint alleges that the District discriminated against a student (the Complainant) on the basis of disability by failing to investigate and provide a written determination to the xxx xx xxxx, internal complaint alleging disability discrimination he filed under the District's grievance procedure.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104 (Section 504). Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance from the U.S. Department of Education (the Department). OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35 (Title II). Title II prohibits discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance from the Department and as a public entity, the District is subject to these laws. Accordingly, OCR had jurisdiction to investigate this complaint.

Based on the complaint allegations, OCR investigated the legal issue of:

- whether the District failed to adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504, and Title II in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.7(b) and the Title II implementing regulation at 28 C.F.R. § 35.107(b).

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Because the Title II implementing regulation provided no greater protection than the Section 504 implementing regulation with respect to the issues raised in these complaints, OCR applied Section 504 standards in analyzing the complaint allegation.

During its investigation of this complaint, OCR interviewed the Complainant and District staff. OCR also reviewed data submitted by the Complainant and the District.

After a careful review of the evidence obtained, OCR has determined that the District violated Section 504 and Title II when it failed to appropriately implement its disability grievance procedures by generally maintaining practices of handling disability grievances different from the written procedures, and, in Complainant's specific case, by failing to complete its processing of his grievance. The bases of our determination are explained below.

I. OCR's Investigation

OCR investigated this complaint by reviewing documentation provided by the Complainant and the District and by interviewing the Complainant and relevant District staff.

A. Background Regarding the Complainant's Allegations

The District is a two-year community college offering academic and vocational educational programs at five Wayne County campuses. According to District records, the Complainant first registered for classes in the District for the xxxxxxxx xxxx semester at the xxxxxxxxx campus. It is undisputed that on or about xxx xx xxxx, the District determined that the Student was a student with a disability and shortly thereafter approved him in writing for the academic adjustments of xxxx xxx x xxx on quizzes and exams; quizzes and exams xxxxxxxxxxx xx x xxxxxxxxxxx xxxxxxxx or the xxxxxxxxxxx xxxxxxx xxxxx (also referred to as ACCESS), if needed; and the use of a xxxxxxxxxxx xx xxxxxx xxxxxxxxxxx xxxxxxxx.

XXX--- Paragraph Redacted--- XXX

The Complainant said that when he submitted the form, he also met with the Associate Vice Chancellor for Student Services (Administrator) regarding his concerns. He said that the Administrator, who had earlier assisted him in obtaining the initial academic adjustments, told him during this meeting that his grievance would be transferred to the District's xxxxx department. By xxxx xx xxxx, the Complainant told OCR that he had heard nothing further regarding his grievance. The Complainant said that the District was not following its own disability grievance procedure, which stated that grievances would be responded to within five days in writing.

B. Information from the District

The District's xxxxxxxx x xxxx, response to OCR's data request included a position statement asserting that it had adopted appropriate grievance procedures, but that it was not obligated to respond to the Complainant's "xxxxxxx xxxxxx xxxx" because he filed it with the wrong office. Specifically, it argued that the Complainant filed his form with the xxxxxxxxxxx xxxxx xxxxx,

rather than with the Coordinator, as required.

OCR reviewed the District's written disability grievance procedure, which is located within its Disability Support Services handbook. The handbook is located on the District's website and is publicly available. It has been previously reviewed and approved by OCR during monitoring of a resolution agreement in case #15-08-2060.

The District's disability grievance procedure instructs that students address grievances to the Coordinator and provides relevant contact information for this individual. It then describes both informal and formal processes for resolution. Under the informal process, a student need only discuss his concerns with the Coordinator, after which the Coordinator must "investigate the complaint and reply with an answer to the grievance." No time frame for this response is stated. Under the formal process, a student must timely¹ submit a "written statement of the grievance" to the Coordinator. Then, the Coordinator must "conduct an impartial investigation," provide the student an opportunity to submit witnesses and evidence, and then reply to the student "in the form of a written determination in writing" to the student within 10 business days. A 10-day extension of this time for response is permitted for good cause upon proper notice to the student. If the Coordinator's response fails to resolve the issue for the student, the procedure includes an appeal process.

In order to determine how the District interacted with the Complainant in this matter, and how the disability-grievance procedure functions in practice, OCR interviewed three District witnesses: The Administrator, the Coordinator, and the administrative staff person to these two individuals.²

XXX---Paragraph Redacted---XXX

The Administrator said he considered the form to be a grievance under the District's grievance procedure. He further said that in response to learning of this grievance, he followed his typical practice of convening a team of District staff members to review it. He said the team initially had some additional questions for the Complainant about what his concerns were and how they amounted to disability discrimination, but that he was able to clarify those with the Complainant on the phone. He said he was then tasked with investigating the concerns. He said the team of staff members also determined that the matter would be "elevated" to the Coordinator.

However, on xxxx xx xxxx, before the Administrator had completed his investigation or referred the matter to the Coordinator, the Complainant arrived unexpectedly at the building in which both the Administrator and the Coordinator's offices are located. According to the administrative specialist and the Administrator, both of whom were present and spoke with the Complainant during this interaction, the Complainant raised various concerns to them about his academic adjustments, financial aid, and other matters. Ultimately, the Complainant stated that xx xxxxx xx xxxx xxxxx xxxxxx against the District. At this point, the Administrator said that he told the Complainant that District staff could xx xxxxx xxxx xxxx xxx xxxxxxxxxxxx. They did, however,

¹ There is no dispute as to the timeliness of the Complainant's submission.

² The administrative staff person is the individual the Complainant identified to OCR as the xxxxxxxx who directed him to file his grievance on the "xxxxxxx xxxxxx xxxx."

provide him with the Disability Services Handbook, after the Complainant said that he lacked one.

The Administrator said he had no further contact with the Complainant after that time, although the Complainant tried to reach him several times via telephone, and stopped investigating his grievance.

XXX---Paragraph Redacted---XXX

The Coordinator, who also serves as the Section 504 coordinator for the District, said he had had no involvement with the Complainant or his grievance. He said that the District's practice is that disability-related grievances are typically resolved at lower levels, such as at the campus level or, above that, at the District level by the Administrator or the Administrator's immediate supervisor. He said that while students may file with him directly, it is not necessary that they do so, and that, in fact, they may hand the grievance to any member of the staff. He further said that when he received direct complaints, he almost always referred them to the Administrator or the Administrator's direct supervisor for resolution. For example, he said that the written responses to grievances required under the procedure issued primarily from the Administrator, not him.

The Coordinator said he had been able to review the Complainant's "xxxxxxx xxxxxx xxx" in the context of this OCR complaint, and that it constituted a properly submitted grievance under the procedure. OCR asked what is supposed to happen to grievances if the complainant files and then verbally threatens legal action. The Coordinator said that, in this case, he would have expected the Administrator to bring that to his attention, but that in any event, the District would continue attempting to assist the student.

II. Applicable Legal Standards

The Section 504 implementing regulation, at 34 C.F.R. 104.7(b) states that a recipient that employs fifteen or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504. The Title II implementing regulation at 28 C.F.R. § 35.107(b) states that a public entity that employs 50 or more persons shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action prohibited under the ADA.

Section 504 obligated the District to adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504. The ADA obligated the District to adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action prohibited under the ADA. OCR has previously reviewed the District's disability grievance procedure as written and found it compliant.

III. Analysis and Conclusion

OCR finds that the procedure was inappropriately implemented in two respects. First,

information gathered in this case demonstrates that the District's practices in handling grievances differ significantly from its written process. For example, in practice, grievances need not be filed with the Coordinator, grievances are handled and processed at various lower levels (campus, District, etc.) and by various personnel, a team review process is sometimes employed, etc. None of these aspects are specifically disclosed to potential complainants in the District's written process or anywhere else. This raises compliance concerns as it fails to provide appropriate notice to students and others as to how their grievances are actually being handled, and fails to ensure that their rights under Section 504 will be appropriately respected.

Second, with respect to this Complainant, the information obtained in this investigation shows that the District did not process his grievance according to its written procedure and failed to afford him a prompt and equitable process. Despite the District's initial assertions in this matter to the contrary, the relevant District witnesses stated that the Complainant had properly filed his grievance, both on the proper form and in an acceptable location. As further evidence of this, the Administrator said he was actively investigating the matter and had even convened other staff members to consider it. However, upon the Complainant's statement that he intended to take xxxxx xxxxx against the District, the Administrator unilaterally stopped investigating the complaint, stopped communicating with the Complainant, failed to refer the grievance to any other District office to handle, and failed to provide any type of alternate contact point to the Complainant such that he could determine the status of his complaint. The Administrator's actions in this case were contrary to the District's written grievance procedure, as the Coordinator himself acknowledged to OCR, which required an investigation and written response from the Coordinator within 10 business days. Here, the Complainant received virtually no investigation and no response to date. Accordingly, OCR finds that the District violated requirements in both Section 504 and the ADA that it adopt appropriate grievance procedures.

On February 16, 2016, the District signed the enclosed Agreement, which, once fully implemented, will resolve the complaint violations regarding the deficiencies in its disability-grievance practices and will ensure the District's compliance with Section 504 and Title II. Based on the information above, OCR is closing this complaint effective the date of this letter. This concludes OCR's investigation of the complaint and should not be interpreted to address the District'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 District may not harass, coerced, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the Complainant may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information, which, if

released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

The 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, please contact me at (216) xxx xxxx, or xxxx x xxxx@ed.gov. For questions about implementation of the Agreement, please contact Mr. xxxxxx xxxxxx at (216) 522-xxxx or xxxxxx xxxxxxxx@ed.gov, who will be monitoring the District's implementation of the Agreement. We look forward to receiving the District's first monitoring report by March 15, 2016.

Sincerely,

/s/

Xxxx x xxxx
Supervisory Attorney/Team Leader