



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

1350 EUCLID AVENUE, SUITE 325
CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

January 27, 2017

Mr. Bill Hantl
President
Ohio Technical College
1374 E 51st Street
Cleveland, Ohio 44103

Re: OCR Docket #15-16-2098

Dear Mr. Hantl:

This is to notify you of the disposition of the above-referenced complaint against Ohio Technical College (the College), which was filed on March 8, 2016, with the U.S. Department of Education's Office for Civil Rights (OCR). The complaint alleged that the College discriminated against a student (the Student) on the basis of disability. Specifically, the complaint alleges that the College failed to respond to the Student's request for disability related academic adjustments or services and/or aids during the 2015-2016 academic year.

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). Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance from the Department. As a recipient of Federal financial assistance from the Department, the College is subject to this law.

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

- whether the College failed to designate at least one person to coordinate its efforts to comply with the Section 504 regulations, in violation of Section 504 implementing regulation at 34 C.F.R. § 104.7(a);
- whether the College failed to adopt grievance procedures in accordance with the requirements of the Section 504 implementing regulation at 34 C.F.R. § 104.7(b);

- whether the College failed to make modifications to its academic requirements, or failed to provide auxiliary aids necessary to ensure that no qualified student with a disability is denied the benefits of, excluded from participation in or otherwise subjected to discrimination, in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.44(a) and/or (b).

During its investigation, OCR also identified concerns that raised the following additional issue:

- whether the College denied admission or subjected individuals to discrimination in admission or recruitment by making a preadmission inquiry as to whether an applicant for admission is a person with a disability in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.42(b)(4);

During its investigation, OCR conducted interviews with College staff and administrators, and reviewed documentation submitted by the College. After a careful review of the relevant information, OCR determined that the evidence was insufficient to support that the College discriminated against the Student by failing to respond to the Student's request for disability related academic adjustments, services and/or aids during the 2015-2016 academic year, as alleged. OCR has determined, however, that the evidence is sufficient to support a finding that the College violated Section 504 in that it failed to adopt grievance procedures in accordance with the requirements of Section 504, and failed to designate at least one person to coordinate its efforts to comply with Section 504 regulations. Additionally, during the investigation, OCR found that the College's application for admission violated the Section 504 regulations regarding pre-admission inquiries. The College has signed a Resolution Agreement, a copy of which is enclosed that, once implemented, will address the compliance issues OCR identified. We set forth below the bases for OCR's determination.

Summary of OCR's Investigation

The College, located in Cleveland, Ohio, offers diplomas, certificates and associate degrees in a variety of automotive specialties. Students attend class Monday-Thursday, and on Friday, may seek additional assistance from instructors. In October 2014, the Student submitted his application for admission to the College and began attending the College during the 2015-2016 academic year.

According to the complaint, the Student believed that the College was aware of his disability and related needs as he and his XXXXX spoke with the College's counselor who assured them that the Student would receive extra notes for his courses. The Student asserted that he never received the additional notes as promised. The Student further stated that the College claimed it did not have to provide services for students with disabilities because it is a private college. The complaint did not identify the nature of

the Student's disability and the Student did not respond to OCR's attempts to gather clarifying information during the evaluation or investigation of the complaint regarding his disability and any resulting need for services.

The College's counselor told OCR he had multiple conversations with the Student's XXXXX about her concerns regarding the Student's adjustment while attending school away from home and his grades; however, the counselor said that the Student's XXXXX never indicated that the Student had a disability or a disability-related need for academic adjustments. The counselor stated that he informed the Student's XXXXX that the College's instructors could provide the Student with a hardcopy of the PowerPoint presentation used during class to use as a study aid and that he also provided the Student with suggestions regarding study skills. The College's counselor said the Student never disclosed a disability or a disability-related need for academic adjustments and/or services to him. The Student's instructors also reported to OCR that the Student never disclosed a disability or disability related need for services. Additionally, all of the College staff interviewed denied informing the Student that the College did not need to provide services to students who have disabilities because it is a private college.

In response to OCR's inquiry, the College provided a copy of its student complaint and grievance procedure that outlines the process and procedure for resolution of student complaints. The procedure directs students to submit complaints first to the school personnel involved. If unable to obtain resolution of the complaint this way, students may submit a written complaint to the director of the college. Students also have the option to direct any problem or complaint to the Executive Director of the State Board of Career Colleges and Schools and/or to file a complaint with the Accrediting Commission of Career Schools and Colleges by submitting a specific commission form. The procedure does not state that it provides for the resolution of complaints involving possible violations of Section 504. It also does not state that it applies to complaints alleging discrimination carried out by employees, other students, or third parties. The procedure does not provide for the adequate, reliable, and impartial investigation of complaints, including an opportunity to present witnesses or other evidence; it includes no timeframes for major stages of the complaint process; it does not speak to notice to the parties of the outcome of a complaint; and it provides no assurance that the College will take steps designed to prevent the recurrence of any harassment and to correct the discriminatory effects on the complainant and others, if appropriate. Interviews with College staff as well as a review of the documentation provided by the College confirmed that the College does not have a grievance procedure that provides for the prompt and equitable resolution of complaints alleging a possible violation of Section 504.

Further, when asked about the identity of the individual responsible for coordination of the College's compliance with Section 504, the College's dean of students stated that the College's counselor is responsible for the coordination, and that he too would be involved once the College became aware of a student's disability. The College's counselor reported that the dean of students is the individual responsible for Section 504 coordination. The College's published materials do not identify the dean of students, nor the College's counselor as the contact person for Section 504 matters; in fact the

College’s published materials provide no information regarding Section 504 or the College’s obligations regarding serving students with disabilities or responding to complaints of disability discrimination.

Additionally, during interviews with OCR, College staff were unable to articulate the process for student requests for disability-related services and/or adjustments. While the staff stated that assistance such as additional instructional time is available to students, they articulated that this assistance would be available to all students, regardless of disability status. A review of documentation submitted by the College confirmed that the College does not have a written policy or procedure that provides guidance to students in need of services and adjustments due to a disability.

Finally, during the investigation, the College provided OCR with a copy of its application for admission in which it asked applicants to provide information about “physical limitations/defects, if any” and “current diagnosed conditions.” Although not raised in the initial complaint, OCR determined that the application questions raised a possible compliance concern by constituting a preadmission inquiry into an applicant’s disability status by the College.

Applicable Legal Standards and Analysis

- **Section 504 Coordinator**

The Section 504 implementing regulation at 34 C.F.R. § 104.7(a) requires recipients of Federal financial assistance to designate at least one person to coordinate its efforts to comply with the Section 504 regulations.

Data provided to OCR by the College, and interviews with College staff and administrators established that the College does not have an employee responsible for coordination of the College’s compliance with the requirements of Section 504. OCR therefore concludes that the evidence is sufficient to find that the College is in violation of the requirements of 34 C.F.R. § 104.7(a).

- **Grievance Procedures**

The Section 504 implementing regulation at 34 C.F.R. § 104.7(b) requires recipients of Federal financial assistance to adopt grievance procedures that incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504.

Interviews with College staff and administrators, as well as a review of documentation submitted by the College—including the student handbooks for the 2015-2016 and 2016-2017 school years—confirmed that while the College does provide a grievance procedure, it makes no mention of Section 504 or its applicability to complaints of disability discrimination. It also does not meet the basic requirements that would allow OCR to conclude that the resolution it provides would be prompt or equitable, as

described above. As such, OCR has determined that the College does not have a grievance procedure that provides for prompt and equitable resolution of complaints alleging actions prohibited by Section 504; thus OCR concludes that the evidence is sufficient to find College is in violation of the requirements of 34 Section 504 at C.F.R. § 104.7(b) .

- **Academic Adjustments**

Pursuant to the Section 504 regulation at 34 C.F.R. § 104.44(a), a postsecondary recipient is required to 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) further requires recipients of Federal financial assistance to provide auxiliary aids necessary to ensure that no qualified student with a disability is denied the benefits of, excluded from participation in or otherwise subjected to discrimination in the recipients program or activities.

A postsecondary school is not required to identify a student as having a disability or to assess his or her need for academic adjustments or auxiliary aids or services. Students who want a college to provide such services must let the college know that they need an academic adjustment for a reason related to a physical or mental condition that could constitute a disability. With appropriate notice to students, postsecondary institutions such as the College may require students with disabilities to follow reasonable procedures to request academic adjustments. A college may require a student to provide documentation that permits the institution to determine that the student currently has a disability, that is, an impairment that substantially limits a major life activity, and that supports the need for an academic adjustment so that the institution may work with the student to identify appropriate services. A college may also set its own requirements for documentation so long as they are reasonable and comply with Section 504.

The College was unable to direct OCR to any written guidance available to students during the 2015-2016 school year that explained how to request academic adjustments and/or services related to a disability. College staff stated that students received information about who to talk to if they needed assistance during orientation but staff were unable to explain to OCR a consistent process for how such a request would be handled. Additionally, as explained above, the College had no designated Section 504 Coordinator. Yet, College staff reported to OCR that the Student did not notify the College that he had a disability or disability-related need for services. The College asserted that even in conversation between College staff, the Student, and his parent, it was not disclosed to College staff that the Student's need for additional support was related to a disability. OCR was unable, despite repeated attempts, to obtain clarification from the Student regarding his communications with the College about his disability and any disability-related needs, Weighing the statements of College staff against the contentions received by OCR in the original complaint, OCR concludes that the evidence is insufficient to support a finding that the College failed to make modifications or provide the Student with academic adjustments related to a disability, as alleged.

- **Additional Compliance Concern Identified During Investigation**

Though not an allegation opened for investigation, upon review of data provided to OCR by the College, OCR identified concerns regarding the College's application. Section 504 implementing regulation at 34 C.F.R. § 104.42 (b)(4), with limited exceptions, prohibits recipients from making a preadmission inquiry as to whether an applicant for admission has a disability. The regulation further provides that after admission, a recipient may make inquiries on a confidential basis as to disabilities that may require accommodation. The College's application requested information about "physical limitations/defects, if any" and "current diagnosed conditions." The application does not state that providing such information is voluntary or otherwise explain the College's purpose in collecting such information from the applicant. OCR therefore concludes that the questions constitute an inappropriate preadmission inquiry into the disability status of applicants. Based on the foregoing, OCR finds that the evidence is sufficient to support that the College is in violation of the requirements of 34 C.F.R. § 104.42(b)(4).

Conclusion

On January 6, 2017, the College entered into the enclosed resolution agreement (Agreement) that, when fully implemented, will resolve the Section 504 compliance concerns identified above.

The agreement therefore requires the College to: designate an employee to coordinate the College's responsibilities under Section 504 (Section 504 Coordinator); draft and submit for OCR review a notice that states that the College does not discriminate on the basis of disability in its programs and activities, in admissions or in employment (Notice of Non-discrimination) and a grievance procedure that incorporated proper due process standards and provides for the prompt and equitable resolution of complaints of disability discrimination, including harassment, under Section 504 (Section 504 grievance procedures); and revise its application so that it no longer inappropriately requests disability-related information from applicants. The Agreement also requires that the College broadly publish the contact information for its Section 504 Coordinator, and upon OCR approval, broadly publish the Notice of Nondiscrimination and Section 504 Grievance Procedures and will provide training on the procedures to administrative staff and the Section 504 Coordinator

In addition, the College has agreed to draft and submit for OCR review and approval a procedure by which students who because of disability may request academic adjustments or auxiliary aids and services from the College. Following OCR approval of this procedure, the college will broadly publish the procedure and will train any staff involved in the provision of academic adjustments.

Based on the commitments the College has made in the Agreement, OCR has determined that it is appropriate to close the investigative phase of this complaint. The College has agreed to provide data and other information, demonstrating implementation of the

Agreement, in a timely manner in accordance with the reporting requirements of the Agreement. OCR may conduct additional visits and request additional information as necessary to determine whether the College has fulfilled the terms of the Agreement and is in compliance with Section 504 with regard to the issue in the complaint. OCR will not close the monitoring of the Agreement until it has determined that the College has complied with the terms of the Agreement.

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, the individual 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 Student may file a private suit in federal court, whether or not OCR finds a violation.

We appreciate the cooperation of the College during the investigation and resolution of this complaint. OCR notes that College has already provided OCR with its first monitoring report under the Agreement, which was due by March 1, 2017. If you have any questions about the monitoring, please contact Ms. Chenelle Love, who will be monitoring the College's compliance with the Agreement. You may reach her by telephone at (216) 522-7626. If you have any questions about this letter, you may contact me at (216) 522-7634.

Sincerely,

/s/

Donald S. Yarab
Supervisory Attorney/Team Leader

Enclosure