



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS, REGION IX

MAY 08 2009

Bill Scroggins, Ph.D.  
Superintendent/President  
College of the Sequoias  
915 S. Mooney Boulevard  
Visalia, California 93277

(In reply, please refer to# 09-09-2022.)

Dear Superintendent/President Scroggins:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the College of the Sequoias (College). The complainant<sup>1</sup> (Student) alleged that the College discriminated against her based on disability. OCR investigated whether the College failed to provide the Student with academic adjustments and/or auxiliary aids that would have enabled the Student to participate in the College's Licensed Vocational Nurse to Registered Nurse Bridge Program (Program).

OCR investigated the complaint under the authority of Section 504 of the Rehabilitation Act of 1973, Title II, and its implementing regulations. Section 504 prohibits discrimination on the basis of disability in programs and activities operated by recipients of Federal financial assistance. OCR also has jurisdiction as a designated agency under Title II of the Americans with Disabilities Act of 1990 and its implementing regulation over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The College receives Department funds, is a public education system, and is subject to the requirements of Section 504 and Title II.

OCR gathered evidence by interviewing the Student, her two attorneys, and College staff members and representatives. OCR also reviewed documents and records submitted by the Student and the College. OCR concluded that the evidence did not establish a violation of Section 504 or Title II with respect to the issue investigated. The facts gathered during the investigation, the applicable legal standards, and the reasons for our determination are summarized below.

The regulations implementing Section 504 at 34 Code of Federal Regulations (C.F.R.) §104.42 states that qualified individuals with a disability may not be denied admission or

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<sup>1</sup>OCR notified the College of the identity of the complainant when the investigation began. We are withholding the name from this letter to protect her privacy.

be subjected to discrimination in admission by recipients of federal financial assistance. Under the Section 504 regulations, at 34 C.F.R. §104.3(1)(3), with respect to postsecondary education services, a qualified individual with a disability is one who meets the academic and technical standards requisite to admission or participation in the college or university's education program or activity.

The Section 504 regulations, at 34 C.F.R. §104.44(a), require recipient colleges and universities to make modifications to their academic requirements that are necessary to ensure that such requirements do not discriminate, or have the effect of discriminating on the basis of disability against qualified individuals with disabilities. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific required courses, and adaptation of the manner in which courses are conducted. However, academic requirements that recipient colleges and universities can demonstrate are essential to the program of instruction being pursued or to any directly related licensing requirement will not be regarded as discriminatory

The Section 504 regulations, at 34 C.F.R. §104.44(d)(1), also require recipient colleges and universities to take steps to ensure that no qualified disabled student 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. Section 104.44(d)(2) provides 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. Recipient colleges and universities, however, need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

Under the Title II regulations, at 28 C.F.R. §35.130(b)(1)(ii) and (iii), public colleges and universities may not afford a qualified individual with a disability opportunities that are not equal to those afforded others, and may not provide aids, benefits or services that are not effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others. The Title II regulations, at 28 C.F.R. §35.104, define a qualified individual with a disability as one who, with or without reasonable modifications to rules, policies, or practices, the removal or architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or participation in the college or university's programs and activities.

Under 28 C.F.R. §35.130(b)(7), public colleges and universities must make reasonable modifications in policies, practices or procedures when necessary to avoid discrimination on the basis of disability, unless doing so would fundamentally alter the nature of the service, program or activity. Section 35.103(a) provides that the Title II regulations shall not be construed to permit a lesser standard than is established by the

Section 504 regulations. Therefore, OCR interprets the Title II regulations to require public colleges and universities to provide necessary academic adjustments to the same extent as is required under the Section 504 regulations.

Our investigation showed the following:

- The Student was involved in an accident and suffered a spinal cord injury for which back surgery was performed on January 8, 2007. As a result of the injury, the Student has physical mobility limitations and uses a cane to walk.
- In February 2007, the Student received a letter of acceptance to the College's Bridge Program for the fall of 2007. The Student notified the College about her injury and the College agreed to defer her admission for one year.
- The College's Nursing Program Student Handbook includes a list of "essential technical standards" that are required for a student to participate in the Program. The essential technical standards include, but are not limited to: standing and/or walking up to seven hours throughout an eight and/or twelve hour shift; bending, crouching, or stooping several times per hour; lifting and moving up to a 300 pound patient in a two to three person transfer; pushing and/or pulling objects and equipment weighing up to 300 pounds; and utilizing the standards to respond promptly to patient needs and/or emergency situations. The Handbook also states that a student who cannot perform the essential technical standards for the Program will not be allowed in any clinical setting and that these standards are required to ensure the safety and welfare of patients, health care workers, and students.
- The Handbook further states that each student accepted into the Program is required to undergo a thorough medical examination and that a physician must complete the Student Health Form. The form specifically states, "Physical Demands: Move and operate varied medical equipment and perform duties such as but not limited to: a) lifting patients of various sizes and weights onto and out of beds, b) maneuvering, pulling, pushing, lifting, and turning patients in awkward positions, c) performing related tasks that require use of hands, arms, shoulders, and feet and legs, d) participating in work-related activities that require extensive bending, kneeling, crouching, stooping, standing and critical movements." The form asks the physician to check either a "yes" or "no" box indicating whether the student is "unrestricted" in meeting the physical demands required in the clinical setting. The forms also asks the physician to provide an explanation if the "no" box is checked.
- On or about April 17, 2008, the Student submitted her Student Health Form to the College. The form was completed by a family nurse practitioner on April 11, 2008. On the form, the nurse practitioner checked the "no" box to indicate that

the Student was restricted in performing the physical demands required in the clinical setting. The nurse practitioner also wrote that the Student had difficulty standing, and could not lift more than 10-15 pounds or engage in prolonged bending or stooping. Based on the nurse practitioner's statement, the College notified the Student, by a letter dated April 30, 2008, that she was withdrawn from the Program. The Student filed a grievance with the College contesting her withdrawal from the Program.

- On May 13, 2008, the Student met with the Director of the Disability Resource Center as part of the grievance process to discuss potential accommodations. The Student stated to OCR that the Director informed her that he would recommend that the Nursing Department hire an aide to help her perform the essential technical standards for the Program, like lifting and moving patients, during her clinical rotation.
- The Director of the Disability Resource Center confirmed to OCR that he recommended an aide for the Student as an accommodation; however, the nursing department rejected his recommendation. Both the Dean and the Interim Director of the Nursing Program stated to OCR that the Department decided that hiring an aide to assist the Student perform the essential technical standards of the Program was not a reasonable accommodation. According to both administrators, because of the nature and extent of the Student's limitations, the aide would have to perform essential job functions that the Student could not do on her own. This would require the instructors to evaluate the Student based on the performance of someone else.
- On May 16, 2008, the Student met with the Dean of Student Services and an instructor from the College regarding her grievance. The Student informed OCR that during the meeting, she requested that the College allow her back into the Program and hire one of her classmates to assist her with the tasks and functions that she could not perform. The Dean informed the Student that her request raised two issues that would need to be addressed. First, the other nursing students would have their own duties at the hospital and might not be available to assist the Student as needed. Second, if the College allowed another student or hired someone from the outside to assist the Student, then there would be a question of how the Student would be evaluated when someone else performed the Student's tasks.
- On May 20, 2008, the Student submitted a letter to the College stating that she was currently using a walking cane and that she had physical limitations which made it difficult for her to lift or move a patient. Along with the letter, the Student submitted another Student Health Form, dated May 19, 2008, which included a notation from a physician's assistant stating that the Student "... appears well healed on plain film...confirmation with a CT scan is pending. I believe it will

show completion of the healing process and [the Student] will be at full functional status limited only by her muscle strength and nerve deficits...Full clearance pending CT scan review... "

- On May 23, 2008, the Student submitted a follow-up letter to the College stating that she no longer had any physical restrictions. The Student also resubmitted her May 19, 2008 Student Health Form, with an additional notation from a different physician's assistant, confirming that the Student had no restrictions and could "perform duties as tolerated" as of May 23.
- The College informed OCR that, based on the inconsistent information provided by the Student on April 17, May 20 and May 23 about her limitations, and the fact that the information was provided by physician's assistants rather than a physician, the Director of the Nursing Program wrote to the Student on June 4, 2008, requesting a clear statement from either her physician or surgeon indicating whether she could perform the essential physical functions for the Bridge Program.
- In June 2008, the Student retained legal counsel. The attorney contacted the Dean of Student Services to discuss the Student's requested accommodation of having another nursing student assist her with any activities she could not perform due to her physical limitations. The Dean informed OCR that he explained to the attorney that the College had two concerns about the Student's request: 1) how the Student would be evaluated when someone else was performing all or a portion of the essential duties during the clinical and 2) the other nursing student would have his or her own duties to perform and might not be available to assist the Student as needed. According to the Dean, the attorney stated that he would consult with the Student's physician to determine what would be a reasonable accommodation for her. Subsequently, the Dean was contacted by another attorney, who indicated that she would be taking over the Student's case.
- On August 4, 2008, the Student's current attorney sent the Dean of Student Services a letter with three attachments: a Student Health Form signed by a physician on July 21, 2008, indicating that the Student was "cleared for her nursing training - no restrictions"; a letter from the physician dated July 30, 2008 stating that the Student was "cleared without restrictions for nursing program, per the Essential Job Functions of that position"; and the Student Health Form signed by the physician on August 4, 2008, with a box checked indicating that "Physical Activity" was "unrestricted". Based on these documents, the attorney requested that the College readmit the Student to the nursing program.
- In a letter dated August 11, 2008, the Dean of Student Services informed the attorney that the Student could enroll in Nursing 154 (Promoting Mental

Wellness) for the fall 2008 semester. The Dean also confirmed in his letter that it was the College's understanding that the physician's unrestricted status meant the Student would not be relying on any assistive devices in the clinical setting.

- On August 15, 2008, the attorney sent a reply letter to Dean stating "[the physician] has released [the Student] unrestrictedly to the Program and her obvious continued reliance on a walking cane is notwithstanding. I am not aware of any assisted devices she may be in need of."
- On August 18, 2008, the Student began the lecture component for Nursing 154. The instructor for Nursing 154 told OCR that the course covers theory and clinical care of psychiatric patients. The instructor also stated that she did not believe that the Student could physically participate in the clinical portion of Nursing 154 because she was significantly impaired in her ambulatory function and relied heavily on her cane to walk. The Dean and the Interim Director of the nursing program also told OCR that, after observing the Student on campus, they were concerned that the current medical documentation stating she had no physical restrictions was not an accurate indicator of her ability to meet the essential technical standards for the Program.
- The Student stated to OCR that she cannot walk without her cane and has difficulty standing or walking for more than an hour. The Student is also unable to lift or move patients as a result of her spinal cord injury. The Student informed OCR that she feels she could participate in the eight hour clinical rotation for Nursing 154 if she were given the use of either a wheelchair or a cane and aide to assist with any lifting requirements.
- The instructor for Nursing 154 stated to OCR that the administrator at the hospital where the clinical rotation was to take place told her that the Student could not use her cane during the clinical for safety reasons. According to the hospital administrator, a psychiatric patient could potentially take the cane away from the Student and use it as a weapon to injure themselves, the Student, or another staff member. The "Student Functional Abilities in the Clinical Setting Handbook" states that for Nursing 154, "The student must be able to take decisive, quick, and immediate verbal and/or physical action to defend themselves against clients that present assaultive, abusive, impulsive, delusional and confused behaviors...."
- In a letter dated October 9, 2008, the College's attorney wrote to the Student's attorney pointing out contradictory information received by the College. The October 9<sup>th</sup> letter also reiterated that the College previously advised the Student that the College could not grant her requested accommodation of having another nursing student assist her with her activities, as it would necessitate a substantial modification to the Program's standards to have another student perform the

Student's work. The letter further stated that the College was willing to defer the Student's enrollment in the Nursing 154 clinical until she was able to perform the essential functions for that position, either with or without reasonable accommodations. The letter further invited the Student's attorney to continue participating in the interactive process with the College to seek a reasonable accommodation for the Student that would enable her to meet the essential requirements for the Program.

- On November 3, 2008, the attorneys for the College and the Student spoke to discuss the Student's ability to participate in the Nursing 154 clinical, which was scheduled to begin on November 7, 2008. During the discussion, the College's attorney informed the Student's attorney that the California Board of Registered Nursing has regulations requiring nursing programs to provide concurrent theoretical and clinical instruction to its students. As a result, deferring the clinical component of the course was not a possible accommodation. The Student's attorney again requested that the College provide the Student with one of the following accommodations: use of a cane; use of a wheelchair; or an assistant to help the Student with lifting, maneuvering and transferring patients.
- The College's attorney provided documentation showing that the College then offered to pay for a comprehensive medical evaluation to determine if the requested accommodations would enable the Student to perform the essential physical functions of the Program. According to the College's attorney, the Student's attorney declined the offer and also declined to provide any further medical documentation, asserting that the Student had already provided sufficient information. OCR contacted the Student's attorney to confirm this but did not receive a response.
- On November 7, 2008, the Student went to hospital at 6:50 AM for Nursing 154 clinical. The Student informed OCR that after she learned that the hospital prohibited her from bringing her cane to the psychiatric ward, she agreed to attend the orientation without her cane. The Student left her cane in her car. During the orientation, the instructor discussed the possibility of psychiatric patients becoming violent. She also reminded the Student that her cane was not allowed in the hospital because one of the patients could take it from her and hurt someone with it. At 11:30 AM, the instructor took the class on a one hour tour around the hospital. The Student informed OCR that, since she did not have her cane, another student occasionally supported her as she walked and that she also used the wall to support herself during the tour.
- The instructor told OCR that the Student was unsteady on her feet and often held onb another student's arm to steady her gait and to walk. When the Student walked independently, she moved slowly and used the wall or the furniture to support herself. The instructor stated to OCR that she was concerned the

Student would not be able to react fast enough if a patient became violent and that she could be injured. Based on the Student's physical limitations, the instructor gave the Student a letter stating that she could not continue in Nursing 154 until her mobility problems were addressed.

- On November 12, 2008, the Student's attorney provided the College with a letter from a physician (different from the one who completed the Student's Student Health Forms on July 31 and August 4, 2008) stating that the Student "has bilateral weakness of her lower extremities secondary to the effusion of her spine on 1-8-07. As a result of this, she needs to use occasionally either a wheelchair, a walker or a cane at the direction of the Program for her clinical rotation.... She has no other physical restrictions."
- The Student informed OCR that she spoke to the instructor on the evening of November 12, 2008. During the conversation, the instructor told the Student that she could no longer participate in the clinical because she was unstable on her feet. After speaking to the instructor, the Student contacted her attorney, who advised her to go to the clinical the next day with a witness.
- On November 13, 2008, the Student arrived at the hospital at 5:15 AM with a witness. The Student stated to OCR that the instructor would not allow her inside the hospital. The instructor confirmed to OCR that she did not allow the Student to participate in the clinical with the rest of the class.
- In a letter dated November 17, 2008, legal counsel for the College informed the Student's attorney that the College determined that the Student's requested accommodations (use of a cane, walker, or wheelchair and hiring an assistant to help with lifting, maneuvering and transferring patients) were not reasonable accommodations in the clinical setting. The College based its decision on the professional judgment of the Dean and Interim Director of the nursing program, both whom are licensed Registered Nurses. The College determined that the use of a cane, walker or wheelchair would not enable the Student to perform the essential physical functions, such as lifting and transferring patients or quickly responding in emergency situations at the hospital. The College also determined that hiring an aide to assist the Student in performing the required physical functions would substantially modify the Program's standards, since the Student would be evaluated for full credit, even though someone else was performing her duties.
- The College's letter further stated that, despite the Student and the College's best efforts during the interactive process, no reasonable accommodation was identified that would enable the Student to qualify for the Program. As a result, the College removed the Student from the clinical section of Nursing 154. The letter further stated that under the circumstances, the best accommodation would



be to defer the Student's enrollment, until she was capable of qualifying for the Program. The Student informed OCR that she was not interested in deferring her enrollment in the Program.

- On November 17, 2008, the Student's attorney e-mailed the attorney for the College to inquire whether the Student could 'receive a grade just for the theory component of the course. The following day, the attorney for the College responded by e-mail that the theory and the clinical are two required components of Nursing 154 and that passing theory without passing the clinical would result in a failing grade for the entire course. Based on this e-mail, the Student stopped going to the theory section of the course. The Student received a failing grade in Nursing 154 and is no longer a student at the College.

As stated above, Section 504/Title II and their implementing regulations provide that colleges and universities may not discriminate against qualified individuals with disabilities with respect to admission to or participation in programs. A qualified individual with a disability<sup>2</sup> is one who, with or without the provision of reasonable accommodations (academic adjustments and auxiliary aids), meets the academic and technical requirements that are essential to participation in the program. Colleges and universities must provide qualified disabled individuals with academic adjustments and auxiliary aids if necessary in order to ensure nondiscrimination. However, an institution need not provide such accommodations if doing so would result in a fundamental alteration of the program.

The admission of all students including the Student to the Program is contingent on the student's ability to perform the essential technical standards for the Program. Since the Student has physical limitations, the Student requested accommodations to enable her to meet the essential eligibility requirements. Once a college or university receives notice that a student is in need of a disability accommodation, the college or university is obligated to engage that student in an interactive process concerning the student's disability, functional limitation(s), and related accommodation needs. As part of the accommodation process, the college or university may request that the student provide reasonable documentation, including medical and other assessments from qualified professionals that clarify the nature of the student's impairment and functional limitations, including how they relate to the essential technical or academic requirements of the program.

In this case, the evidence shows that the College engaged in an extended interactive process with the Student and her legal representatives. The College reviewed and responded to each submitted piece of medical information. The review included input

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<sup>2</sup> Since the College accepted this the Student's impairments condition as a disability, OCR did not make a determination on this issue. Our investigation focused on whether the College unlawfully denied the Student admission to the program and/or failed to provide the Student with academic adjustments or auxiliary aids.

from registered nurses who have knowledge, experience and expertise regarding the skills students need to meet the technical standards of the program. In doing this review the College was entitled to take into consideration the health and safety of other individuals with whom the Student would be working, and the patients for whom she would be caring.

The College concluded that the Student had provided inconsistent and conflicting medical information regarding her ability to meet the technical standards of the program with or without accommodations. Further, as to the practitioners who indicated that there were "no restrictions" on the Student, it is not at all clear that they intended to make an affirmative representation that she was able to perform specific tasks, as opposed to representing that her health did not prevent her from attempting such tasks. The College offered to arrange for an independent medical evaluation but the Student rejected this offer. The College determined that the use of the mediating measures identified by the Student, a cane, walker, or wheelchair, would not enable the Student to perform the essential physical functions required in the clinical setting and, in the clinical psychiatric setting, would create a risk of danger to the Student, patients and other staff. The College also determined that hiring an aide to assist the Student in carrying out the essential functions of a nursing position would substantially alter the Program's academic standards because the Student would be evaluated and certified for work performed by someone else. These were the only accommodations proposed by the Student as enabling her to accomplish the essential functions and technical standards of the Program. The College further offered to defer the Student's enrollment into the program until she could perform essential technical standards of the Program, either with or without reasonable accommodations. This offer, however, was not acceptable to the Student.

Section 504 does not prohibit educational institutions from requiring reasonable physical qualifications for admission to a clinical training program that are related to essential career or licensing requirements; accordingly, a college can, consistent with Section 504, conclude that an individual does not qualify for admission to its nursing program because the individual cannot articulate how, even with reasonable accommodation, he or she would be able to meet the program qualifications. In addition, Section 504 does not impose any requirement upon an educational institution to lower or effect fundamental modifications to its standards in order to accommodate disabled persons, including allowing another person instead of the disabled individual to perform the essential functions required by the program. After a careful review of the evidence collected, OCR concluded that the College made a reasoned and rational decision using an authentic interactive process and appropriate standards, based on a diligent examination of all the available information.

OCR recognizes the difficulty of the challenges that the Student, as a result of her injury, has faced in her efforts to fulfill her career aspirations, as well her determination in seeking to achieve them. However, based on a careful review of all the evidence,

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OCR determined that there was insufficient evidence to establish that the College violated Section 504, Title II and the regulations.

OCR is closing this case as of the date of this letter and concurrently notifying the Student of this closure.

OCR thanks you and your staff for your cooperation during the resolution of this case. If you have any questions, please contact Ms. Cynthia Avila, Equal Opportunity Specialist, at (415) 486-5501, or Ms. Minako Sakurai, Civil Rights Attorney, at (415) 486-5552.

Sincerely,



James M. Wood  
Team Leader



cc: Peter E. Denno