



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
WESTERN DIVISION, SEATTLE OFFICE
November 24, 2010

Dr. Michael Richards, President
College of Southern Nevada
6375 West Charleston. Boulevard
Las Vegas, Nevada 89146

Re: College of Southern Nevada
OCR Reference No. 10092044

Dear Dr. Richards:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the College of Southern Nevada. The complaint alleged that, during the spring 2009 semester, the college failed to provide academic adjustments and auxiliary aids for a student with a disability that would have allowed her to participate in a math class.

OCR investigated the complaint under the authority of section 504 of the Rehabilitation Act of 1973 and title 11 of the Americans with Disabilities Act of 1990 (ADA) and the regulations that implement those statutes at 34 C.F.R. Part 104 and 28 C.F.R. Part 35. These laws prohibit discrimination on the basis of disability in programs and activities that receive financial assistance from the U.S. Department of Education and by public entities. As a recipient of financial assistance from this Department and as a public entity, the college is subject to the requirements of these laws.

The issue OCR investigated was whether, during the Spring 2009 semester, the college violated Section 504 and Title II of the ADA and the regulations, at 34 CFR 104.4 and 104.44 and 28 C.F.R. 35.130(b)(3) and 130(b)(7), by failing to make such modifications to its policies, practices, and procedures as are necessary to ensure that such policies, practices, and procedures do not discriminate against a qualified student with a disability.

As set forth below, the evidence established that the college failed to comply with the requirements of Section 504 and Title II in responding to the student's request for academic accommodations.

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OCR's findings and conclusions are based upon a review of documents provided by the student and the college and upon interviews with the student and college staff members. To address the compliance concerns identified by OCR; the college has agreed to take the remedial actions provided for by the enclosed settlement agreement.

Findings of Fact

1. The student enrolled in Math 120 at the Charleston campus for the winter term, 2009. She met with a DRC disability specialist at that campus on January 21, 2009, presented the DRC specialist with a July 7, 2008 letter from her treating physician, and requested open books and notes during exams for the Math 120 course.
2. According to the student, the DRC specialist told her that she had not adequately documented her disability and that open books and notes would violate the integrity of the class, and denied her request. The student's position is that the DRC specialist told her that the letter did not address the student's learning disability, that she would need to be evaluated by a psychologist to be tested for a learning disability, dismissed the student's attempts to explain the impact of her medical condition on her daily activities, did not discuss any other possible accommodations; told her that she could not help her and said that she needed to see a psychiatrist for retraining of her brain.
3. The student's stated that she informed the DRC specialist that she had additional medical information and asked whether the DRC needed letters from her other treating physicians, but was told that the DRC specialist did not need them. She stated that she asked if she could be provided the requested academic adjustment if she obtained further evaluation and that the DRC specialist told her that she could not.
4. The ORC specialist stated that she denied the student's request because the letter from the student's physician did not meet the college's documentation requirements, as stated in the college's DRC handbook; did not adequately support that the student had a disability; did not provide any testing results such as an MRI or CT scan that would establish to her satisfaction that the student had cervical disc disease; and was from a doctor of osteopathy. - who would not typically conduct cognitive testing. She also stated that she informed the student that allowing the student the requested academic adjustment would violate the integrity of the class.
5. The July 7, 2008, letter from the student's primary treating physician indicated that the purpose of the letter was to describe the student's most significant health problem, its effect on her overall health, and her ability to function in a school environment. The letter stated that the student suffers from cervical disc disease, a

degenerative condition of the neck vertebrae, has a loss of stability of the spine resulting in nerve irritation and calcium deposits around the vertebrae that also irritate the spinal nerves. The letter indicates that despite multiple surgeries the student continues to be in significant pain, is disabled from her previous job, takes narcotic pain medication on a daily basis to manage pain, suffers from poor short term memory as a result of her constant pain affecting her ability to concentrate, and has trouble paying attention all the time because of her level of pain and her medications. The letter recommends that the student be allowed to use books and notes during exams.

6. The college's DRC handbook states that students requesting academic accommodations are responsible for providing documentation of their disability. The handbook states that the purposes of the documentation is 1) to establish that the individual is a person with a disability as defined by the law and eligible for protection; and 2) used by the college to determine what, if any, accommodation must be made in order to assure that the individual has equal access to its programs and services.
7. According to the college's website, during subsequent academic terms the college offered Math 120 as an online course, in which all quizzes and exams were administered at a remote, un-proctored site and with no apparent restrictions on the use of books, notes or other aids.
8. The student withdrew from her math class on January 21, 2009. She stated that she withdrew because the DRC had determined not to provide her with academic adjustments that she believed she needed.

Analysis and Conclusion

The issue OCR investigated was whether, during the Spring 2009 semester, the college violated Section 504 and Title II of the ADA and the regulations, at 34 CFR. 104.4 and 104.44 and 28 C.F.R 35.130(b)(3) and 130(b)(7), by failing to make such modifications to its policies, practices., and procedures as are necessary to ensure that such policies, practices and procedures do not discriminate against a qualified student with a disability.

The Section 504 regulations prohibit discrimination against a qualified disabled person under any program or activity that receives financial assistance from the U.S. Department of Education. 34 CFR 104.4(a).

The Section 504 regulations also prohibit recipients from utilizing criteria or methods of administration (i) that have the effect of subjecting qualified disabled persons to discrimination on the basis of disability, or (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program or activity with respect to disabled persons. 34 CFR 104.4(b)(4).

The regulations require recipients 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 disabled student, and provide that such "[m]odifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted." Academic requirements that the recipient can demonstrate are essential to the instruction being pursued by such student or to any directly related licensing requirement will not be regarded as discriminatory within the meaning of the particular regulations. 34 CFR 104.44(a).¹

Under the ADA Amendments Act of 2008 ("the Act"), effective January 1, 2009, the standards and definitions relevant to OCR's analysis have been clarified, "Major life activities include, but are not limited to, learning, reading, concentrating, thinking, communicating, and working. The Act also provides that the definition of disability is to "be construed in favor of broad coverage of individuals under this Act, to the maximum extent permitted by the terms of this Act", and that the determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects" of certain mitigating measures. Also, the Act indicates that Congress's original intent in enacting the ADA was to provide "' a clear and comprehensive national mandate for the elimination of discrimination' and 'clear, strong, consistent, enforceable standards addressing discrimination' by reinstating a broad scope of protection to be available under the ADA." Congress also sought to set aside "an inappropriately high level limitation necessary to obtain coverage under the ADA, to convey that its intent that the primary object of attention in cases brought under the ADA should be whether entities covered under the ADA have complied with their obligations, and to convey that the question of whether an individual's impairment is a disability under the ADA should not demand extensive analysis." Based on the evidence obtained during its investigation, OCR has determined that the student presented medical information regarding a physical or mental impairment

¹ The Title II regulations, at 28 C.F.R. Part 35, are generally consistent with the Section 504 regulations. See 28 C.F.R. 35.103(a) (requiring that ADA Title II regulations not be construed to apply a lesser standard than the standards applied under an agency's Section 504 regulations).

that affects a major life activity and requested a modification of the college's academic requirements in the form of open book testing for her Math 120 course. OCR determined that the college in responding to the student's request failed to take steps to ensure that the student's disability-related needs were accurately determined and addressed, and that this failure had the effect of subjecting the student to discrimination on the basis of disability, or of defeating or substantially impairing the accomplishment of the objectives of the recipient's program or activity with respect to its responsibility to provide needed auxiliary aids or academic adjustments to qualified disabled students.

The student provided medical information to the college to support her position that she is a student with a disability. Her primary treating physician provided a statement describing the student's medical condition and its effect on certain functions that would affect her ability to learn, think and concentrate.

Testimony from the college's DRC staff indicated concerns that the documentation provided by the student was not sufficient to establish that she was a student with a disability. OCR has determined that the student provided sufficient information to establish that she was entitled to protection under Section 504 and Title II of the ADA and that, once she provided that information, the college had a responsibility to engage in an interactive process to determine what, if any, academic adjustments the student needed.

The evidence established that the college's response to the student's request was to indicate to the student that she had not provided adequate information to demonstrate that she was disabled, that the information she provided did not support the need for the requested modification and that, even if the student is disabled and the information adequately supported the requested modification, the requested modification would constitute a fundamental alteration of the college's program which the college would not be required to provide.

OCR determined that, the process followed by the college in responding to and addressing the student's request for accommodation did not ensure that an accurate, factually supported determination was made regarding whether the student was disabled. College staff did not engage in an effective interactive process to determine the impact that her medical condition would have on her ability to complete certain academic requirements and to determine the type and nature of aids or adjustments that she may need in order to ensure that the requirements would not subject her to disability discrimination. The process followed by the college was inconsistent with the provisions of 34 CFR 104.4(b)(4) and 104.44, because that process failed to ensure that the student, and other similarly situated students, would not be

subjected to discrimination on the basis of disability and would, as a result; effectively defeat or impair the accomplishment of the objectives of the recipient's program.

34 CFR 104.44(a) requires covered entities to make such modifications to academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating on the basis of disability. The evidence established that the DRC personnel informed the student in that the testing procedure's adjustment she requested would "violate the academic integrity of the course". However, college officials did not provide OCR information demonstrating that knowledgeable instructional or department administrators had determined that the requested adjustment of open book testing would violate the academic integrity of the specific course in question.

The college's approach in this regard was inconsistent with the provisions of 34 CFR 104.4(b)(4) and 104.44(a), because that process failed to ensure that the student, and other similarly situated students, would not be subjected to discrimination on the basis of disability and would as a result effectively defeat or impair the accomplishment of the objectives of the recipient's program.

Because the process followed by the college in responding to and addressing the student's request for accommodation did not result in all effective interactive process that would ensure an appropriate exchange of information to support nondiscriminatory decisions regarding the student's needs for auxiliary aids or academic adjustments, as well as a clear determination and articulation regarding her status as a disabled person, the methods utilized were inconsistent with the provisions of 34 CFR 104.4(b)(4) and 104.44; and, 28 CFR 35.130(b)(3) and 130(b)(7). The process followed by the college had the effect of substantially impairing the objectives of the college's program with respect to disabled persons, thus subjecting the student to discrimination on the basis of disability.

Also, because the college did not demonstrate that the requested testing modification would fundamentally alter the essential instruction being pursued by the student but had informed the student that her request would violate the academic integrity of her course of instruction, the college's approach had the effect of substantially impairing the objectives of the college's program with respect to disabled persons, thus subjecting the student to discrimination on the basis of disability under the provisions of 34 CFR 104.4(b) and 104.44(a); and 28 CFR 35.130(b)(3) and 130(b)(7).

This letter is a letter of findings issued by OCR to address an individual OCR case. Letters of findings contain fact-specific investigative findings and dispositions of individual cases. Letters of findings are not formal statements of OCR policy and they 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.

As noted above, the college has agreed to take the remedial actions provided for by the enclosed settlement agreement. OCR will monitor the implementation of the agreement and will close the complaint when OCR determines that the college has satisfied the terms of the agreement and is complying with the referenced regulations with respect to the issues addressed in this complaint. The first report under the agreement is due by March 30, 2011.

The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Thank you and your staff and the university's legal counsel, (b)(7)(C) Esq. for the cooperation extended to OCR during the investigation of this complaint. If you have any questions, please contact Gary Mackenstadt, special projects coordinator, at (206) 607-1624 or by email at gary.mackenstadt@ed.gov.

Sincerely,



Gary D. Jackson
Director
Seattle Office

cc: (b)(7)(C) Esq.

Enclosure: Settlement Agreement

SETTLEMENT AGREEMENT

I INTRODUCTION

The College of Southern Nevada (College) and the U.S. Department of Education, Office for Civil Rights (OCR) enter into this agreement to resolve the compliance issues identified by OCR in its investigation of OCR Reference No. 10092044. conducted under the authority of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and title II of the Americans with Disabilities Act of 1990 (42U.S.C. 12131-12134) and their respective implementing regulations.

II. GENERAL PROVISIONS

- A. This agreement resolves only those compliance issues identified by OCR, in the investigation of OCR Reference No. 10092044 and does not constitute an admission by the College of any violation of Section 504, Title II, or any other law.
- B. This. agreement is effective when signed by the authorized representatives of both parties.
- C. In consideration of the College's full implementation of this agreement, OCR agrees not to initiate enforcement proceedings with respect to the compliance issues identified in the investigation of OCR Reference No. 10092044.
- D. The College understands that OCR will not close the monitoring of this agreement until OCR determines that the college has fulfilled the terms of this agreement and is in compliance with the regulation implementing Section 504, at 34 CFR 104.4, and 104.44, and Title II, at 28 CFR 35.130 which were at issue in this case.

III. REMEDIAL PROVISIONS

- A. Responses to Student Requests for Disability-related services or Adjustments
 - 1. By January 31t 2011, i:he College agrees to take specific steps either through the articulation and implementation of specific staff responsibilities or through the adoption or revision of specific procedures, to ensure that its responses to requests by students for

disability-related program modifications, academic adjustments or auxiliary aids meet the following standards:

- a. Determinations relating to students requests for disability related services or adjustments will adhere to the applicable standards of Section 504 and Title II;
 - b. An interactive process between college staff and students occurs in order to ensure effective communications;
 - c. When requests are not granted by the College specific reasons for such decisions are clearly articulated and documented in writing; and as applicable specifically inform the student regarding any additional information the College needs to further support the student's request;
 - d. Where additional information is requested from a student, the request will be consistent with Section 504 and Title II; and
 - e. The College's responses are promptly communicated to the student;
2. By January 31, 2011, the College agrees to adopt and implement procedures to ensure that responses to requests for academic modifications that are based on the college's interest in maintaining essential requirements of instruction or that relate directly to licensing requirements:
 - a. take into account information provided by instructional or academic staff that are knowledgeable regarding such instructional or licensing requirements; and
 - b. articulate the specific reasons for the determination

B. Staff Notice and Training

1. By March 2, 2011 the College agrees to disseminate information regarding the specific steps taken under section III A, 1 and the procedures adopted and implemented under section III. A 2. to the college staff involved in receiving, acting on, or responding to student requests regarding disability-related modifications, adjustments or services.

2. By March 2, 2011, the College agrees to conduct training of Disability Resources Center staff regarding the ADA Amendments Act of 2008 and the effects of the Act on the college's obligations with regard to students with disabilities.
3. Any dissemination of information or training conducted by the College under Section III, B, 1 and 2 of this agreement may be conducted as part of the college's ongoing 'in-service' training for the overall development and improvement in staff servicing.

C. Individual Remedies

1. By February 15, 2011, the College will provide a letter to the student informing her of the specific steps taken by the College pursuant to sections III. A 1., and the specific procedures adopted and implemented under III.A. 2., above, and inviting her to utilize the process and advising her of its intent to review her request for academic adjustments utilizing those standards;
2. By March 2, 2011, the College agrees to complete its review of the student's original request for academic adjustments, consistent with the standards provided in Sections III.A.1. and 2., above;
3. If the review conducted by the College does not result in a decision to grant the student's original request, in keeping with the standards enumerated in Section III.A. I, the College will meet with the student for the purposes of viewing the alternatives available to the student. including, but not limited to: the provision of additional documentation to support her original request for academic adjustments, other academic adjustments or program modifications that may assist the student in meeting her disability-related needs, and information regarding other options that the student may pursue to complete her degree requirements, such as a course substitution, degree requirement modifications, or on line course enrollment.

IV. REPORTING PROVISIONS

Consistent with the reporting provisions set forth below, the College agrees to cooperate with OCR's monitoring of the implementation of the terms of this agreement by providing requested data and other information in a timely manner. During the monitoring of this agreement, OCR may visit the College, interview staff, and students and request such additional reports or data as are necessary for OCR to determine whether the College has complied with the terms of this agreement and the applicable provisions of Section 504 and Title II.

- A. By March 30 2011, the college will provide a written report to OCR that reflects the specific steps taken pursuant to section III A above; and the specific procedures adopted and implemented under III.A. 2, above
- B. By March 30, 2011, the college will provide a written report to OCR that reflects the specific actions taken pursuant to section III, B, above, including;
 1. A description of the date(s), method(s) of dissemination. and staff recipients of the dissemination of the specific steps taken and the procedures adopted under section III, A 1 and 2; and
 2. 2. A description of the training provided to college staff pursuant to III. B, including the names and credentials of individuals who conducted the training. a copy of any written materials provided by the trainer to the participants in the training. and a roster reflecting the names and positions of college staff that attended the training and the dates of their attendance.
- C. By March 30 2011. the college will provide a written report to OCR that reflects completion of the individual remedies set forth in III, C, above, and. that includes:
 1. 1. A copy of the letter from the college to the student pursuant to section III, C, 1. above;
 2. A description of the review conducted under section III C. 2. of the agreement and a copy of any written decision or explanation communicated to the student;

3. 3. A description of the alternatives made available to the student by the college pursuant to section III. C. 3, above.

Signed:



Dr. Arthur Byrd
Vice-President, Student Affairs
College of Southern Nevada

11/23/10
Date



Gary D. Jackson
Director
OCR Seattle Office

12-11-10
Date

Copy of [unclear]
Signature [unclear]