



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

5 POST OFFICE SQUARE, 8TH FLOOR
BOSTON, MASSACHUSETTS 02109-3921

April 30, 2013

Dr. Martha McLeod, President
Office of the President
Asnuntuck Community College
170 Elm Street
Enfield, Connecticut 06082

Re: Complaint No. 01-10-2084
Asnuntuck Community College

Dear Dr. McLeod:

This letter is to inform you that the U.S. Department of Education, Office for Civil Rights (OCR) has completed its investigation of the above-referenced complaint that was filed on August 26, 2010, against Asnuntuck Community College (College). The Complainant (Student) alleged that the College discriminated against her, on the basis of disability, by failing to provide agreed-upon accommodations in several classes. Following our investigation, OCR identified the compliance concerns that are described in more detail below. The College has agreed to take the steps outlined in the enclosed Voluntary Resolution Agreement (Agreement) to address these concerns.

OCR investigated this complaint according to our jurisdiction under Section 504 of the Rehabilitation Act of 1973 and its implementing regulation at 34 C.F.R. Part 104 (Section 504), as well as Title II of the Americans with Disabilities Act of 1990 and its implementing regulation at 28 C.F.R. Part 35 (Title II). Both Section 504 and Title II prohibit discrimination based on disability. The College is subject to Section 504 because it receives Federal financial assistance from the U.S. Department of Education and it is also subject to Title II because it is a public entity that operates an educational system.

OCR investigated the following legal issue:

Whether the College discriminated against the Student, on the basis of her disabilities, by failing to provide her with appropriate academic adjustments and auxiliary aids and services, so as to afford her an equal opportunity to participate in, and benefit from, the educational programs and activities at the College, in violation of 34 C.F.R. Section 104.44 and 28 C.F.R. Section 35.130.

OCR reviewed documents provided by the Student and interviewed her and her parents on several occasions. OCR also reviewed documents provided by the College at many junctures during the investigation, and interviewed College staff, including the Coordinator (Coordinator) of the Office for Disability Services (ODS); the Dean of Students (Dean); the Department Chair (Chair) for Arts and Sciences at the College; and a number of the Student's professors.

Legal Standards

The Section 504 regulation at 34 C.F.R. Section 104.44 and the Title II regulation at 28 C.F.R. Section 35.130 have been interpreted to require recipients to provide academic adjustments (reasonable accommodations) to qualified college students with disabilities who request them and provide appropriate documentation in support of their request. To be entitled to academic adjustments/accommodations, a postsecondary student with a disability must provide adequate notice that the accommodations are needed, by informing the postsecondary institution of his or her disability and identifying needed accommodations. In addition, the postsecondary institution may make reasonable requests that the student provide the results of medical, psychological or education diagnostic tests and professional prescriptions that support the existence of a disability and the need for the requested supports. The institution must also provide fair notice to a student of any deficiencies that the institution has found in the documentation, in order to give the student a chance to cure them.

Once a student has notified a postsecondary institution of the need for reasonable accommodations, the institution has an obligation to engage the student in an interactive process to determine the appropriate accommodations to be provided. The institution should do so in consultation with the student; additionally, although institutions have flexibility in choosing the specific accommodations they will provide, they must nonetheless ensure that the accommodation selected is effective.

Beyond engaging in the initial process of establishing the appropriate accommodations, the postsecondary institution is obligated to ensure that these accommodations are made available and to respond to problems that arise after the initial accommodations process. Similarly, the student must remain engaged in an interactive process with the institution beyond the initial stage of determining what accommodations are appropriate. If the academic adjustments/accommodations are not provided, or are not effective in meeting the student's needs, the student should notify the institution as soon as possible. The student and the institution should work together to resolve the problem, including by, as appropriate, modifying the accommodations or identifying other effective accommodations to be provided.

In disputes over the need for specific academic adjustments/accommodations, OCR considers whether the institution's process for addressing such circumstances complies with the requirements of Section 504/Title II. In particular, OCR examines whether the institution took reasonable steps to obtain a professional determination of whether the requested accommodation is necessary for the student to effectively participate in the recipient's program, and whether the institution offered an effective alternative for the accommodation it refused.

Findings of Fact/Analysis

The College's procedure for obtaining accommodations due to disability required students to submit documentation of their disabilities, and needed accommodations, to the Coordinator, who would then determine the appropriate accommodations. The Coordinator then would develop a sheet of agreed-upon accommodations (Accommodations Sheet) for each semester, which students had to take to each professor, for their signature.

The Student enrolled at the College in the fall of 2008. She requested accommodations for her disabilities, which included a hearing impairment and phonological dyslexia, and provided the College with documentation of both of these disabilities, including audiological assessments, achievement reports and language assessments.

Based on the above documentation, the Coordinator developed an Accommodations Sheet, which included:

- Extended time on tests and quizzes;
- Extended time on out of class written assignments...;
- Quiet area for tests and quizzes;
- Alternative test(s) such as take home; oral or supplementary assignments, research paper; student [to] discuss options with each professor;
- FM Unit...in all teaching and group situations;
- Close captions for films; [and]
- Handouts and visuals prior to class (use of Kurzweil to support auditory, language, sequencing processes).

The Student also alleged that in order to address her language disability (phonological dyslexia), the College initially agreed to, and did provide, the accommodation of a human reader for tests in language-based classes, but then took away this accommodation during the Spring 2010 and subsequent semesters. Documents provided by the College and Student, as well as OCR's interviews with staff and the Student, confirmed that, prior to the Spring 2010, the Student had exams read for her in other classes, such as Psychology I, Intermediate Algebra and Principals of Sociology. Finally, OCR confirmed that when the Student sought a reader for courses during the Spring 2010, the College refused to provide it.

The College asserted, to the Student and to OCR, that it did not agree to provide this accommodation and that the Student's documentation of her disability and requested accommodations did not support a need for a human reader. The College did acknowledge that it had provided a person to read and clarify test questions for the Student. According to the College, the reader was limited to one class during the Fall 2009 semester and was provided because the professor for that class had a strong foreign accent which the Complainant had difficulty understanding due to her hearing impairment. OCR found that, for that class, the Student took her exams in the Academic Skills Center (ASC) with an ASC staff member reading and clarifying exams as needed.

As a result, from the Spring 2010 semester on, whether the Student was entitled to a reader during exams to address her dyslexia became an ongoing dispute during the rest of the Student's time at the College. As described below, OCR found that once the College discontinued the reader, it did not otherwise accommodate the Student's language disability for in-class exams.

Spring 2010

The Student alleged that many of her accommodations were not provided in the Spring 2010 Sociology class (Self & Others) and that although she notified ODS of the omissions, ODS did not resolve the problems. From interviewing the Student and College staff, and reviewing relevant documents, OCR found that during that class, the Student was not provided with closed captioning, nor an effective alternative, for three out of five films shown in the class. Additionally, from correspondence between the Student and Professor, which was provided by both the Student and College, the Professor struggled with using the FM unit, so that the Student experienced many classes without the unit being used (or, again, having an effective alternative put in place). Also From the correspondence and OCR interviews with College staff, OCR also found that the Sociology Professor failed to provide extended time for at least one test, even though the Accommodations sheet clearly required it.

The Student further alleged that this was the first course in which the College refused to provide her a reader. OCR confirmed this, and also found that College did not provide an effective alternative

accommodation for her language disability during in-class exams. This failure to provide appropriate accommodations denied the Student the ability to benefit from the class due to her disabilities.

Fall 2010

As specified in her Accommodations sheet above, the Student was to receive alternatives to class tests - such as take home exams, oral or supplementary assignments, or [substitute] research papers. As also indicated by the Accommodations sheet, the Student was directed to discuss the appropriate test options for each class with the assigned professor.

As a general matter, OCR found that this testing accommodation was so general that it did not effectively inform professors, or the Student, as to what accommodations were actually required. As a result, the Student, and each of her professors, were put in the position of negotiating the testing accommodations that each individual professor was willing to provide. OCR found that when the Student raised concerns to ODS about difficulties that she was having with obtaining testing accommodations (as she did at various junctures during her Fall 2010 Biology class), ODS did not step in to more clearly define or facilitate the provision of necessary accommodations. Instead, the Student was told to “self-advocate with her professors” and develop strong relationships with them so that she and her professors could determine what would work for each class. Although involving both the Student and Professors in identifying appropriate testing alternatives may be an appropriate step, the effect in this case was to improperly put professors in the role of determining which accommodations would and would not be provided, without a proper assessment or involvement from a disability professional, or intervention by ODS when the Student and a Professor disputed the type of accommodation that was appropriate.

OCR found that, in the fall of 2010 and during other semesters, some professors responded when the Student voiced concerns about testing options, and ultimately provided her with alternative test formats, including take-home assignments in lieu of timed exams. Yet in the Student’s Biology class, she and the professor were left to negotiate throughout the entire term as to the form of her exam. Rather than consulting with ODS for clarification, the professor spoke to the Department Chair, who then determined what testing accommodations would be provided (with only the professor’s input). As a result of this process, OCR found that in Biology the College did not provide the Student consistent, effective testing accommodations to address her language disability.

OCR found that the lack of language accommodations, as well as the constant shift in testing approaches, affected her progress and impeded her ability to benefit from those classes.

Spring 2011

In February of 2011, OCR discussed its initial compliance concerns with the College, and began negotiating with the College the necessary steps that the College needed to take to address OCR’s compliance concerns. At that time, the College also re-reviewed the Student’s disability needs and sought to ensure that she was being properly accommodated in the current, Spring 2011 semester. As OCR explained to the College, the Student had already reported that she was not receiving necessary accommodations in the two Spring 2011 classes – Micro-Biology (MB) and Anatomy & Physiology (AP). OCR, therefore, collected additional data from both the Student and the College to assess whether the Student received proper accommodations during that semester.

Based on the evidence OCR obtained, the difficulties the Student experienced in obtaining necessary supports in the MB and AP classes were similar to those described above, and centered on the College’s failure to develop a common understanding among staff (and the Student) as to the accommodations she

would receive, as well the ongoing disagreement as to whether the Student would be afforded a personal reader during exams.

As noted above, the Student's disability documentation identified that she has a language processing deficit, specifically phonological dyslexia, which required some auditory accommodation during testing. The College re-confirmed that need at the beginning of the Spring 2011 semester when it sent the Student's documentation to an expert in hearing and language disabilities, who reported that the Student required auditory presentation of testing materials. The specialist did not conclude that a human reader was necessary, but reported that testing should be provided through the Kurzweil (reading) software and that the Student also should have access to her Professors during exams for purposes of clarifying directions.

Nonetheless, as of March 2011 and over six weeks into the Spring 2011 semester, the College still had not resolved, or conveyed to faculty, the method by which the Student would receive reading support for her examinations. The evidence obtained by OCR indicated that Student had routinely requested a human reader during her exams, beginning as early as the fall of 2009, and that the several professors afforded her a reader during exams and subsequent semesters. Although the College stopped providing the Student a reader altogether, as of middle of the Spring 2010 semester, it did not provide an effective alternative during tests and exams in classes where one was needed, including MB and AP in the Spring of 2011. The College asserted to OCR that it would have made Kurzweil available to the Student during the Spring 2011 semester – consistent with the direction provided by the hearing and language expert in March 2011 – but that the Student had made clear that she did not want, and would not avail herself of, Kurzweil. The Student disagreed, and OCR did not obtain any evidence to support the College's contention. Rather, OCR concluded that the College did not provide the Student Kurzweil, or any other effective alternative (to the reader), during her exams in MB and AP.

Additionally, OCR found that the accommodations developed by the College required the Student to choose between obtaining clarification of directions from the professors (a need that was established in your initial documentation to ODS and confirmed by the specialist's March 2011 report), or taking quizzes, exams and practicums in a quiet area (as stated in her Accommodations sheet). The Student's need for both accommodations was documented, and she should not have had to choose between them. Thus, the failure to provide testing accommodations in MB and AP denied the Student the ability to fully benefit from these two classes.

Conclusion and Resolution

Based on the foregoing, OCR found that the College did not fully accommodate the Student in many of her courses, as identified above and as required under Section 504 and Title II.

In order to address OCR's compliance concerns, OCR negotiated a resolution with the College, through which the College agreed to further revise its Policies and Procedures for accommodating students with disabilities, train staff on the revised Policies and Procedures, and compensate the Student for classes in which the Student was not properly accommodated. OCR will monitor the College's fulfillment of each of the responsive steps specified in 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 note that the complainant may file a private suit in federal court, whether or not OCR finds a violation.

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 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.

If you have any questions regarding this letter, please contact Meighan McCrea, Civil Rights Attorney, at (617) 289-0052 or Meighan.McCrea@ed.gov. You may also contact me at (617) 289-0111. Please refer to the complaint number in any contact with OCR.

Sincerely,

/s/

Thomas J. Hibino
Regional Director

Enclosure