



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

50 BEALE ST., SUITE 7200
SAN FRANCISCO, CA 94105

REGION IX
CALIFORNIA

August 16, 2013

Nabil Abu-Ghazaleh
President
West Los Angeles College
9000 Overland Avenue
Culver City, California 90230

(In reply, please refer to case no. 09-13-2082.)

Dear President Abu-Ghazaleh:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against West Los Angeles College (College). OCR investigated whether the Student¹ was discriminated against on the basis of disability when the College failed to allow the Student the full assistance of his personal assistant as an accommodation during classes so the Student could participate in the education program in a nondiscriminatory manner.

OCR investigated this complaint under the authority of Section 504 of the Rehabilitation Act of 1973 and Title II of the American with Disabilities Act of 1990. 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 over complaints alleging discrimination on the basis of disability by certain public entities. The College receives Department funds, is a public education institution, and is subject to the requirements of title VI, Section 504, Title II and their regulations.

OCR gathered information through interviews with the Student, his parent and College staff, and by reviewing documents provided by the parties. OCR found that although the College allowed the personal assistant to accompany the Student in his classes, it imposed broad categorical restrictions on the functions that the assistant could carry out, without engaging in an interactive process with the Student concerning his individual disability-related needs. This approach was inconsistent with the requirements of Section 504 and Title II. The College, without admitting to any violation

¹ OCR notified the College of the identity of the Student in a letter dated February 1, 2013. OCR is withholding the Student's name from this letter to protect his privacy.

of law, voluntarily agreed to the attached resolution agreement which, when implemented, will address the identified areas of non-compliance. The applicable legal standards, the facts gathered during the investigation, and the reasons for OCR's determination are summarized below.

The Section 504 regulations, at 34 C.F.R. §104.43(a), provide that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any postsecondary education program of a recipient. The Title II regulations, at 28 C.F.R. §35.130(a), contain a similar prohibition applicable to public postsecondary educational institutions. The regulations define an individual with a disability as one who (1) has a mental or physical impairment that substantially limits one or more major life activities, (2) has a record of such an impairment, or (3) is regarded as having such an impairment. Major life activities include but are not limited to caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

Under the Section 504 regulation, 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. 34 C.F.R. §104.3(l)(3). Similarly, 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.

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, 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.

Section 104.44(d)(1) of the regulations requires recipient colleges and universities to take steps to ensure that no 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 attendants², individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

Additionally, the Section 504 regulations, at 34 C.F.R. §104.44(b), prohibit recipient colleges and universities from adopting rules that have the effect of limiting participation in college and university programs on the basis of disability.

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. 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 and auxiliary aids to the same extent as is required under the Section 504 regulations.

In addition, the Title II regulations, at 28 C.F.R. §35.160(a), require a public college or university to take appropriate steps to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others. The regulations at 28 C.F.R. §35.160(b)(1) further requires a public college or university to furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity. In determining what type of auxiliary aid and service is necessary, 28 C.F.R. §35.160(b)(2) requires that the college or university give primary consideration to the requests of the individual with disabilities.

OCR's investigation showed the following:

² The Student in this case provided his own assistant and did not ask the College to provide one.

- The Student enrolled at the College in the fall semester of the 2012-2013 academic year. He provided the College with a letter, dated July 24, 2012, from one of California's Regional Centers³ stating that had been diagnosed with autism spectrum disorder. The Student registered with the College's Disabled Student Programs and Services (DSPS) shortly after registering for fall courses in August of 2012.
- On November 8, 2012, the Student sent the College a letter stating that he had a disability which affected his "communication, ability to process oral information, orientation and memory." He requested that he be able to use the services of an assistant as a reasonable accommodation; he stated that the assistant would be funded by an outside entity (the Regional Center) and would allow him to fully participate in the two classes for which he had registered. He specified in his letter that, due to his disability, he needed reminders and cues to follow along in class, as well as help with processing information, and that an assistant would be able to assist him with his communication. The letter was forwarded to the College's DSPS.
- The Dean of Support Services (Dean) at the College informed OCR that the College did not have policies in place to address student requests for the use of personal assistants. After receiving the Student's request, the College developed a "Personal Care Attendant" (PCA) Policy and a PCA Request and Agreement form in December 2012.
- The PCA Policy states, in part, that an assistant's participation in class "is limited to assisting the student's accessibility needs (e.g., turning pages, getting out supplies, taking off coat, etc.)." The Policy also states that an assistant is not to "engage in instructional activities, provide academic support, or in any way influence the student's learning during class time."
- The PCA Request and Agreement form states, in part, that an assistant is to:
 - Limit assistance to performing necessary personal care functions which are approved by DSPS. Examples of such functions include turning pages, retrieving books and class supplies, removing a coat, etc.
 - Refrain from engaging in the learning process and performing instructional support functions such as taking notes, asking questions on behalf of the

³ Regional Centers are agencies that provide support and services to individuals with disabilities.

student, prompting the student to pay attention, addressing behavioral problems, or providing instructional help, and

- Refrain from communicating with faculty, staff or others on behalf of the student.
- The PCA Agreement also requires all assistants to stipulate that they understand that “[s/he is] not to provide any type of instruction, tutoring, behavioral coaching, or any type of intervention during class instruction/activities/field trips. [S/he] understand[s] that failure to abide by College policies, regulations, and the terms of this agreement may result in [his/her] removal from the classroom and the campus.”
- At the beginning of the spring 2013 semester, the Student enrolled in two courses: XXX XXX XXXXXXXXXXXX.
- The Dean met with the Student’s parent on January 23, 2013 to discuss the request for permission to use the assistant. The Dean told OCR that he described the College’s concerns as to the kind of work that an assistant could do in the classroom. He informed OCR that he had told the parent that the assistant could help the Student take things out of his backpack but could not prompt him to pay attention or otherwise “interfere” with instruction.
- The parent told OCR that the Student had trouble staying focused and on task, and also had difficulty communicating with the teacher. She stated that the issue of concern was that, under the PCA Agreement, the assistant could not prompt the Student or assist with anything that was considered behavioral in nature. For example, tapping the Student on the shoulder as an attention cue would be prohibited. The parent also told OCR that the Student had dropped his XXXXXXXXXXXX class in part due to concerns regarding the PCA policy. The parent added that the College had never requested any medical documentation from the Student concerning the Student’s need for the assistant or the functions the assistant would serve, prior to adopting the PCA Policy.
- The Student and his PCA were provided with a copy of the PCA Policy and PCA Request and Agreement, which they signed on February 5, 2013. On the same day, DSPS authorized double time for testing and a PCA in the classroom as accommodations for the Student, subject to the restrictions in the PCA Policy and Agreement.

- The Dean told OCR that the Student's instructor had complained to the Department Chair that the Student's assistant was helping him in class by using scissors. According to the Dean, using scissors was an "actual class activity" and the assistant's actions constituted engagement and participation in an instructional activity. The Dean added that if students needed to be prompted to pay attention, such prompting could be disruptive to instruction. The College provided no evidence that the assistant had in fact disrupted the class in any way.

Analysis

As stated above, the Section 504 and Title II regulations require 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, against qualified students with disabilities. In addition, colleges and universities must take steps to ensure that no qualified disabled student is denied the benefits of, excluded from participation in, or otherwise subjected to, discrimination in a postsecondary education program because of the absence of educational auxiliary aids. Further, colleges and universities may not adopt rules that have the effect of limiting a disabled student's participation in the education program. In addition, the Title II regulations require a public college or university to take appropriate steps to ensure that communications with disabled students are as effective as communications with others.

Under the requirements of Section 504 and Title II, a postsecondary student with a disability who is seeking an accommodation is responsible for notifying the college or university of the nature of the disability and the need for a modification, academic adjustment, or auxiliary aid or service. Once a college or university receives such notice it has an obligation to engage the student in an interactive process concerning the student's disability, functional limitation(s) and related accommodation needs. As part of this process, the college or university may request that the student provide reasonable documentation, such as portions of medical, psychological or educational assessments that pertain to the nature of the impairment and functional limitations. It may also obtain its own professional determination of whether specific requested accommodations are necessary.

Colleges and universities are not required to provide or permit accommodations that would result in a fundamental alteration of the program or create an undue burden on the institution. However, whether or not a particular accommodation would fundamentally alter the program in question must be made on a case-by-case basis through examination of the facts and circumstances of the individual situation. College officials also should be aware under Title II, that in determining what types of auxiliary

aids and services are necessary, the institution must give primary consideration to the requests of individuals with disabilities.

Although the Section 504/Title II regulations do not require colleges to provide personal care attendants, colleges cannot prohibit a student from providing his or her own assistant as an accommodation unless the college can show, based on the individual facts of the case and analysis by individuals with appropriate knowledge and expertise about the disability, that use of the assistant would be a fundamental alteration of the program or that the student is not otherwise qualified to be a student in the class.

In this case, the Student notified the College that, as an accommodation for his disability, autism spectrum disorder, he needed the services of an assistant in the classroom. The Student did not ask the College to provide the assistant but only to allow an assistant funded through another source to accompany him in his classes. In response, although the College allowed the assistant, it adopted a policy that imposed broad categorical restrictions on the functions that the Student's assistant, and all assistants, could carry out. The College took this action without engaging in an interactive process with the Student to discuss his individual disability-related need for the assistant, to request or review diagnostic or assessment documentation from appropriate professionals, or to examine the nature and effect of the specific functions that the assistant would seek to perform.

The restrictions imposed by the PCA Policy suggest that the College believed an assistant would only be permissible to assist students with limitations created by physical impairments. The College indicated to OCR that the assistant for the Student in this case would alter the instructional process or be disruptive, but it did not make either of these determinations based on any collection and review of factual or assessment information. It arbitrarily prohibited all "instructional support functions such as taking notes, asking questions on behalf of the student, prompting the student to pay attention, addressing behavioral problems, or providing instructional help." While it is possible that certain of these activities by an assistant could fundamentally alter the nature of the educational process, the College did not have any facts, other than an instructor's objection concerning a single example regarding the use of scissors, to indicate that this was true in the Student's case. The College cannot assume, based on little or no information about an individual student's situation, that an in-class assistant who would, for example, redirect a student who has attention problems, would either be disruptive or would automatically compromise the academic process.

Upon receipt of the Student's request, the College was obligated to permit the use of the assistant unless, through an interactive process examining the specific facts and circumstances, it determined that the assistant's services would result in a fundamental

alteration or undue burden, or that the student was not otherwise qualified to be enrolled in the classes. The College did not engage in such an individualized process; therefore, OCR concludes that the College was not in compliance with Section 504 and Title II and their regulations with regard to this case.⁴

To address OCR's compliance concerns, the College, without admitting to any violation of law, entered into the enclosed resolution agreement which is aligned with the complaint allegation and the information obtained by OCR during its investigation. Under the agreement, the College will: (1) modify its Personal Attendant Policy to state that the College will engage in the interactive process and make an individualized determination as to whether a personal assistant will be permitted for a requesting student, and (2) provide written guidance to College instructors regarding the College's accommodation process. OCR will monitor the agreement. OCR is notifying the complainant of its decision by concurrent 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. The complainant may have the right to 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 records upon request. In the event that OCR receives such a request, we will seek to protect, to the extent provided by law, personal information which, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

⁴ OCR makes no determination as to whether or not the use of the assistant in this case would or would not constitute a fundamental alteration or an undue burden.

OCR wishes to thank the College, particularly Dr. Shalomon Duke, for its assistance during this investigation. If you have any questions about this letter, please contact OCR Attorneys Anamaria Loya at (415) 486-5404 or Shilpa Ram at (415) 486-5565.

Sincerely,

/s/

Zachary Pelchat
Team Leader

Enclosure

cc: Dr. Shalomon Duke, Dean of Student Services