

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

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NEW JERSEY
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August 29, 2014

Dr. William W. Destler
President
Rochester Institute of Technology
7000 Eastman Hall
Rochester, New York 14623-5603

Re: Case No. 02-14-2077
Rochester Institute of Technology

Dear President Destler:

This letter is to notify you of the determination made by the U.S. Department of Education, New York Office for Civil Rights (OCR) with respect to the above-referenced complaint filed against the Rochester Institute of Technology (The Institute). The complainant alleged that the Institute discriminated against her, on the basis of her disability, by failing to provide her with appropriate auxiliary aids and services for her XXXXX XXXXX course (Course 1) from XXXXXXXXXXXX, XXX X, 2014 to XXXXX X, 2014; and XXXXXXXX XXXXXXXX XXXXXXXX XXXXXXXX course (Course 2) from XXXXXXXX XX, 2014 to XXXXXXXX XX, 2014 (Allegation 1); and denying her an equal opportunity to participate in a field trip in Course 2 held on XXXXX XX, 2014 (Allegation 2).

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities receiving financial assistance from the U.S. Department of Education (the Department). The Institute is a recipient of financial assistance from the Department. Therefore, OCR has jurisdictional authority to investigate this complaint under Section 504.

In its investigation, OCR interviewed the complainant and Institute staff and reviewed information the complainant and the Institute submitted.

The regulation implementing Section 504, at 34 C.F.R. § 104.44, requires recipients to modify academic requirements when necessary to ensure that the requirements are not discriminatory on the basis of disability, and to take steps to ensure that no qualified individual with a disability is

subjected to discrimination because of the absence of educational auxiliary aids. At the postsecondary level, it is the student's responsibility to disclose a disabling condition and to request academic adjustments or auxiliary aids. In reviewing allegations regarding the provision of academic adjustments or auxiliary aids, OCR considers whether: (1) the student provided adequate notice to the recipient that the academic adjustments or auxiliary aids were required; (2) the academic adjustments or auxiliary aids were necessary; (3) the appropriate academic adjustments or auxiliary aids were provided; and (4) the academic adjustments or auxiliary aids were of adequate quality and effectiveness.¹

The complainant alleged that the Institute discriminated against her, on the basis of her disability, by failing to provide her with auxiliary aids and services (i.e., XXX XXX XXX (XXX)) for Course 1 from XXXXXXXX XX, 2014 to XXXXXX X, 2014; and Course 2 from XXXXXXXX XX, 2014 to XXXXXXXXXXXX XX, 2014 (Allegation 1); and denying her an equal opportunity to participate in a field trip in Course 2 on XXXXXX XX, 2014 (Allegation 2). The complainant stated that she is profoundly deaf and that the most effective means of communication for her is through the use of XXX.

OCR determined that the complainant enrolled in a XXXXX XXX XXXXX program in XXXXX XXXXX XXXXX at the Institute beginning in the spring 2014 semester.² On XXXXX XX, 2014, seven weeks prior to the start of classes for the spring 2014 semester, the complainant identified herself as a student with a disability to the Institute's XXXXX XX XXXXX XXXXX in the Office of Disability Services (the Coordinator). The complainant requested that the Institute provide her with XXX as an auxiliary aid and service in Course 1 and Course 2.

OCR determined that the Coordinator referred the complainant's request to the Institute's XXXXX XXXXX XXX XXXXX XXXXX XXX XXXXX XXXXX XX XXX XXXXX XXXXX XXXXX (Dean). The Dean considered the complainant's request and explored the viability of providing alternative auxiliary aids, in lieu of XXX, including C-print and sign language interpreting services. By electronic mail (email) dated January 9, 2014, the Dean informed the complainant that the Institute believed C-print would provide the complainant with effective access to communication in her XXXXXXXXXXXX studies classes. In an email response to the Dean, dated January 9, 2014, the complainant asserted that C-print would not sufficiently provide access to communication because XXXXXXXXXXXX classes are often heavily interactive, and C-print is limited to a one-way communication from the professor to the class; and the complainant is not able to verbally communicate effectively using C-print.³ The complainant

¹ The regulation implementing Section 504, at 34 C.F.R. § 104.44 (d), provides that "auxiliary aids may include taped texts, interpreters or other effective methods of making orally delivered materials available to students with hearing impairments."

² OCR determined that the complainant previously was known to the Institute as a student with a profound hearing loss who needed XXX services when she was enrolled at the Institute as an XXXXXXXXXXXXXXXX from in or around 2002 through 2004.

³ The complainant stated, "By the time I am ready to send a comment in the comment box, the class has often already moved on to the next topic or someone else has already given a comment similar to mine. ... With XXX XXXXX XXXXX (XXX or XXX), I am able to gain full access in the classroom especially with regard to full classroom and small group discussions as well as presentations that I give. ... In my case XXX [XXXX] are my voice and crutch."

also noted to the Dean that she relied heavily on XXX while she was an XXXXXXXXXXXXXXXX. On January 21, 2014, the Dean notified the XXXXX XXX XXXXX XXX XX XXXXX XXXXX XX XXX XX XXX XXXXX XXXXX (XXXXXX XXXXX Director) that she had approved the complainant's request for XXX services for the spring 2014 semester.

OCR determined that Course 1 convened XXX XXX XXXXX for XXX hours on XXXXX; the first day of class was January XX, 2014. The Institute acknowledged that it did not provide the complainant with XXX in Course 1 for the first five class sessions, which were held on XXXXX XX, XXXXX XX, XXXXX XX, XXXXX XX, and XXXXX XX, XXXX. Rather, Institute staff and documentation the Institute furnished to OCR indicated that during that period, the Institute provided the complainant with C-print services and/or student interpreters, who had minimal experience or no training in XXX.

OCR determined that Course 2 convened XXXXX XXX XXXXX for XXX hours on XXXXX; the first day of class was January XX, 2014. The Institute acknowledged that it did not provide the complainant with XXX in Course 2 for the first four class sessions, which were held on XXXXX XX, XXXXX XX, XXXXX XX and XXXXX XX,XXXX. Rather, Institute staff and documentation the Institute furnished to OCR indicated that during that period, the Institute provided the complainant with student interpreters on XXXXX XX, and XXXXX XX, 2014. However, the Institute acknowledged that the student interpreters were not adequately trained to provide XXX services. The complainant informed OCR that from XXXXX XX, 2014 until the end of the spring 2014 semester, an Institute-contracted provider, Interpretex (the contractor), provided the complainant with XXX in Course 1 and Course 2. The complainant stated that she received "XX" grades in Course 1 and Course 2 for the spring 2014 semester.

On August 29, 2014, the Institute voluntarily entered into the attached resolution agreement to resolve the complaint, in accordance with Section 302 of OCR's Case Processing Manual. OCR will monitor implementation of the resolution agreement. If the Institute fails to comply with the terms of the resolution agreement, OCR will resume its investigation.

With respect to Allegation 2, the complainant alleged that the Institute discriminated against her, on the basis of her disability, by denying her an opportunity to participate in a field trip in Course 2 held on XXXXX XX, 2014, on an equal basis with students who are not disabled. The complainant asserted that she requested XXX for the field trip; however, because the Institute did not provide XXX, she could not attend the trip. The complainant stated that although the field trip was an optional portion of Course 2, it would have been "an important part of her experience in the course."

OCR determined that the Course 2 field trip on XXXXX XX, 2014 was to observe a retreat at the XXXXXXXXXXXX XX XXXXXXXXXXX XXXXXXXXXXX XXXXXXX. One week prior to the trip, the complainant informed Course 2's professor that she wished to attend. On XXXXX, 2014, the complainant requested XXX for the trip via the College's on-line "My Access" website. That same day, the complainant also sent an email to the XXXXXXXXXXX XX XXXXXXXXXXX XXXXXXXXXXX to confirm that XXX had been scheduled for the trip; and stated that for this trip, the Institute could use student interpreters, as "voicing" would not be required because she was simply observing a retreat. On or about XXXXX XX, 2014, the My Access website indicated that the Institute "plan[ned] to provide the service." However, on or about XXXXX XX, 2014,

the XXXXXXXX XX XXXXXXXXXXX XXXXXXXX Informed the complainant that he could not find XX XXX for the trip. On the evening before the trip, the complainant informed the Course 2 professor that she would not be able to attend the trip because she would derive no benefit without XXXXXXXX services.

The regulation implementing Section 504, at 34 C.F.R. § 104.43(a), provides that no qualified person with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any postsecondary education program, activity or service, including extracurricular activities.

OCR determined that the Institute's general policy is to provide academic adjustments or auxiliary aids or services for field trips if the field trip is related to the course being taken.⁴ OCR also determined that the complainant requested XXX for the field trip in accordance with the Institute's process for requesting auxiliary aids and services.⁵ The XXXXXXXX XX XXXXXXXXXXX XXXXXXXX informed OCR that the complainant's request was handled through the Institute's Access Services Data System (ASDS) and was referred to the contractor, which was unable to fulfill the complainant's request for XXX on the trip. The XXXXXXXX XX XXXXXXXXXXX XXXXXXXX informed OCR that he (leave in) was not able to locate an alternate provider, despite his efforts to reach out to local and providers as far as New York City, and attributed the difficulty in obtaining a provider to the "short notice," i.e. less than two weeks, the Institute had to find XXX for the field trip. The Institute informed OCR that although it attempted to provide XXX to the complainant in connection with the field trip held on XXXXX XX, 2014, it was not successful in obtaining the services from the contractor or an alternate source. However, as stated above, the complainant received a grade of "XX" in Course 2 for the spring 2014 semester.

As set forth above, on August 29, 2014, the Institute voluntarily entered into the attached resolution agreement to resolve the complaint, in accordance with Section 302 of OCR's Case Processing Manual. OCR will monitor implementation of the resolution agreement. If the Institute fails to comply with the terms of the resolution agreement, OCR will resume its investigation.

This concludes OCR's investigation of the complaint and should not be interpreted to address the Institute'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. The complainant may file a private suit in federal court whether or not OCR finds a violation.

⁴ According to the Institute's published policy, the Department of XXXXXXXX XX XXXXXXXXXXX XXXXXXXX provides interpreting services in the classroom and non-academic activities such as athletic events, religious services, student government meetings, guest presentations and other student life activities.

⁵ OCR determined that the Institute considered a request for auxiliary aids/services for a field trip as a special request on "My Access," for which the requestor could provide additional information concerning his/her needs in connection with the request at the time the request is made.

Please be advised that the Institute 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, it 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 OCR's determination, please contact Michele Ginter-Barbara, Compliance Team Investigator, at (646) 428-3816 or michele.ginter-barbara@ed.gov; or, Jane Tobey Momo, Senior Compliance Team Attorney, at (646) 428-3763 or jane.momo@ed.gov; or, Nadja Allen Gill, Compliance Team Leader, at (646) 428-3801 or nadja.r.allen.gill@ed.gov.

Sincerely,

/s

Timothy C.J. Blanchard

Encl.