



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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February 25, 2016

Ms. Vicky Dewsnup
President
4021 South 700 East, Suite 400
Salt Lake City, Utah 84107

Re: Stevens-Henager College
Case Number: 08-15-2203

Dear President Dewsnup:

On May 19, 2015, the United States Department of Education's Office for Civil Rights received a complaint filed against Steven-Henager College (College). The Complainant alleges that the College discriminated against her (Student) based on her disability. Specifically, the Complainant states the College failed to implement her approved academic adjustment for extended time on assignments.

We investigated this complaint pursuant to Section 504 of the Rehabilitation Act of 1973 and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department; and Title II of the Americans with Disabilities Act of 1990 and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. Individuals filing a complaint, participating in an investigation, or asserting a right under Section 504 and Title II are protected from intimidation or retaliation by Federal law. As a recipient of Federal financial assistance from the Department and a public entity, the College is subject to these laws and regulations. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

During our investigation we reviewed documentation provided by the Complainant and the College and interviewed the Complainant and a College representative. Our investigation found sufficient evidence to establish that the College discriminated against the Student as alleged. The following is a summary of our investigation.

Legal Standard

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 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.

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

Background

The Complainant identified herself as an individual with a disability. The Complainant suffers from XXXX. The Complainant began at the College on XXXX. The Complainant requested, then received, notification that she would receive academic adjustments from the College on XXXX. The approved academic adjustment for the Complainant was extra time on assignments and tests. The Complaint withdrew from the College on XXXX.

Facts

The Complainant began Introduction to Sociology, XXXX (Course), a four week course, on XXXX. Instruction for the course ended on XXXX. The College states that on XXXX, the College's disability services coordinator e-mailed the instructor of the Course reminding her that the Complainant had been approved for the academic adjustments for extra time on assignments and tests with no late penalties.

The final assignment for the Course was due for all students on XXXX. On XXXX, the instructor received an e-mail from the Complainant regarding concerns that the "Smarthinking"¹ program was taking too long to review her final assignment. The Instructor informed the Complainant not to worry and that she was doing fine on her papers for the Course. The

¹ Smarthinking is a live, online program offered for students to use at the College. Smarthinking provides students with tutoring services, in writing, reading, mathematics, English, foreign language, and multiple other subjects. In this course, Smarthinking served as a grammar and writing check for student assignments before they were submitted for grading.

Instructor further informed the Complainant that if she still had not received edits from Smarthinking, she should turn the assignment in on Saturday, XXXX, and the Instructor would make a note in her gradebook.

The College stated that on XXXX, the disability services coordinator e-mailed the Instructor again reminding her that the Complainant had academic adjustments of extended time on assignments and tests. This reminder came in response to the Complainant communicating to disability services that she had concerns about the provision of her academic adjustments for the final assignment in the Course. The Complainant did not identify any other concerns with respect to the provision of her academic adjustments.

The College stated the Complainant turned in her assignment on XXXX receiving 178 of a possible 180 points and earned a final grade point average of 95.5% for the Course.

Legal Analysis and Conclusion

The College approved the Complainant's request for academic adjustments by granting her extended time on exams and assignments. The facts in this case, however, show that the Complainant's academic adjustment was not implemented on her final assignment in the Course. She turned in her assignment on XXXX, which was the same deadline for all other students in the Course. Based on interviews of the Complainant, College staff, and documentation provided by both, OCR finds that the College made efforts to remind the instructor of the approved academic adjustments on XXXX, and again on XXXX, in attempt to follow its own policy and procedures for providing academic adjustments to students with disabilities for services.

While the Complainant's grade on the final assignment did not seem to be adversely affected by the failure to provide her with extra time, OCR finds that the College did not provide the student extended time on her assignment despite her approved academic adjustment in violation of Section 504 and Title II. The College has agreed to enter into a resolution agreement in order to address the issue raised in this case.

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.

Please be advised that the Department of Education regulation prohibits entities over which we have jurisdiction from intimidating or harassing anyone who files a complaint with our office or who takes part in an investigation. If you believe such actions have occurred as a result of your complaint with OCR, you may file a new complaint with our agency informing us of such retaliation.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will protect personal information to the extent provided by law.

If you have any questions, you may contact XXXX, Equal Opportunity Specialist, at (303) 844-XXXX, or by E-mail at XXXX@ed.gov.

Sincerely,

Stephen Chen
Supervisory Attorney

Cc: Ms. Susie Reed
Vice President of Compliance