



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVENUE, SW
WASHINGTON, DC 20202-1475

REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, D.C.

December 21, 2012

Dr. Joann Boyd-Scotland
Interim President
1126 Solomon Blatt Blvd.
P.O. Box 327
Denmark, SC 29042

Re: OCR Complaint Number 11-12-2162
Letter of Findings

Dear Dr. Boyd-Scotland,

The District of Columbia Office of the Office for Civil Rights (OCR), within the U.S. Department of Education (the Department), has completed its investigation of the above-referenced complaint received on September 24, 2012 against Denmark Technical College (the College), located in South Carolina. The Complainant alleged that the College discriminated against a student at the College (the Student) on the basis of disability (b)(7)(C) and against other individuals with disabilities by:

1. Failing to provide approved auxiliary aids and services (closed captioning and a note taker) to the Student in spring 2012;
2. Failing to provide approved auxiliary aids and services (qualified interpreter, note taker, and closed captioning) to the Student in summer 2012;
3. Failing to provide appropriate auxiliary aids and services to afford the Student an equal opportunity to participate in the College's program and to ensure that communications with the Student are as effective as communications with students without disabilities in fall 2012;
4. Failing to designate a responsible employee to coordinate the College's efforts to comply with Section 504 and Title II;
5. Failing to adopt grievance procedures for the resolution of complaints under Section 504 and Title II;
6. Failing to publish a notice of nondiscrimination as required by Section 504 and Title II; and
7. Failing to provide accessible restrooms in Blatt Hall and accessible entrances to all campus buildings other than the gymnasium.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 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 that receive federal financial assistance (FFA) from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation, at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public colleges. The College is a recipient of FFA and a public entity and is subject to the provisions of Section 504 and Title II.

During the investigation, OCR conducted interviews and reviewed documentation provided by the College and the Complainant. Below is a discussion of OCR's determinations.

Allegations 1-3

BACKGROUND

The Student enrolled at the College in 2011 as a full-time student in a two-year degree program. The Complainant notified the College in her admission paperwork that she was deaf and would need the College to provide a Pidgin Signed English (PSE) interpreter, a note taker, and closed captioning for any video programs shown during class.

Following negotiations between the College and the Student's attorney in December 2011 and January 2012, the College agreed to provide the Student with the requested accommodations. The Student reported to OCR that a qualified interpreter was not provided until several weeks into the semester, and a note taker was not provided at all. She also reported that closed captioning was not provided in her Biology class when videos were shown. The Student finished her coursework successfully in the Spring 2012 semester, earning no grade lower than a C.

The Student attended class at the College during the Summer 2012 session, and alleges that the interpreter provided by the College was not qualified and that the College failed to provide a separate note taker or closed captioning during that session. Nonetheless, the Student completed her summer courses successfully, again earning no grade lower than a C.

In the Fall 2012 semester, after discussions with the Student and her attorney, the College decided to provide computer transcription in the Complainant's courses in lieu of an interpreter. The Complainant acknowledged that the Student agreed to try the computer program in her lone Tuesday-Thursday course. The Student told OCR that although she requested a qualified interpreter for her remaining classes on Monday, Wednesday, and Friday, the College agreed to provide an interpreter only for the Student's Biology lab course on those days. The Student alleged that the computer transcription was inadequate and confusing; the College reported that the Student did not communicate these concerns. Shortly after being notified of the OCR complaint and of the Student's concerns with the computer transcriptions, the College began providing a qualified PSE interpreter for all of the Student's classes.

The Complainant also alleges that the Student has not been provided with closed captioning for video programs shown in her courses in the Fall 2012 semester. The College told OCR, and the Student confirmed, that the Student did not make anyone at the College aware of this problem. The Student has received note taking services during the Fall 2012 semester; in addition, the note

taker reviews the transcripts produced by the computer program the College has provided and edits the transcripts where necessary.

LEGAL STANDARD AND ANALYSIS

The Section 504 regulation prohibits colleges and universities that receive financial assistance from the Department from denying students, on the basis of disability, the benefits of a program or activity. Further, the Section 504 regulation requires that a college or university that receives Federal financial assistance make modifications to its academic requirements as necessary to ensure that the academic requirements do not discriminate or have the effect of discriminating against qualified individuals with disabilities. 34 C.F.R. § 104.44(a). The Title II regulation contains similar language at 28 C.F.R. § 35.130(b)(7). A college or university may require students to follow reasonable procedures for obtaining academic adjustments. The question of whether a college or university has to make modifications to its academic requirements or provide academic adjustments is generally determined on a case-by-case basis. Both Section 504 and Title II envision an interactive process with respect to provision of academic adjustments and auxiliary aids for individuals with disabilities.

At the postsecondary level, students with disabilities may be required to follow reasonable procedures to request an academic adjustment. Students are responsible for knowing and following these procedures.

As of mid-October 2012, the College began providing the Student with a qualified PSE interpreter in all of her courses. The College has agreed to continue providing this service for as long as the Student is enrolled as a student. Further, the College is continuing to provide computer transcriptions for all of the Student's courses in addition to a note taker. The note taker also reviews the computer transcripts to ensure their accuracy.

As of September 4, 2012, the Student's instructors were all made aware by letter of the Student's need for closed captioning for any video programs shown in class. Instructors were directed to contact the College's Title II/Section 504 Coordinator if there were any problems providing this service to the Student. On November 13, 2012, the Interim Vice President for Academic Affairs met with the Student's instructors to remind them of the need to use closed captioning with any videos shown in class. The Student indicated that she was concerned about retaliation if she complained about the lack of closed captioning in her courses and that this concern prevented her from discussing the issue with the Title II/Section 504 Coordinator. The Student and the College have been reminded that the College cannot retaliate against the Student for requesting accommodations and the Student has agreed to contact the Title II/Section 504 Coordinator in the future if closed captioning is not provided in class.

OCR strongly cautions the College that the provision of approved modifications is the responsibility of the College and it appears in this case that the College failed to provide approved modifications to the Student. However, the Student had an obligation to notify the College that she was not receiving a modification, and, at least with regard to closed captioning, the Student did not do this.

Based on the evidence above and on the Student's indication that she does not wish to retake any classes in which approved modifications were not provided,¹ OCR has determined that the College has resolved the Complainant's concern that the Student was not receiving auxiliary aids and services to afford her an equal opportunity to participate in the College's program and no additional individual relief is available. OCR's Case Processing Manual states that OCR will close an allegation if OCR obtains credible information indicating that the allegation has been resolved, and the allegation is not a class-wide allegation. Therefore, OCR is closing Allegations 1-3 as of the date of this letter.

Allegation 4

BACKGROUND

The Complainant alleged that the College failed to designate a responsible employee to coordinate the College's efforts to comply with Title II and Section 504. The Complaint stated that the person serving as Acting Title II/Section 504 Coordinator appeared to have little or no understanding of the role or training for the position.

LEGAL STANDARD AND ANALYSIS

Title II and Section 504 require that the College designate at least one employee to coordinate its efforts to comply with these laws. OCR interprets these laws to also mandate that the College adequately train coordinators and such additional employees as are needed to ensure compliance with these laws.

The College refutes the Complainant's assertion regarding the Title II/Section 504 Coordinator. The College alleges that the Dean who supervises the Student Services Division at the College has been the Coordinator for ten years, and that this employee has attended all state conferences regarding Title II and Section 504. The College's Academic Catalog and Student Handbook clearly identify this Dean as the Coordinator. In addition, the College provided a copy of a poster that is displayed in campus locations including College residence halls, the cafeteria, and the library; the poster includes a notice of non-discrimination and also identifies the Dean as the Coordinator.

In response, the Complainant stated that she and the Student were unaware that the Dean was responsible for overseeing Title II/Section 504 compliance at the College, but that she had no concerns about her interactions with the Dean.

For the reasons stated above, there is insufficient evidence to conclude that the College has failed to designate a responsible employee to coordinate its efforts to comply with Title II and Section 504.

Allegation 5

¹ The Complainant plans to retake a Math course from fall 2011. The provision of auxiliary aids and services during that semester was not addressed during OCR's investigation.

The Complainant alleged that the College failed to adopt grievance procedures for the resolution of complaints under Section 504 and Title II.

Section 504 requires that the College adopt grievance procedures that incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints alleging any action prohibited by these laws. In determining whether a recipient's grievance procedures governing allegations of violations of these laws are prompt and equitable under these laws, OCR looks to whether the procedures provide for:

1. Adequate notice of the procedures, including with whom grievances should be filed;
2. The adequate, reliable, and impartial investigation of grievances, including the opportunity to present witnesses and evidence;
3. Designated and reasonably prompt timeframes for the major stages of the grievance process; and
4. Notice to the parties of the outcome of the grievance process.

Although not explicitly required, OCR also looks to whether the recipient provides an opportunity to appeal the findings, remedy, or both, and whether the recipient prohibits retaliation against any individual who files a grievance or participates in a grievance process.

According to OCR's review of the College's Student Handbook, the College has put into place appropriate and sufficient grievance procedures that meet the requirements of the law. Therefore, OCR finds that there is insufficient evidence that the College failed to adopt grievance procedures for the resolution of complaints under Section 504 and Title II.

Allegation 6

The Complainant alleged that the College failed to publish a notice of nondiscrimination as required by Section 504 and Title II.

Section 504 and Title II require that the College include in its publications a notification that it does not discriminate on the basis of disability in any of its programs and activities, and to include in that notification information on how to contact the individuals who coordinate its efforts to comply with these laws.

The College has provided evidence that it has published its notice of nondiscrimination in the following places: student handbook, College catalog, student application packet, College brochure, and on posters in multiple physical locations around campus.² Further, both the posters and the College catalog clearly identify the Section 504 Coordinator and provide her contact information. In addition, although the College's main website is currently under construction, information about the College, including the notice of nondiscrimination and the identity of the Coordinator, are still available online. As the College has provided notice of nondiscrimination in its publications and in buildings around the campus, and as it has provided contact information for the Section 504 Coordinator, OCR finds that there is insufficient evidence that the College failed to publish a notice of nondiscrimination as required by Section 504 and Title II.

² OCR recommends that the College also include the notice of nondiscrimination on employment applications.

Allegation 7

The Complainant alleged that the College failed to provide accessible restrooms in Blatt Hall and accessible entrances to all campus buildings other than the gymnasium. According to the Complainant, the faucets in the restrooms in Blatt Hall were of the grab and twist variety, and the door pressure in the women's room was too high. The Complainant also alleged that some of the buildings at the College did not have ramps.

The physical accessibility requirements of the Section 504 implementing regulation are found at 34 C.F.R. §§104.21-104.23. The Section 504 regulation, at 34 C.F.R. §104.21, provides that no qualified individual with a disability shall, because a recipient's facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in the recipient's programs or activities. Comparable provisions of the Title II implementing regulation are found at 28 C.F.R. §§ 35.149-35.151.

The College provided photographs showing that the restrooms in Blatt Hall have lever faucets that can be operated with a single motion. The College provided a signed letter from a licensed contractor indicating that the door on the women's restroom in Blatt Hall can be opened with five pounds of pressure as the law requires. And the College provided evidence demonstrating that each building on campus is either equipped with a ramp or has at least one entrance at ground level (the College did not provide evidence regarding the gymnasium, as the Complainant did not allege that this building was inaccessible).

The Complainant expressed particular concern regarding the entrance to Blatt Hall. The College provided a photograph of the ramp to the rear entrance of that building. The Complainant subsequently acknowledged that she became aware of that ramp after filing the complaint. The Complainant also acknowledged that since filing the complaint she had noticed that there are ramps on at least two other buildings on campus.

Based on the above evidence and analysis, and the lack of sufficient contradictory evidence, we find that there is insufficient evidence to find the College in violation of Section 504 or Title II with respect to Allegation 7.

Conclusion

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.

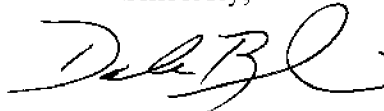
Please be advised that the College may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the Complainant may file another complaint alleging such treatment.

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.

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.

If you have any questions or concerns regarding this letter, please contact Martha Russo at (214) 661-9622 or via e-mail at Martha.Russo@ed.gov or Jane Ehrenfeld at (202) 260-0790 or via e-mail at Jane.Ehrenfeld@ed.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Dale Rhines". The signature is fluid and cursive, with a prominent initial "D" and "R".

Dale Rhines
Acting Team Leader
District of Columbia Office
Office for Civil Rights