

# Accessing Higher Ground

OCR 2013 Year in Review

# ACCESSIBLE TECHNOLOGY

*OCR Compliance Review No. 11116002*

**Finding: Violation**

## OCR'S ANALYSIS

Students with disabilities, especially students with visual impairments, to be afforded “opportunity to acquire same information, engage in same interactions, and enjoy same services as sighted students.”

University must provide disabled students with “substantially equivalent ease of use...in equally effective and equally integrated manner.”

## SECTION 508 STANDARDS

While these standards only directly applicable to the federal government, the state community college system had decided to use them as well.

# FINDINGS

1. PDF files missing tagging, alt. text for graphics, identification on column headers, specified reading order, tags on critical information (watermarks & headings).
2. Videos without proper labeling, keyboard control, or captioning.
3. Alternative attributes insufficient or missing; fields missing labels that would allow screen reader user to fill them in.

## FINDINGS, cont.

4. Tables missing headings; areas where a keyboard-only user wouldn't be able to access information or use drop down menus.
5. Content in course management systems missing captions, alternative texts, and other features required for accessibility.

# RESOLUTION

The system agreed to:

1. Fix issues through directive to member colleges providing information about responsibilities of system office and each college to ensure their websites are accessible & about accessibility standards, & require annual web-site reviews.
2. Each college has to identify point of contact — someone with enough authority to make sure that any problems get fixed.

## RESOLUTION, cont.

3. System will issue resource guide with detailed guidance on web accessibility requirements & how to make on-line content accessible – for particular use by those offering &/or designing online courses and to those designing & maintaining system's & colleges' websites.
4. Colleges will report annually to system office.
5. System office will designate someone to review reports and monitor corrective actions.

# ADMISSIONS

*OCR COMPLAINT NO. 11122006*

Finding: Violation

# FACTS

Student with ADHD and math-related learning disability accepted to University. Shortly before semester began, University revoked acceptance, explaining that it couldn't meet his disability-related needs because he refused to take his ADHD medication, which contradicted his signed medical form indicating that he wasn't taking medication on regular basis.

## FACTS, cont.

Further, University also concerned that Student hadn't submitted request for accommodations, even though he was on 504 plan in high school.

In the past, University had ADHD student who failed to take her meds and had serious behavior issues, so Univ. now required students with ADHD to agree to have local health care agency come to campus to give ADHD meds.

# FINDINGS

OCR determined that Student's use or non-use of meds and his failure to submit request for accommodations were not LNRs for denying enrollment.

While the Student was prescribed meds, he answered truthfully, in that he was actually not taking them regularly. Further, students only required to submit request for accommodations if they want them.

## FINDINGS, cont.

University's requirement that ADHD students agree to have local health agency administer meds was violation since decision based on assumption that, because one ADHD student had behavioral issues after not taking meds, other ADHD students would do the same.

# RESOLUTION

University agreed to:

1. Reimburse Student for expenses incurred as result of University's conduct.
2. Stop discouraging SWDs from attending, or denying them admission/enrollment.
3. Discontinue requiring ADHD students to take meds for disability and/or have them administered by health care provider.

# READMISSION

*OCR Complaint No. 02122023*

Finding: Violation

# FACTS

Complainant alleged that, after telling University he had Asperger's, University denied him readmission to MPA program based on disability.

University requires 3.0 GPA to continue in program.  
At end of Fall 2010 semester, Student maintained 2.89.  
In January, 2011, Student advised the Chair of the MPA program that he has Asperger's Syndrome.

## FACTS, cont.

Chair told Student he was dismissed from program for failing to maintain 3.0 GPA. Told him he could apply for readmission, but no guarantees.

In March 2011, after retaking some courses as non-matriculated student, Student told professor of his Asperger's & that he may need to be advised if not communicating normally.

Professor advised Student that he may want to share this info with the University's Office of Disability Services.

## FACTS, cont.

In March 2011, Student applied for readmission to Program. In June 2011, the University denied application.

Decision based largely on opinion of Student's Professor, who thought Student had "trust issues," was not engaged and had difficulty working in groups.

But Professor told OCR that he believed Student's behavior might have been related to his disability.

## FACTS, cont.

Only one other student, Student A, had reapplied to MPA Program in past 6 years. He was conditionally readmitted with readmission score on his re-application package of 2.9.

Same Professor who recommended that Student not be readmitted told OCR that Student A was “never a strong student, and that was an understatement,” but he had advocated for Student A’s readmission because of his “strong public service work ethic.”

# FINDINGS

University didn't provide LNRs for denying Student's readmission.

Chair told OCR that Student didn't have strong interest in public service but he had said the opposite in emails.

University didn't provide Student's readmission score, but he was originally admitted without conditions with a score of 3.08; whereas Student A's readmission score of 2.9 was enough to readmit him conditionally to the MPA program.

## FINDINGS, cont.

Finally, Chair and Asst Director relied on Professor's assessment that Student had "trust issues" which the Professor considered to be related to the Student's disability.

Therefore, OCR determined that University discriminated against Student in denying him readmission to MPA Program.

# RESOLUTION

The University agreed to:

1. Offer Student readmission
2. provide training to administrators & faculty making admissions decisions on requirements of Section 504 and ADA, including prohibition on using disability as factor in denying admission or readmission.

# ACADEMIC ADJUSTMENTS

*OCR Complaint No. 02122058*

*Insufficient Evidence/No Violation Finding*

# ALLEGATIONS

Student alleged that College discriminated against her by failing to provide her with:

1. extended time on tests,
2. note-taking services, and
3. use of tape recorder in one of her psychology courses.

## FACTS & FINDING

DSS approved Student's request for extended exam time & note-taking services, but Student never submitted accommodations letter to professor or even orally request them.

Thus, College's failure to provide these two accommodations was not discriminatory because the Student did not follow the College's procedures.

## FACTS & FINDINGS, cont.

Instead of making a decision on request for tape recorder, as required by College's policy, DSS counselor told Student to speak with Professor about it.

But OCR determined that it was DSS counselor's responsibility to determine whether tape recording in the Course was necessary aid for Student, rather than leaving determination to professor.

# RESOLUTION

The College agreed to:

1. Offer Student opportunity to retake course with different professor & at no charge, with Student to be treated as first time student in course.
2. Training for all administrators, faculty and staff responsible for processing requests and/or providing accommodations, with special emphasis on requirement that only DSS can review and make determinations about requests for accommodations (though DSS can consult with faculty in making decisions).

# AUXILIARY AIDS AND SERVICES I

*OCR Complaint No. 09122170*

**Finding: Violation**

# FACTS & FINDINGS

Three deaf students alleged college discriminated against them on the basis of disability. OCR found College didn't provide equally effective communication when Students:

1. Not provided sign language interpreters for tutoring sessions due to foreseeable shortage of interpreters;
2. Not provided interpreters after first week of class or note taking services (not communications but a necessary service) for math class; and
3. When College didn't respond to Students' internal complaint that deaf students about difficulties with communication services/sign language interpreters.

# RESOLUTION

The College agreed to:

1. Allow Students to retroactively drop classes they took, modify their transcripts & reimburse fees;
2. Review its delivery system of sign language interpreters, provide a written report to OCR and develop plan to insure that students receive auxiliary aids & services in timely manner;
3. Report services/aids provided to each deaf or h/h students for next school year.

# AUXILIARY AIDS AND SERVICES II

*OCR Complaint No. 09122114*

**Finding: Violation**

# ALLEGATIONS

Student alleged that College discriminated against her on the basis of disability (deafness) by not applying correct standard of review in determining whether communications with Student were as effective as communications provided to others in her Biology class.

# FACTS

Student asked for & received 2 Interpreters for Biology class. After several classes, Student said first Interpreter wasn't effective, identifying specific failures.

College told Student that Senior Interpreter observed class and decided both interpreters were fully qualified.

Senior Interpreter relied on “team-based” measure of adequacy of interpretation: even though one interpreter relied on Signed English & finger-spelling, interpreter team as a whole conveyed instructor's message accurately & completely.

# ANALYSIS

College did not apply the correct standard in determining adequacy of interpreters:

- a) College didn't give primary consideration to Student's request, as required by case law and regs on effective communication.
- b) Opinion of Senior Interpreter that team, as a whole, did good job isn't dispositive of whether Student received effective communication & didn't demonstrate that team approach was equally effective alternative to what Student requested — team of qualified ASL interpreters.

# RESOLUTION

College signed resolution agreement providing that:

1. College would offer Student opportunity to take additional Biology course at no cost with appropriate auxiliary aides and services;
2. College would develop written plan for changing interpreters or provide independent evaluation to determine whether interpreter is providing effective communication if student complains about interpreter's communication skills.

# DEFINITION OF A DISABILITY

*OCR Complaint No. 04112241*  
Voluntary Recipient Resolution

# ALLEGATIONS

University denied Complainant academic adjustment of 100% extra time to complete exams & timed in-class assignments. However, main issue was whether University used current definition of disability.

Section 504 implementing regulation defines person with disability as any person who, among other things, has physical or mental impairment that substantially limits one or more major life activities.

# FACTS

Student provided DSS with written explanation of her disability & related needs and recent neuropsychological evaluation by Board-certified neurological psychologist.

Psychologist stated Student “has learning disability in area of reading...due primarily to significant deficit in area of immediate memory for verbal material” and that this significantly limited her in major life function of reading.

## FACTS, cont.

Psychologist also noted that Complainant “developed compensatory techniques of taking notes & highlighting information as she reads to aid her memory deficits, resulting in answering questions correctly if she is not pressured by time constraints & can re-read material.”

Complainant’s request was rejected. She appealed & was given 50% extended time, not requested 100%; but notification letter didn’t acknowledge whether University accepted her as having a disability. Appealed again, but was turned down.

# RESOLUTION

University voluntarily agreed to:

1. Reconsider request for 100% extended time without requiring her to show she is significantly restricted re any MLAs.
2. Replace 'D' in one of her courses with a W and allow her to retake course.

Agreement facilitated by earlier OCR case in which University agreed to:

- a) broaden definition of MLAs;
- b) clarify that “substantially limits” would be applied without regard to mitigating measures; &
- c) amend its procedures so DSS staff work collaboratively with students to determine needed accommodations.

# ACADEMIC GRADING

*OCR Complaint No. 04122160*

*Insufficient Evidence/No Violation Finding*

# ALLEGATION

Student alleged discrimination based on disability when Psychology department head and professors in several courses scored his assignments, tests & final grades lower than he deserved because of his disability.

# ANALYSIS

OCR investigated whether Student was treated differently than other students without disabilities under similar circumstances and whether this treatment resulted in denial or limitation of education services, benefits or opportunity.

# FINDINGS

1. Grades issued before Professors knew of Student's disability
2. Non-disabled students received similar or poorer grades
3. Once University notified of Student's concerns, processed grade appeals in timely manner.

Therefore *insufficient evidence* to support finding that University discriminated against Student in violation of Section 504.

# Contact Us

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