



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE

January 8, 2010

Dr. Jane Monnig Atkinson
Interim President
Lewis and Clark College
0615 SW Palatine Hill Road
Portland, Oregon 97219-7899

Re: Lewis and Clark College
OCR Reference No. 10092092

Dear Dr. Atkinson:

The U.S. Department of Education, Office for Civil Rights (OCR) has completed its investigation of the above-referenced disability discrimination complaint filed against Lewis and Clark College on July 23, 2009. The complaint alleged that the college discriminated against a student at the Law School on the basis of disability. OCR investigated the following specific allegations:

1. the instructor of the Environmental Law class at the law school failed to provide the student an academic adjustment of extended time during the spring semester environmental law exam;
2. the instructor of the Environmental Law class prevented the student from starting the Environmental Law exam at the same time as the rest of the class and the student started the exam 20 minutes later; and
3. because the student filed a disability-related complaint at the college in May 2009, the college retaliated against her by immediately reducing her academic scholarship by 25 percent.

OCR investigated this complaint under section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in programs and activities receiving federal financial assistance from the U.S. Department of Education. Section 504 also prohibits retaliation against an individual for the purpose of interfering with a right secured by Section 504 or because an individual has filed a complaint alleging a violation of Section 504. The college is a recipient of federal financial assistance from this Department.

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

As the findings and conclusions in this letter reflect, OCR determined that the college did not comply with the requirements of Section 504 with respect to one of the three issues OCR investigated. The college has agreed to take actions to resolve the compliance concern by implementing the enclosed Settlement Agreement.

OCR's findings and conclusions, set forth below, are based upon a review and analysis of written information and testimony provided by the college and the student.

Findings of Fact - Issue No. 1

1. The student began Law School at the college in the fall semester of 2007. She received a merit scholarship in the amount of \$10,000 per year, which was to last until she graduated, provided she maintained a cumulative GPA of 2.95.
2. It is the Law School's policy to terminate a scholarship for the following academic year if a student does not achieve a cumulative GPA of 2.95 by the end of the previous school year.
3. With respect to disability-related accommodations, the Law School requires all requests from law students for accommodations and exam modifications to be made, with proper documentation, through the associate dean for academic affairs at the Law School (Associate Dean). The Associate Dean generally refers the request to the college's Student Support Services for evaluation and determination of accommodations.
4. With respect to physical disabilities, the college's policy states that proper documentation must reflect the student's present level of functioning in regard to his/her disability and its impact on the need for accommodations. Following its assessment of the student's accommodations needs, Student Support Services informs the Associate Dean of its determinations, including any recommendations for accommodations. The Law School administers those recommendations.
5. Upon admission, the student informed the Associate Dean of her diagnosis of chronic overuse syndrome in the upper extremities. According to the student, the condition limits her ability to use her hands for fine motor movements and she experiences difficulty in typing and writing. She provided a note from her physician in support of her request for accommodations. The accommodations requested included assistance with note-taking, tape-recording classes, and extra time for exams. The Associate Dean stated

that the student properly followed the Law School's policy and procedures in making her request.

6. The Associate Dean referred the student's request to Student Support Services. Following its assessment, on October 2, 2007, Student Support Services recommended the following accommodations for the student: note-takers, time and half on exams, preferential seating in order to tape record lectures, and permission to tape record lectures. The Associate Dean accepted the recommendations for implementation.
7. The Associate Dean informed OCR that she does not disclose to their respective professors the identities of specific students with disabilities who are receiving accommodations. She stated that she informs professors of the number of students within each of their classes who are receiving accommodations. She also inquires of the respective professors whether they are offering timed or untimed exams. For timed exams, the Law School affords extra time to any disabled student who has been approved for extended time on exams. For untimed exams, such as 24-hour take-home exams, the Law School does not generally afford disabled students any more time beyond the allotted time for completion.
8. Beginning in 2007 and until spring 2009, the student had consistently received accommodation of time and a half on all timed exams.
9. In spring 2009, the student's scheduled exams included Administrative Law and Environmental Law. On April 27, 2009, the Associate Dean informed the student that she would receive extended time, up to time and a half, to take the Administrative Law class. For the Environmental Law class, the Associate Dean informed the student that the professor "states his Environmental Law exam is a 3 hour exam, but in an attempt to remove time pressure, he allows all students five hours in which to complete it. Your accommodation is based on the professor's stated length of the exam. Thus, since you get time and a half, you are allowed 4 hours and 30 minutes on a three hour exam. This falls within the 5 hours allowed for the exam, so no additional accommodation is provided."
10. Environmental Law is a four credit class. The professor, who has been teaching at the Law School since 1983, stated that since 1999, he has offered what he considers to be a 3-hour exam to be completed in 5 hours.

11. The professor stated that he determined from years of experience that the average law student could take his exam in 3 hours. He stated that he adopted the current 5-hour format because he believed that would result in better exams from students and reduce student anxiety. According to the professor, 5 hours to take a 3-hour exam permits the students to take breaks if they wish. "They can take their time, go to the bathroom, have a snack, have a nap if they want. All they have to do is hand it in 5 hours," stated the professor.
12. The Associate Dean did not inform the professor that the student was to receive additional time on the exam. The professor stated that he did not know that the student was disabled or that she was receiving accommodations.
13. According to the Associate Dean, because the professor's estimated 3-hour exam was to be completed by all students in 5 hours, she determined that the student's accommodation of time and half, 4 hours and 30 minutes, would be satisfied. She concluded that the student did not need extra time beyond the 5 hours afforded to all students.
14. The student took the Environmental Law exam on May 8, 2009, along with the rest of the class. It is her position that she realized during the examination that, contrary to the Associate Dean's representation that the exam was a 3-hour exam, most students required more than 4 hours to complete it. The student stated that even though she completed the exam and responded to each of the questions, she only managed to type 7 pages, which was less than the limit of 11 pages for the exam. The Law School confirmed that the student wrote no more than 7 pages.
15. Of the 34 students in the Environmental Law class, 19 (55.88%) took 4 ½-5 hours to take the exam; 4 (11.76%) took 4-4 ½ hours; 6 (17.65%) took 3 ½ -4; 4 (11.76%) took 3-3 ½ hours; and 1 (2.94%) took less than 3 hours.
16. Of the 19 students who took the exam in 4 ½ -5 hours, 7 received grades between A- and A+; 6 received between B- and B+; 5 received between C- and C+; and 1 received a D. Of the 4 students who took 4-4 ½ hours, 2 received between A- and A+ and 2 received C and C+. Of the 6 who took 3 ½-4 hours, 1 received an A-, 4 received Bs, and one received a C. Of the 4 who took 3-3 ½ hours, 2 received Bs and 2 received Cs. One student who took the exam in under 3 hours received a C+.
17. The student received a C- on the Environmental Law exam and a B- on the Administrative Law exam. Her cumulative GPA fell to 2.92.

18. Because the student's cumulative GPA fell below 2.95, the law school reduced her scholarship by 10 percent for the 2009-2010 school year. The Associate Dean informed the student that the Law School would fully restore her scholarship if she attained a 2.95 GPA at the end of the 2009-2010 academic year.
19. After the student's complaint to OCR, the Law School discovered that because of a clerical error, it had issued another student's Environmental Law exam score to the student. On or about November 2, 2009, the Law School corrected the student's grade in Environmental Law to a B-, which raised the student's GPA to above 2.95 and her full academic scholarship was reinstated.
20. It is the student's position that because the professor allowed students 5 hours to take the exam, she should have been afforded time and a half based on 5 hours. She contends that the extra time may have given her an opportunity to fare better than she did on the exam. Following the exam, the student complained to the Associate Dean, who maintained that the student was given adequate time to take the exam.
21. It is the position of the professor that he would not be inclined to afford the student 7.5 hours for what he considers to be a 3-hour exam. He maintained that: "exams are aimed at trying to assess what people do in real life, the essay questions are based on problems that people encounter in real life, and typically in practice you have more or less a set time to do things," stated the professor.
22. The Associate Dean stated that given the nature of the student's disability, which did not limit her ability to process information, but rather a physical limitation that required the student to take breaks between typing, the student received ample time to take the exam.
23. The individual who was the Director of Student Support Services during the time period in question, and with whom the student raised concerns shortly after the exam, stated that she was aware of the professor's policy of affording every student 5 hours to take the exam. She stated that for students who had been determined to need double time, she has insisted that they receive 6 hours on the professor's exam. Regarding those who need time and half, she informed OCR of previous recommendations she made to the Associate Dean that those students should receive time and half plus 2 additional hours to complete the professor's exams. She said this would allow the disabled student 4.5 hours for a 3-hour exam (time and a half) plus an extra 2 hours

to correct, reorganize answers, or take breaks. She said she based her computation on the fact that the professor afforded nondisabled students 3 hours plus an additional 2 hours for any additional edits, changes, or breaks.

Analysis and Conclusion - Issue No. 1

OCR investigated whether the college discriminated against the student on the basis of disability by failing to provide an academic adjustment of extended time for the spring semester 2009 Environmental Law class.

Section 504, at 34 CFR 104.44 (a), provides that a recipient to which this subpart applies shall make such modifications to its academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating, on the basis of disability, against a qualified disabled applicant or student. Academic requirements that the recipient can demonstrate are essential to the instruction being pursued by such student, or to any directly related licensing requirement, will not be regarded as discriminatory within the meaning of this section. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted.

Students with disabilities who need academic adjustments are required to notify the institution of their need for academic adjustments and of the nature of their disabilities. Before acting on a student's request, the institution may require the student to provide documentation of a diagnosis by a qualified professional that the student has a physical or mental impairment and that it supports the need for the requested academic adjustments.

In this case, the student followed established Law School procedures in requesting accommodations. She provided documentation to the college in support of her request for accommodations, including extended time on exams. The college's designated reviewing entity, the Student Support Services office, determined that the documentation provided by the student supported the academic adjustment of time and a half for completing exams. The Law School accepted the recommendations by Student Support Services and had provided the student with extended time on all timed exams since 2007.

With respect to the student's Environmental Law exam, the professor indicated that the exam was a 3-hour exam but that he gave students 5 hours to complete it. The student in question was allotted the same amount of time (5 hours) to complete the

exam as other students in the class. Because the class was given 5 hours to complete the exam and the student in question was given the same amount of time to complete the exam as her nondisabled peers, the college did not provide the student the testing modification of time and a half that it had determined she needed because of her disability.

Because the college failed to provide the student with time and half on the Environmental Law exam, a testing modification that it had determined she needed because of a disability, the college did not comply with Section 504 with respect to the issue investigated. The college has agreed to remedy this compliance concern by taking the actions set forth in the enclosed agreement.

Findings of Fact - Issue No. 2

1. The student alleges that at the beginning of the Environmental Law exam, the professor brought exam papers to the class and placed them on a table for students to pick up. The student was unable to find her exam paper, which was assigned a unique identity number. The student informed the professor of her missing exam paper.
2. According to the student, after she informed the professor of her missing exam paper, the professor walked out of the class. The professor informed OCR that he went with the student to the Registrar's office to find a solution to the situation. The Registrar's office is responsible for assigning exam identification numbers to students.
3. The Registrar's office provided the student another exam paper and informed the professor and the student that the office would resolve the matter later.
4. By the time the student returned to the class, the other students had already begun the exam and, according to the student, approximately 20 minutes had already elapsed. The professor had allotted 5 hours to everyone, including the student, to take the exam.
5. The student maintained that the professor was aware she was disabled and treated her differently from other students by causing her to not start her exam at the same time as everybody else. The Registrar's office permitted the student to have 5 hours to complete the exam. Records from the Law School showed that the exam began at 5:00 p.m. and that the student began the exam at 5:12 p.m. and returned her paper 5 hours later at 10:12 p.m.

6. The Law School subsequently discovered that another student had taken the student's exam paper on the day of the exam.
7. The professor informed OCR that he had no information that the student was disabled and he did not cause her to start her exam later than the scheduled time.

Analysis and Conclusion - Issue No. 2

OCR investigated whether the Environmental Law professor discriminated against the student based on disability by preventing her from starting the Environmental Law exam at the same time as others in the class.

The Section 504 regulation, at 34 CFR 104.4(a), states that no qualified disabled person shall, on the basis of disability, be subjected to discrimination under any program or activity which receives federal financial assistance. 34 CFR 104.4(b)(1)(ii) states that a recipient of federal financial assistance shall not, on the basis of disability, afford a qualified disabled person an opportunity to participate in, or benefit from, an aid, benefit, or service that is not equal to that afforded others. To establish such discrimination, OCR must have evidence that the disabled student was treated differently from other similarly situated individuals and that the different treatment was based on his or her disability.

The college considered the student to be a qualified disabled person and eligible for disability-related academic adjustments.

The evidence established that on the day of the exam, the student's numbered exam paper could not be located. After the professor consulted with the registrar's office on how to proceed, the student was provided an exam. Records from the Law School showed that the student started her exam 12 minutes later than the other students. Because of the delay in starting her exam, the Registrar's office permitted the student to return her exam 12 minutes later than the rest of the class. The evidence did not establish that the professor was responsible for the student's exam being missing or that he knew that she was an individual with a disability.

Because the evidence did not establish that the Environmental Law professor or the Law School treated the student differently from other similarly situated students because of her disability, the findings do not support a conclusion that the college violated Section 504 with respect to this issue.

Findings of Fact - Issue No. 3

1. After the student received a grade of C- in the Environmental Law class, and her GPA dropped to 2.92, she complained to the Associate Dean about the Law School's failure to provide extra time for her to take the Environmental Law exam. The student alleges that the Associate Dean assured her she would not lose any amount of her scholarship.
2. Following her discussion with the Associate Dean, the student similarly complained to Student Support Services about the Law School's failure to afford her extended time on the Environmental Law exam. The Associate Dean informed OCR that she was aware that the student raised concerns with the Student Support Services office about the Environmental Law exam.
3. On June 26, 2009, a few weeks after the student raised concerns with Student Support Services, the Associate Dean informed the student that her scholarship would be reduced from \$10,000 to \$7,500 for the 2009-2010 academic year because her GPA had fallen below 2.95, which was the GPA required to maintain the full scholarship.
4. E-mail exchanges between the student and the Associate Dean showed that on or about June 29, 2009, the student wrote to the Associate Dean about an earlier conversation regarding the scholarship. The student stated: "If you recall, I came to speak with you about my exam experience from last semester, particularly with [the professor of the Environmental Law class]. You indicated that you would take the experience into account when assessing my eligibility for the scholarship."
5. On June 29, 2009, the Associate Dean responded to the student informing her that, similar to other students whose scholarships were reduced for the 2009-2010 academic year, the student's scholarship reduction was based on the Law School's assessment that the student's overall GPA dropped below what was required to maintain her full scholarship for the 2009-2010 school year. The Associate Dean also informed the student that based on the availability of funds, the Law School was able to fund $\frac{3}{4}$ of the student's scholarship for the year. The alternative, the Associate Dean explained, would have been to terminate the scholarship. The Law School assured the student that it would reinstate her scholarship for the 2010-2011 academic year if she met the required GPA at the end of the 2009-2010 academic year.

6. Records from the college indicated that in the 2009-2010 school year, scholarships were awarded based on the following GPAs: 2.90 to 2.94 maintained $\frac{3}{4}$ of the scholarship; 2.80 to 2.89 maintained $\frac{1}{2}$ of the scholarship; and 2.75 to 2.79 maintained $\frac{1}{4}$ of the scholarship. Any student whose GPA fell below 2.74 lost the scholarship.
7. On October 8, 2009, the Law School reinstated the student's scholarship pending the outcome of the OCR investigation.
8. In November 2009, the Law School corrected an error in the student's grade in Environmental Law, which brought the student's GPA above 2.95, and her full academic scholarship was reinstated for the academic year.

Analysis and Conclusion - Issue No. 3

The issue OCR investigated was whether, because the student filed a disability-related complaint at the college in May 2009, the college retaliated against her by immediately reducing her academic scholarship by 25 percent.

The Section 504 regulation, at 34 CFR 104.61, incorporates by reference the prohibition against retaliation found in the regulation that implements title VI of the Civil Rights Act of 1964. The Title VI regulation, at 34 CFR 100.7(e), prohibits recipients from intimidating, threatening, coercing, or discriminating against any person for the purpose of interfering with any right or privilege secured by the regulations, or because the person has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the regulation.

OCR found that the student raised concerns with the former director of Student Support Services about the Law School's failure to provide extended time on the Environmental Law exam despite the student's disability, an academic adjustment that is a right protected under Section 504. OCR also found that the Associate Dean notified the student of a reduction in her scholarship after the student raised these concerns with Student Support Services. OCR found, however, that the reduction in scholarship was based on the overall GPA earned by the student and that other students whose GPA fell below the required 2.95 were treated in a similar manner.

Although the reduction in the student's scholarship was made shortly after the student raised concerns with Student Support Services about her academic adjustments, the evidence did not establish that the reduction in the student's scholarship was motivated by other than legitimate, nondiscriminatory, reasons or

that the college's action was a pretext for retaliation. Because the evidence is insufficient to establish that the college intimidated, threatened, coerced, or discriminated against the student for the purpose of interfering with a right secured under Section 504, OCR has determined that the findings do not support a conclusion that the college failed to comply with Section 504 with respect to this issue.


OCR and the college discussed the area of noncompliance identified above. As a result of these discussions, the college has agreed to take the remedial actions set forth in the enclosed Settlement Agreement to bring itself into compliance with Section 504. OCR concludes that the college will be in compliance with Section 504, with respect to the issue, when it has fully implemented the agreement. OCR's determination of compliance is contingent upon the college's implementation of the commitments set forth in the agreement. The colleges' failure to honor these commitments may result in further action by OCR.

This letter is a letter of findings issued by OCR to address an individual OCR case. Letters of findings contain fact-specific investigative findings and dispositions of individual cases. Letters of findings are not formal statements of OCR policy and they 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.

Thank you for the cooperation you and your staff members extended to OCR staff during the investigation of this complaint. If you have any questions regarding this letter, please contact Kwame Amoateng, attorney, by telephone at (206) 607-1602 or by e-mail at kwame.amoateng@ed.gov.

Sincerely,



Joan D. Rubin
Chief Attorney

Enclosure: Settlement Agreement

SETTLEMENT AGREEMENT

Lewis and Clark College
OCR Reference No. 10092092

I. INTRODUCTION

To resolve the compliance concerns identified by the U.S. Department of Education, Office for Civil Rights (OCR) in its investigation of Lewis and Clark College (College), in OCR Reference No. 10092092, the parties agree to resolve this matter as follows:

II. GENERAL PROVISIONS

- A. The parties to this Settlement Agreement are the College and OCR.
- B. This Agreement shall become effective when the authorized representatives for both parties have signed the agreement.
- C. This Agreement resolves only those compliance concerns OCR identified in the investigation of this complaint under section 504 of the Rehabilitation Act of 1973 (Section 504).
- D. In consideration of the College's implementation of the provisions of this Agreement, OCR agrees not to initiate enforcement proceedings with respect to the compliance matters addressed in the referenced complaint investigation. It is agreed, however, that in the event the College fails to implement any provision of this Agreement, OCR will take appropriate measures to effect compliance.
- E. It is understood and agreed that by entering into this Agreement, the College is not admitting that it has violated Section 504 or any other law.

III. SUBSTANTIVE PROVISIONS

The College agrees to take the following actions to ensure compliance with the requirements of Section 504.

A. IMPLEMENTATION OF ACADEMIC ADJUSTMENTS

1. By February 15, 2010, the College will develop written guidelines to ensure that, if a student with a disability is found eligible for an academic adjustment of extended time (for example, time and half) on exams, such student will be provided the specified additional time determined necessary to ensure that testing requirements do not discriminate or have the effect of discriminating against the student on the basis of disability. In general, the amount of extended time determined necessary for a student with a disability will be added to the amount of time provided to other students for each exam.
2. By February 15, 2010, the College will provide written notice to law school staff members and administrators involved in processing and/or implementing requests from students with disabilities for extended time on tests informing them of the College's obligation under Section 504 with respect to academic adjustments and the implementation of extended time on exams and the College's guidelines developed under section III.A.1., above.

B. STUDENT IN QUESTION

1. By January 15, 2010, the College will make an offer in writing to the student allowing her to retake the spring semester 2009 Environmental Law exam with an academic adjustment of time and half. If the student accepts the College's offer, the student will be allowed to retake the exam at the earliest opportunity that the exam is offered, which OCR understands to be April/May 2010; and the College will also offer the student an opportunity to retake the Environmental Law class prior to retaking the exam. The College will waive fees associated with retaking the Environmental Law class and the exam.
 2. If the student retakes the Environmental Law exam, the College will amend the student's transcript to reflect the final grade received by the student for that course, based on her retaking the exam, and ensure that the previously earned spring semester 2009 grade is not reflected.
 3. By January 15, 2010, the College president will write a letter to the student outlining the College's obligations under the terms of this agreement and emphasizing the College's commitment to fully implement those terms.
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IV. REPORTING PROVISIONS

- A. By February 22, 2010, the College will provide OCR a copy of its written guidelines, as specified in section III.A.1.
- B. By February 22, 2010, the College will provide OCR a copy of the notice required under section III.A.2 and a list of the individuals, by name and title, who received such notice.
- C. By February 10, 2010, the College will provide OCR:
 - 1. a copy of the offer to the student, as described in section III.B.1, and a copy of the letter to the student, as described in section III.B.3;
 - 2. written confirmation that the College's offer allowing the student to retake the Environmental Law class and exam was provided to the student and stating whether the student has accepted the offer, as described in section III.B.1.
- D. If the student has accepted the College's offer to retake the Environmental Law class and/or the exam, by May 31, 2010, the College will provide OCR confirmation in writing showing that it has implemented sections III.B.1 and 2.

SIGNED:

[Redacted Signature]

Dr. Jane Monnig Atkinson
Interim President
Lewis and Clark College

1/6/2010
Date

[Redacted Signature]

Gary D. Jackson
Director
Office for Civil Rights
Seattle Office

1-8-2010
Date