



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

THE WANAMAKER BUILDING, SUITE 515  
100 PENN SQUARE EAST  
PHILADELPHIA, PA 19107-3323

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WEST VIRGIN

July 6, 2015

**IN RESPONSE, PLEASE REFER TO DOCKET #03132319**

Dean Donald Tobin  
University of Maryland School of Law  
500 West Baltimore Street  
Baltimore, MD 21201

Dear Mr. Tobin:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint that was filed against University of Maryland School of Law (the University). XXXXXX (the Complainant) alleges that the University retaliated against him and discriminated against him on the basis of age, disability, and national origin. Specifically, the Complainant alleges that the University:

1. discriminated against him on the basis of disability by failing to provide agreed upon academic adjustments during his preparation for XXXXXX;
2. discriminated against him on the basis of disability by failing to provide approved academic adjustments for his XXXXXX;
3. discriminated against him on the basis of disability by failing to timely provide agreed upon XXXXXX;
4. discriminated against him on the basis of age and disability by XXXXXX;
5. discriminated against him on the basis of disability by failing to respond to his complaint, made on XXXXXX, regarding XXXXXX; and
6. retaliated against him for making numerous complaints alleging disability discrimination against the University personnel by:
  - a. denying his XXXXXX;
  - b. failing to address his complaint of disability discrimination, made on XXXXXX, regarding XXXXXX;
  - c. denying him placement in XXXXXX;
  - d. failing to provide him with timely notice with respect to XXXXXX;

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

- e. placing him on a leave of absence without his knowledge or consent in August 2013;
- f. failing to timely provide him with agreed upon academic adjustments XXXXXX; and
- g. limiting his XXXXXX.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance from the Department. OCR is also responsible for enforcing 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. Section 504 and Title II also prohibit retaliation. OCR also enforces the Age Discrimination Act of 1975 (the Age Act), 42 U.S.C. 6101 et seq., and its implementing regulation, at 34 C.F.R. Part 110, which prohibit discrimination on the basis of age by recipients of Federal financial assistance. As a recipient of Federal financial assistance from the Department and a public entity, the University is subject to these laws.

OCR applies a preponderance of the evidence standard to determine whether the evidence is sufficient to support a particular conclusion. Specifically, OCR examines the evidence in support of and against a particular conclusion to determine whether the greater weight of the evidence supports the conclusion or whether the evidence is insufficient to support the conclusion. If OCR receives conflicting information from the Complainant and the Recipient regarding key elements of our legal analysis, and the differences between the two accounts cannot be reconciled by available evidence, then OCR will not be able to establish that a violation occurred.

OCR considered information provided by the Complainant and the University. Additionally, OCR conducted interviews of the Complainant and University personnel. Based on a preponderance of the evidence, OCR has determined that there is sufficient evidence to support allegation 5 and insufficient evidence to support the remainder of the allegations. The University signed a Resolution Agreement with OCR on **June 9, 2015**, a copy of which is enclosed, in order to resolve this compliance concern. The bases for our conclusion are set forth below.

## **Legal Standards**

### **Disability Discrimination Standards**

For the purpose of postsecondary programs, a “qualified” person with a disability is a person with a disability who meets the academic and technical standards requisite to admission or participation in the recipient’s educational program or activity. 34 C.F.R. §104.3(l)(3).

Section 504, at 34 C.F.R. § 104.3(j)(1), provides that an individual with a disability is any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such an impairment.

Section 504, at 34 C.F.R. Sections 104.4(a) and (b)(i-vii), prohibits a recipient of Federal financial assistance from providing a service, financial aid or other benefit to an individual, which is different or is provided in a different manner from that provided to others under the program. Title II prohibits the same form of discrimination by public entities. Therefore, OCR applies the Section 504 standard when analyzing the same claims under Title II.

In order to establish a finding of a violation of different treatment under Section 504, OCR must determine that the student was treated differently than similarly-situated students in a way that limited the student's opportunity to participate in or benefit from a recipient's program or activity, and that either the recipient cannot articulate a legitimate, nondiscriminatory reason for the different treatment or that the recipient has articulated a legitimate nondiscriminatory reason for the different treatment, but the reason is pretext for discrimination. Additionally, OCR also examines whether the recipient treated the student in a manner that was consistent with established policies and practices and whether there is any other evidence of disability discrimination.

Section 504, at 34 C.F.R. § 104.43 (a), provides that a qualified individual with a disability may not, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any postsecondary education program or activity of a recipient of Federal financial assistance from the Department. Section 504, at 34 C.F.R. § 104.44(d), requires a recipient postsecondary educational institution to take such steps as necessary to ensure that no qualified person with a disability is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination because of the absence of educational auxiliary aids for students with impaired sensory, manual or speaking skills.

Section 504, at 34 C.F.R. § 104.44(d)(2), requires the provision of effective academic adjustments and auxiliary aids. Section 504, at 34 C.F.R. § 104.4(b)(1)(iii), provides that a recipient may not provide a qualified person with a disability with an aid, benefit, or service that is not as effective as that provided to others. The regulation also states that aids, benefits and service, to be equally effective, are not required to produce the identical result or level of achievement for persons with and without disabilities, but must afford persons with disabilities equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement. 34 C.F.R. § 104.4(b)(2)).

When a postsecondary institution has been given adequate notice of the need for auxiliary aids and services due to a disability, it is responsible for making a reasonable determination as to which auxiliary aids or academic adjustments should be provided to the qualified individual with a disability and ensuring that such necessary modifications are provided. It is the responsibility of the student to provide timely and adequate notice to the institution of his/her disability and the need for auxiliary aids or academic adjustments. Under Section 504, a postsecondary institution is entitled to make reasonable requests of the student to document his or her disability and need for modifications.

If the academic adjustments or modifications provided are not effective in meeting the student's needs, it is the student's responsibility to notify the institution as soon as possible. The student and the institution should work together to resolve the problem, including as appropriate, by modifying the adjustments or modifications being provided or identifying other effective academic adjustments or modifications to be provided. Where disputes arise over the need for specific academic adjustments or modifications or over the adequacy and effectiveness of the adjustments or modifications provided, OCR considers whether the recipient and student acted in a reasonable manner under the circumstances.

The Section 504 implementing regulation, at 34 C.F.R. Section 104.7(b), provides that a recipient that employs 15 or more persons shall adopt grievance procedures that incorporate

appropriate due process standards and that provide for the prompt and equitable resolution of complaint allegations of any prohibited actions under Section 504. OCR has identified a number of elements in evaluating whether a recipient's grievance procedures are prompt and equitable, including whether the procedures provide for:

- notice to students, parents, and employees of the procedure, including how and where to file a complaint;
- application of the procedure to complaints alleging disability discrimination carried out by students, employees, or third parties;
- adequate, reliable, and impartial investigation, including the opportunity to present witnesses and other evidence;
- designated and reasonably prompt timeframes for the major stages of the complaint process;
- notice to the parties of the outcome of the complaint, and the basis for the decision; and
- an assurance that the recipient will take steps to prevent the recurrence of any prohibited actions and to correct its discriminatory effects on the complainant and others, if appropriate.

### **Age Discrimination Standards**

The regulation implementing the Age Act, at 34 C.F.R. § 110.10(a), states that no person shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity of a recipient of Department funds. As such, a recipient may not subject a person to different treatment on the basis of age.

In determining whether a recipient has subjected an individual to discrimination on the basis of age, OCR looks at whether there were any apparent differences in the treatment of similarly situated individuals on the basis of age. If different treatment is established, OCR then considers whether the recipient had a legitimate, nondiscriminatory reason for the apparent difference in treatment and whether the reason provided by the recipient was a pretext for discrimination based on age. Additionally, OCR examines whether the recipient treated the individual in a manner that was consistent with established policies and procedures and whether there is any other evidence of age discrimination.

### **Retaliation Standards**

The regulation implementing Title VI of the Civil Rights Act of 1964, at 34 C.F.R. 100.7(e), which is incorporated by reference in Section 504 at 34 C.F.R. Part 104.61, prohibits recipients from intimidating, threatening, coercing or discriminating against any individual for the purpose of interfering with any right or privilege secured by regulations enforced by OCR or because one has made a complaint, testified, assisted or participated in any manner in an investigation, proceedings or hearing held in connection with a complaint. The regulations implementing Title

II, at 28 C.F.R. Part 35.134, and the Age Act, at 34 C.F.R. Part 110.34, include similar requirements.

When investigating a retaliation claim, OCR must determine whether: (1) the individual engaged in a protected activity; (2) the recipient had notice of the individual's protected activity; (3) the individual was subjected to an adverse action contemporaneous with or subsequent to the protected activity; and (4) there was a causal connection between the protected activity and the adverse action. If one of the elements cannot be established, then OCR finds insufficient evidence of a violation. If all of these elements are established, then OCR considers whether the recipient has identified a legitimate, non-retaliatory reason for taking the adverse action. If so, OCR then considers whether the reason asserted is a pretext for discrimination. While OCR would need to address all of the elements in order to find a violation, OCR need not address all of these elements in order to find insufficient evidence of a violation, where the evidence otherwise demonstrates that retaliation cannot be established.

In order for an activity to be considered to be "protected," the individual must have either opposed conduct prohibited by one of the laws that OCR enforces or participated in an investigation conducted under the laws that OCR enforces. Notice of the protected activity to the recipient, and not necessarily to the alleged individual retaliator(s), is sufficient to establish the notice requirement. In determining whether an action taken by the recipient is adverse, OCR considers whether the alleged adverse action caused lasting and tangible harm, or had a deterrent effect. Merely unpleasant or transient incidents usually are not considered adverse. Generally, the more time in between the protected activity and the adverse action, the weaker the presumption of a causal connection. Additional evidence that would demonstrate a causal connection includes: a change in treatment of the individual before and after engaging in the protected activity; treatment of the individual that is different from treatment of other similarly situated individuals; and deviation from established practice or procedure.

### **General Information**

The Complainant has been enrolled in the University's School of Law since XXXXXX. The Complainant asserts that he is an individual with a XXXXXX. According to the Complainant, he provided the University with documentation of his disabilities in XXXXXX. The data establishes that the Complainant is a qualified individual with a disability. Although academic adjustments were agreed upon, the Complainant asserts that he experienced difficulty with the provision of the academic adjustments XXXXXX, which resulted in XXXXXX.

**Allegation #1**

The Complainant alleged that the University discriminated against him on the basis of disability by failing to provide agreed upon academic adjustments during his preparation for the Law Journal competition in May/June 2013.

**Facts relevant to Allegation #1**

The Complainant asserts that he requested the academic adjustments of XXXXXX, but he was not provided the academic adjustments in a timely manner. He asserts that an abundance of time was technically allotted, but that the adjustments of XXXXXX became useless due to difficulties in scheduling a mutually XXXXXX.

According to University documents, on XXXXXX, the Complainant sent an email to the University’s Assistant VP Campus Academic Affairs, the Director of Campus and Educational Support and a representative from the Academic Affairs Office stating XXXXXX.

X---paragraph redacted---X

X---paragraph redacted---X

**Analysis of Allegation #1**

The data establishes that the University made reasonable efforts to provide the Complainant with the necessary academic adjustments of XXXXXXXX. The University made efforts to secure XXXXXXXX, and the data confirms that XXXXXXXX. The Complainant contacted XXXXXXXX before the petitioning deadline and requested an extension XXXXXXXX. The Complainant does not assert that he requested the extension due to his disability. Based on the data gathered during this investigation, OCR finds that there is insufficient evidence to establish that the University discriminated against the Complainant by not providing him with necessary academic adjustments for the Law Journal competition.

**Allegation #2**

The Complainant alleged that the University discriminated against him on the basis of disability by failing to provide approved academic adjustments for XXXXXXXX.

**Facts relevant to Allegation #2**

X---paragraph redacted---X

**Analysis of Allegation #2**

X---paragraph redacted---X

X---paragraph redacted---X

X---paragraph redacted---X. Accordingly, OCR finds that there is insufficient evidence in support of allegation #2.

**Allegation #3**

The Complainant alleged that the University discriminated against him on the basis of disability by failing XXXXXX.

**Facts relevant to Allegation #3**

X---paragraph redacted---X

X---paragraph redacted---X

X---paragraph redacted---X

X---paragraph redacted---X

**Analysis of Allegation #3**

OCR finds that the time period between the Complainant’s request and the University’s fulfillment of the request was reasonable in length in light of the interactive process that was engaged in by the University and the Complainant during that time period. Further, the Complainant’s failure to comply with the University’s procedures for requesting academic adjustments likely contributed to the delay. Accordingly, OCR finds that the University did respond timely to the Complainant’s request and also responded timely to the Complainant’s request for an extension for submission of the final assignment. Accordingly, OCR finds that there is insufficient evidence to support allegation #3.

**Allegation #4**

The Complainant alleged that the University discriminated against him on the bases of age and disability by XXXXXX.

**Facts relevant to Allegation #4**

X---paragraph redacted---X

According to the University, applicants for both programs go through the same process. The University stated that no rubric is used to select students into the program; rather, a holistic approach is used. Applicants are judged based on their writing sample, academic achievements and performance in individual and group interviews.

X---paragraph redacted---X

X---paragraph redacted---X

X---paragraph redacted---X

**Analysis of Allegation #4**

X---paragraph redacted---X

**Allegation #5**

The Complainant alleged that the University discriminated against him on the basis of disability by failing to respond to his complaint, made on XXXXXX, regarding the XXXXXX.

**Facts relevant to Allegation #5**

X---paragraph redacted---X

X---paragraph redacted---X

X---paragraph redacted---X

X---paragraph redacted---X

X---paragraph redacted---X

The University utilizes its Student Grievance Procedures Regarding Accommodation Decisions (the “Grievance Procedures”) to handle disability discrimination complaints made by students. These procedures do not: provide notice to employees of the procedure, including how and where to file a complaint; state that they apply to complaints alleging disability discrimination carried out by students or third parties; or include an assurance that steps will be taken to prevent the recurrence of any prohibited actions and to correct its discriminatory effects on the complainant and others, if appropriate.

**Analysis of Allegation #5**

The data establishes that, XXXXXX, the Complainant asserted that he was subjected to disability discrimination. The University had notice of the Complainant’s allegation of disability

discrimination. The data indicates that the Complainant's disability discrimination complaint was not investigated by the University. Furthermore, the University's grievance procedures only address complaints regarding accommodations. Based on the data gathered during this investigation, OCR finds that the University discriminated against the Complainant on the basis of his disability by failing to address his complaint of disability discrimination.

- The data also establishes that the University's disability grievance procedures are not in compliance with Title II or Section 504 because they only apply to grievances related to student requests for academic adjustments. Thus, the procedures do not apply to grievances concerning other types of disability discrimination or apply to employees. The procedures state that they apply to complaints alleging disability discrimination carried out by students or third parties;
- or include an assurance that the University will take steps to prevent the recurrence of any prohibited actions and to correct its discriminatory effects on the complainant and others, if appropriate.

Accordingly, OCR finds that there is sufficient evidence to support a finding of a violation of Section 504 by the University with regard to its grievance procedures and its response to the Complainant's disability complaint. The University entered into a Resolution Agreement with OCR to resolve this compliance concern.

**Allegation #6(a)**

The Complainant alleged that the University retaliated against him XXXXXX.

**Facts relevant to Allegation #6(a)**

X---paragraph redacted---X

X---paragraph redacted---X

The remainder of the facts is the same as Allegation #4.

**Analysis of Allegation #6(a)**

The evidence establishes that the Complainant XXXXXX. X---paragraph redacted---X. We found no evidence of pretext. Thus, there is insufficient evidence in support of allegation 6(a).

**Allegation #6(b)**

The Complainant alleged that the University retaliated against him for making numerous complaints alleging disability discrimination against the University personnel by failing to address his complaint of disability discrimination, XXXXXX.

**Facts Relevant to Allegation #6(b)**

The same facts set forth in allegation #5, except those facts concerning the University's grievance procedures, are relevant to allegation #6(b).

**Analysis of Allegation #6(b)**

Based on the available evidence, we cannot conclude that the alleged adverse action of not addressing the XXXXXX allegation of disability discrimination occurred. OCR found that University administrators, in a series of exchanges, responded to his concerns regarding the application and selection process of the XXXXXX. The Complainant was also permitted to appeal the initial determination to the Vice President of Academic Affairs, who met with the Complainant and other administrators on XXXXXX, to consider whether there were grounds for reconsideration of his complaint. While the University’s response did not meet the technical requirements of Section 504 (as addressed under allegation #5 above), we cannot conclude by a preponderance of the evidence that the complaint was not addressed. Thus, there is insufficient evidence in support of allegation #6(b).

**Allegation 6(c)**

The Complainant alleged that the University retaliated against him for making numerous complaints alleging disability discrimination against the University personnel by XXXXXX.

**Facts Relevant to Allegation 6(c)**

X---paragraph redacted---X

X---paragraph redacted---X

X---paragraph redacted---X

**Analysis of Allegation #6(c)**

OCR construes the denial of the Complainant’s XXXXXXXX. However, a causal connection cannot be established between the Complainant’s protected activity and the adverse action. The data indicates that the University handled the Complainant’s XXXXXX in accordance with its practices and procedures. The Complainant had not completed the first-year curriculum at the time of application and was one of many students not selected for the program. Because the Complainant was treated to the same as other, similarly-situated students, and was treated in a manner that was consistent with the University’s practices of giving priority to upper-level students who had XXXXXX we do not find a causal connection between the protected activity and the adverse action. Accordingly, there is insufficient evidence in support of allegation #6(c).

**Allegation #6(d)**

The Complainant alleged that the University retaliated against him for making numerous complaints alleging disability discrimination against the University personnel XXXXXX.

**Facts Relevant to Allegation #6(d)**

X---paragraph redacted---X

X---paragraph redacted---X

X---paragraph redacted---X

X---paragraph redacted---X

**Analysis of Allegation #6(d)**

X---paragraph redacted---X. Thus, there is insufficient evidence to establish that the Complainant suffered an adverse action, as alleged in allegation 6(d).

**Allegation #6(e):**

The Complainant alleged that the University retaliated against him for making numerous complaints alleging disability discrimination against the University personnel by XXXXXX.

**Facts Relevant to Allegation 6(e)**

X---paragraph redacted---X

X---paragraph redacted---X

X---paragraph redacted---X

X---paragraph redacted---X

X---paragraph redacted---X

X---paragraph redacted---X

**Analysis of Allegation #6(e)**

The data establishes that the Complainant XXXXXX. Thus, there is insufficient evidence to establish that the Complainant suffered an adverse action XXXXXX. Thus, there is insufficient evidence to establish that the Complainant suffered an adverse action, as alleged in #6(e).

**Allegation #6(f)**

The Complainant alleged that the University retaliated against him for making numerous complaints alleging disability discrimination against the University personnel by XXXXXX.

**Facts Relevant to Allegation 6(f)**

The same facts set forth under allegation #3 are relevant to allegation #6(f).

**Analysis of Allegation #6(f)**

X---paragraph redacted---X. OCR finds that there is insufficient evidence to establish that the Complainant suffered an adverse action, as alleged in #6(f).

**Allegation #6(g)**

The Complainant alleged that the University retaliated against him for making numerous complaints alleging disability discrimination against the University personnel XXXXXX.

**Facts Relevant to Allegation #6(g)**

X---paragraph redacted---X

X---paragraph redacted---X

X---paragraph redacted---X

X---paragraph redacted---X

X---paragraph redacted---X

X---paragraph redacted---X

**Analysis of Allegation #6(g)**

X---paragraph redacted---X. Thus, there is insufficient evidence to establish that the Complainant suffered an adverse action, as alleged in #6(g).

**Conclusion**

As stated above, OCR found sufficient evidence of a violation of Section 504 for Allegation #5 and insufficient evidence with respect to the remaining allegations in this complaint. Consistent with OCR’s procedures, the University signed a Resolution Agreement with OCR on **June 9, 2015**, a copy of which is enclosed, in order to resolve the identified compliance concerns. OCR will monitor the University’s implementation of the agreement we have determined that the University has fully complied with its terms. Accordingly, we are concluding our investigation of this complaint.

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. This letter is not intended nor should it be construed to cover any other issues regarding the University’s compliance with Section 504 or the ADA, which may exist and are not discussed herein. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

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. Please be advised that the University may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint

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resolution process. If this happens, the Complainant may file another complaint alleging such treatment.

Thank you for your cooperation. If you have any questions or concerns, please contact Irene Town at 215-656-8586 or by email at Irene.Town@ed.gov.

Sincerely,

/s/

Judith A. O'Boyle  
Acting Team Leader