



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

50 BEALE ST., SUITE 7200
SAN FRANCISCO, CA 94105

REGION IX
CALIFORNIA

May 27, 2015

Horace Mitchell, Ph.D.
President
California State University, Bakersfield
9001 Stockdale Highway
Bakersfield, California 93311

(In reply, please refer to # 09-15-2059.)

Dear President Mitchell:

The U.S. Department of Education, Office for Civil Rights (OCR), has concluded its investigation of the above-referenced complaint against California State University, Bakersfield (University). The Complainant¹ alleged discrimination on the basis of disability. The specific allegation OCR investigated was whether the University failed to provide the Complainant with the academic adjustments or auxiliary aids necessary to ensure that she could participate in the education program in a nondiscriminatory manner.

OCR opened this complaint for investigation under the authority of Section 504 of the Rehabilitation Act of 1973 and its respective implementing regulations. Section 504 prohibits discrimination on the basis of disability, in programs and activities operated by recipients of Federal financial assistance. OCR also has jurisdiction as a designated agency under Title II of the Americans with Disabilities Act of 1990 and its implementing regulations, over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The University receives Department funds and is subject to the requirements of Section 504 and Title II.

Under Section 302 of OCR's Complaint Processing Manual, a complaint may be resolved at any time when, before the conclusion of an investigation, a recipient expresses an interest in resolving the complaint. Prior to the completion of OCR's investigation, the University informed OCR that it would voluntarily take steps to address the compliance concerns raised in the complaint. The University entered into an agreement to resolve the complaint on May 21, 2015. Accordingly, OCR did not complete its investigation of the complaint or reach conclusions regarding the University's compliance with Section 504 or Title II.

The applicable legal standards and the facts OCR gathered during its preliminary investigation are summarized below.

¹ OCR informed the University of the Complainant's identity in our letter notifying it of the complaint. We are withholding it here to protect her privacy.

The Section 504 regulations, at 34 C.F.R. §104.43(a), provide that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any postsecondary education program of a recipient. The Title II regulations, at 28 C.F.R. §35.130(a), contain a similar prohibition applicable to public postsecondary educational institutions.

The Section 504 regulations, at 34 C.F.R. §104.44(a), require recipient colleges and universities to make modifications to their academic requirements that are necessary to ensure that such requirements do not discriminate, or have the effect of discriminating, against qualified individuals with disabilities. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific required courses, and adaptation of the manner in which courses are conducted. However, academic requirements that recipient colleges and universities can demonstrate are essential to the program of instruction being pursued or to any directly related licensing requirement will not be regarded as discriminatory.

Under the Title II regulations, at 28 C.F.R. §35.130(b)(1)(ii) and (iii), public colleges and universities may not afford a qualified individual with a disability opportunities that are not equal to those afforded others, and may not provide aids, benefits or services that are not effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others. Under 28 C.F.R. §35.130(b)(7), public colleges and universities must make reasonable modifications in policies, practices or procedures when necessary to avoid discrimination on the basis of disability, unless doing so would fundamentally alter the nature of the service, program or activity. Section 35.103(a) provides that the Title II regulations shall not be construed to permit a lesser standard than is established by the Section 504 regulations. Therefore, OCR interprets the Title II regulations to require public colleges and universities to provide necessary academic adjustments to the same extent as is required under the Section 504 regulations.

Under the requirements of Section 504 and Title II, a student with a disability is obligated to notify the college or university of the nature of the disability and the need for a modification, adjustment, aid or service. Once a college or university receives such notice it has an obligation to engage the student in an interactive process concerning the student's disability and related needs. As part of this process, the college or university may request that the student provide documentation, such as medical, psychological or educational assessments, of the impairment and functional limitation.

OCR's preliminary investigation showed the following:

- In order to receive academic accommodations and auxiliary aids, a student with a disability must be enrolled at the University and complete an Intake Packet, which includes several forms including the Verification of Disability form. The student must then schedule an appointment with an appropriate Services for Students with

Disabilities (SSD) Office staff member in order to discuss eligibility and accommodations.

- The Complainant is a student at the University, pursuing a degree in Psychology. The Complainant has a disability and one of its effects is that she has auditory hallucinations.
- On October 13, 2014, the Complainant prepared a Verification of Disability form. In the comments section of the form, the Complainant's treating physician wrote that the Complainant requires the educational accommodation of "open book testing and personal notes allowed."
- The Complainant met with an SSD staff member on October 14, 2014. The staff member wrote in the Complainant's SSD file that this accommodation is not offered. The staff member concluded the visit by scheduling an appointment for the Complainant with the SSD Office Director. The Complainant did not come in for her appointment.
- On November 24, 2014, the Complainant met with a different SSD staff member who accompanied her to meet her music professor. The SSD staff member noted that the Complainant and professor were able to agree on a testing accommodation that allowed the Complainant to take an exam in a separate room.
- On December 3, 2014, the Complainant dropped off a letter at the SSD Office from her physician that noted that the Complainant "would be a great candidate for oral testing in all of her classes." The SSD Office staff member informed the Complainant that the SSD Office could request oral examinations and give supporting documentation to professors if they elected to offer the accommodation, but that the SSD Office could not mandate this accommodation. The University states that the Complainant has not contacted the SSD office since this date.
- The Complainant alleges that the SSD Office has not helped her obtain the necessary academic adjustments she requires. She states that the SSD Office can only provide certain accommodations and professor approved adjustments. She claims that the SSD office informed her that she would need to request the open notes and open book accommodation directly from her professor and if the professor agreed, then she could receive the accommodation. The Complainant's professors permitted the Complainant to receive this accommodation. As of January 2015, the Complainant stated that she is receiving accommodations in all of her classes.

As noted above, under OCR's procedures, a complaint may be resolved at any time when, before the conclusion of an investigation, a recipient expresses an interest in resolving the complaint. Prior to the completion of OCR's investigation, the University entered into the attached agreement to resolve the allegations in the complaint. The agreement requires that the University: initiate an interactive process with the Complainant to determine any reasonable accommodations necessary to ensure she

has equal access in the University's program; arrange for its SSD Office Staff to be trained concerning the interactive process, including consultation with students seeking accommodations and, if required, with affected faculty and staff, and how to provide reasonable accommodations to, and work with, students with impairments; and provide written guidance and training to its faculty, as well as all other administrative and academic department heads, regarding the requirement to expeditiously refer all student requests for disability related accommodations, services, or modifications, to the SSD office, as required by University policy.

Because the University voluntarily resolved this complaint, OCR did not complete its investigation or reach conclusions as to whether the University failed to comply with Section 504 or Title II. OCR will monitor the University's implementation of the agreement.

This concludes OCR's investigation of the complaint and should not be interpreted to address the University's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. OCR is closing this complaint as of the date of this letter, and notifying the Complainant simultaneously. 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.

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 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.

Thank you for your cooperation in resolving this case. If you have any questions about this letter, please contact Alvaro Soria, OCR attorney, at (415) 486-5580.

Sincerely,

/s/

Anamaria Loya
Team Leader

Enclosure