



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

REGION IX  
CALIFORNIA

50 UNITED NATIONS PLAZA  
MAIL BOX 1200; ROOM 1545  
SAN FRANCISCO, CA 94102

December 20, 2016

Dr. Willie Hagan  
President  
California State University, Dominguez Hills  
1000 East Victoria Street  
Carson, California 90747

(In reply, please refer to case no. 09-15-2463.)

Dear President Hagan:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against California State University, Dominguez Hills (University). The Complainant alleged that the University discriminated against her on the basis of disability.<sup>1</sup> Specifically, OCR investigated the following allegation:

- Whether during the 2014-15 and 2015-16 academic years, the University failed to provide the Complainant with auxiliary aids and services necessary for her to participate in her educational program; specifically, additional time to complete assignments in her classes.

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. Section 504 prohibits discrimination on the basis of disability by recipients of federal financial assistance. OCR is also responsible for enforcing 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. Title II prohibits discrimination on the basis of disability by public entities. As a recipient of federal financial assistance and as a public university, the University is subject to Section 504, Title II, and their implementing regulations.

To investigate this complaint, OCR conducted interviews and reviewed documents and other information provided by the Complainant and the University. After careful review of the information gathered in the investigation, OCR concluded that the University violated Section 504 and Title II and their implementing regulations with regard to the allegation OCR investigated. The legal standards, facts gathered, and the reasons for OCR's determinations are summarized below.

### Legal Standards

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,

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<sup>1</sup> OCR previously provided the University with the identity of the Complainant. We are withholding her name from this letter to protect her privacy.

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.

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 as 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 or result in undue financial and administrative burdens. 28 C.F.R. § 35.150(a)(3) provides that, in those circumstances where personnel of the public entity believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, a public entity has the burden of proving that compliance with §35.150(a) of this part would result in such alteration or burdens.

The decision that compliance would result in such alteration or burdens must be made by the head of a public entity or his or her designee after considering all resources available for use in the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, a public entity shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits or services provided by the public entity.

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.

### **Findings of Fact**

The following facts are relevant to OCR's analysis.

- The Complainant was a graduate student pursuing a single subject credential in the Special Education Program at the University. In the Spring 2015 semester, she was enrolled in four Special Education courses.
- The Complainant has levoscoliosis, a physical disability. Due to the Complainant's disability, she told OCR that she experiences constant and radiating pain in her right leg and the University acknowledged that she "can't sit and walk for long periods of time and is taking physical therapy."
- According to Disabled Student Services (DSS) policy and procedures, in order to request and receive academic adjustments and accommodations, students must submit an Application for Services packet, which includes several required forms, and participate in an individual DSS orientation with a Disability Management Advisor.

#### *January XX, 2015 Request for Modifications:*

- On January XX, 2015, the Complainant emailed DSS and her Spring 2015 professors requesting that her classes be online and that she be able to turn in her work online given her disability. The Complainant included physical therapy documents and doctors' notes to support her request. Those documents stated the Complainant's medical condition and explained that she "has low back pain and is not able to seat [*sic*] for a long time." The then-Special Education Department Chair replied on the same day in an email to the Complainant, stating: "Based on your request unfortunately we cannot support your request for it requires a fundamental alteration of courses. These SPED courses are designed as face-to-face courses and as such are delivered in a face-to-face setting. They are not offered online." The Complainant responded to the Special Education Department Chair that she understands her classes are face-to-face but reiterated that her physical therapy and doctors' appointments will prevent her from attending class. She expressed a desire for accommodations from her professors.
- Four days after the Special Education Department Chair denied the Complainant's request for online courses, the DSS Director informed the Complainant that her request for online accommodations was denied.
- The Special Education Department Chair and the DSS Director denied the Complainant's request for online courses before the Complainant completed the DSS procedures for a student seeking academic adjustments and accommodations. The Complainant had not yet correctly completed the required Application for Services packet nor had she participated in an individual DSS orientation with a Disability Management Advisor.

- In its narrative response, the University explained that it denied the Complainant's request for online classes because "(1) the academic requirements for each of the on-campus courses had been set and approved by the Curriculum Review Committee prior to the start of the 2014-15 academic year and making the course an online course would have required substantial planning and approval before the start of the spring semester; (2) DSS consulted Special Education Department Chair, who concluded it was fundamentally impossible to change the courses from on-campus to online one week before the start of the semester; and (3) modifying the courses would be inconsistent with established practice and the courses are related to certification requirements within the Special Education Program."
- In an interview with the Special Education Department Chair, he explained that making the Complainant's Spring 2015 courses online classes would be a fundamental alteration because these courses require supervision of students in the field. Additionally, the University Curriculum Committee and the California Council of Teaching Credentials would need to approve the online course, which is a multi-step process that could take two to three years.
- The second part of the Complainant's January XX, 2015 request—to turn in her work online given her disability—was not addressed by the Special Education Department Chair, DSS, or the University's narrative response. OCR learned through interviews with three of the Complainant's four Spring 2015 professors that the three professors accepted student work online through Blackboard or email attachment. During the course of the Spring 2015 semester, the Complainant learned of the opportunity to submit her work online and she did so.
- After the denial of Complainant's request for online courses, DSS asked the Complainant to complete the DSS procedures for students seeking academic adjustments and accommodations. On January XX, 2015 and January XX, 2015, there were email and phone communications between the Complainant and a DSS Disability Management Advisor regarding DSS procedures, including the required DSS forms and an orientation. On January XX, 2015, a DSS Disability Management Advisor provided the Complainant the Test Accommodation Form, Class Schedule Form, and Course Test Accommodation Policy for her to complete. According to DSS records, a DSS Disability Management Advisor spoke to the Complainant over the phone for the DSS orientation on January XX, 2015.
- January XX, 2015 was the next scheduled phone orientation between a DSS Disability Management Advisor and the Complainant, but the Complainant missed this meeting. The Disability Management Advisor called the Complainant on January XX, 2015 and February X, 2015 to reschedule the orientation.
- According to DSS records, DSS received the Complainant's Application for Services on February X, 2015. The DSS process for academic adjustments and accommodations still required the Complainant's Class Schedule and a signed Accommodation Agreement after an orientation with a Disability Management Advisor.

*February XX, 2015 Request for Modifications:*

- On February XX, 2015, the Complainant emailed DSS and blind copied her four Spring 2015 professors requesting four modifications: (1) extra time for assignments due to doctor's appointments, (2) not to be marked down on days she is not in class, (3) to receive assignments from a specific professor early so she can turn in her weekly reflection the night before Thursday class, and (4) turn in assignments ahead of time. After receiving this email, a DSS Disability Management Advisor asked the Complainant to discuss the requests. The Complainant told OCR she asked for these modifications because her disability, including the pain, inability to walk or sit for too long, and two to three weekly appointments with doctors and physical therapists, affected her school work. The Complainant stated she did not want to be marked down for absences when she was seeing a doctor or physical therapist due to her disability. She also requested extra time to complete assignments since it was challenging to work through the pain, but she occasionally had enough energy to complete an assignment faster and wanted the opportunity to turn in those assignments early.
- On February XX, 2015, DSS and the Complainant spoke on the phone to complete the DSS orientation and discuss the Complainant's February XX, 2015 requests. The DSS Disability Management Advisor and then-DSS Associate Director participated in this call with the Complainant. According to the DSS Record of Contact describing the February XX, 2015 orientation, DSS explained their policies and procedures, and DSS reviewed the Student Accommodation Agreement and Complainant's four modification requests. DSS noted in the Complainant's Record of Contact for the call that these modifications are "up to professor's discretion, not a modification/accommodation to be supported or granted by DSS." The University's narrative response further stated that during the DSS orientation, DSS told the Complainant that "her request for open-ended extensions on all assignments was not reasonable and would not be supported by DSS."
- A DSS Disability Management Advisor explained to OCR that the Complainant's four requests were determined to be unreasonable because they were "blanket" requests: the Complainant wanted extra time on all her assignments and all reflection questions early; she wanted to turn in all her assignments early and not be marked down when she is absent from class. According to the Disability Management Advisor as well as the DSS Administrative Support Coordinator, DSS would never grant "blanket" accommodations.
- The Disability Management Advisor described the Complainant's requests, including turning in assignments early, as unreasonable. However, in interviews with three of the Complainant's four Spring 2015 professors, OCR learned that all three professors accepted assignments early.
- The Complainant's Spring 2015 professors knew of the Complainant's four requested modifications because she emailed them the request. One of the Complainant's professors explained to OCR that the Complainant's requests were "too much" and these modifications, such as extra time, were meant for students with cognitive, not physical, disabilities.

- The Disability Management Advisor informed OCR that she has previously engaged with students to make unreasonable requests more reasonable. For instance, the Advisor would suggest double time rather than triple time for exams or suggest a Smart Pen rather than a captionist. However, in the Complainant's case, the Disability Manager Advisor did not recall any conversation with the Complainant to make her requests more reasonable. The Complainant told OCR that she would have been willing to discuss her requests with DSS, but the Disability Management Advisor said no to the requests and there was no negotiation about the modifications she asked for.
- At the end of the DSS orientation on February XX, 2015, DSS noted that it will write Disability Verification Letters to the Complainant's professors, but the letters would only state disability verification without any accommodations. According to the DSS Disability Management Advisor only five to ten Disability Verification Letters, out of six hundred letters per semester, state a student has a disability and provides no accommodations.
- Following the February XX, 2015 DSS orientation, the Complainant provided DSS the remaining required forms, such as the Student Accommodation Agreement and the Class Schedule Form.
- Though DSS rejected the Complainant's four modification requests, DSS informed the Complainant that she may receive accommodations based on her professors' discretion. In an email from the Complainant to DSS on February XX, 2015, the Complainant wrote, "[P]er the phone conversation, it is up to each professor to accommodate me for my disability matters." DSS did not dispute the Complainant's summary of the phone conversation.
- On February XX, 2015, DSS emailed the Complainant stating, "1. Your modifications were denied. It is now up to your professors [*sic*] discretion on whether they would like to extend any assignments, etc. 2. I will email your professors your DSS Disability Verification letters stating you are registered with DSS. Again, as stated before your modification requests are unreasonable and will not be supported by DSS."
- DSS emailed the Complainant's professors a Disability Verification Letter which stated, "This letter indicates student has provided proper documentation for their disability although they do not currently require academic accommodations. No action is typically needed."
- According to the Complainant's professors, it is very rare for them to receive a Disability Verification Letter that identifies a disability but does not include any accommodations or modifications.
- The Complainant told OCR that when she asked her Spring 2015 professors for modifications, the professors told her to talk to DSS.

- During Spring 2015, the Complainant did not receive any accommodations or modifications in her four courses.
- The Complainant sought and received a medical withdrawal from her four Spring 2015 courses and her two Fall 2015 courses. Because she had medical withdrawals, the University refunded the costs and fees for the two semesters. The Complainant is not currently registered for classes at the University.
- Since the Complainant requested modifications in her Special Education courses in January and February of 2015, the University has updated its policies and procedures regarding course modifications, academic adjustments, and course assignment extension. The new Student disAbility Resource Center Student Handbook, printed in January 2016, describes the interactive process by which the University will review student requests for course modifications, including an extension on an assignment. The Disability Management Advisor will review each request on a “case-by-case basis” and will provide “adequate and thorough consideration,” and if the Disability Management Advisor denies a student’s request, the student will meet with the Director to review the request. If the student is not in agreement with the Director’s decision, the student will be directed to schedule an appointment with the Dean of Students as an appeal. The new policy also states that faculty will inform students to speak to Student disAbility Resource Center for course modifications since “[a]ll university sanctioned accommodations or modifications are to be authorized by the Student disAbility Resource Center office.”

#### Analysis & Conclusions of Law

OCR found that the University did not meet its responsibilities under Section 504 and Title II and their implementing regulations regarding academic adjustments and auxiliary aids to a qualified student with a disability. Specifically, the University did not engage in an interactive process with the Complainant.

Under the requirements of Section 504 and Title II, a student with a disability is obligated to notify the university of the nature of the disability and the need for a modification or adjustment. Once a 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 of the impairment and functional limitation.

In this case, the Complainant informed the University of her disability and she made two requests for modifications on January XX, 2015 and February XX, 2015. Before the Complainant provided all the required documents to DSS to consider her requests, the University had already rejected both requests for modifications.

The Complainant first notified the University in her January XX, 2015 email requesting online courses and the opportunity to turn in work online. The Special Education Department Chair rejected the Complainant’s request for online courses as a fundamental alteration since the courses were designed to be “face-to-face” and cannot be offered online. The Special Education

Department Chair and the University's narrative response further detail how making the courses online would be a fundamental alteration. Regarding the assertion that online courses were a fundamental alteration, OCR found that the University satisfied Title II and its implementing regulations because the Special Education Department Chair considered the resources and accreditation requirements needed to change the Complainant's four Spring 2015 classes and provided a written statement, via email, of the reason online classes would be a fundamental alteration. In his email rejecting the Complainant's request for online courses, the Special Education Department Chair did not respond to the Complainant's request to turn in her work online, but the Complainant informed OCR that she was able to do so in her Spring 2015 courses. Though the University determined that online courses were a fundamental alteration, Title II and its implementing regulations still required that the University consider whether other effective accommodations exist.

After the rejection of her January XX, 2015 request, the Complainant made another request for modifications on February XX, 2015. The Complainant emailed DSS and blind copied her Spring 2015 professors to request: (1) extra time for assignments due to doctor's appointments, (2) not to be marked down on days she is not in class, (3) to receive assignments from a specific professor early so she can turn in her weekly reflection the night before Thursday class, and (4) turn in assignments ahead of time. DSS rejected these four requests during the February XX, 2015 DSS Orientation call involving the Complainant, the Disability Management Advisor, and the then-Associate Director. The Disability Management Advisor characterized the Complainant's requests as unreasonable, which is echoed by the University's narrative response. Though the Disability Management Advisor has previously engaged with students to make unreasonable requests more reasonable, she did not recall any conversation with the Complainant to make the requests more reasonable. The Complainant stated that the Advisor did not negotiate her requests with her but instead rejected them without discussion.

Rather than engage in an interactive process with the Complainant to determine what modifications were needed, the Disability Management Advisor told the Complainant to speak individually with her professors, since accommodations can be provided based on professorial discretion. Simultaneously, however, the Disability Management Advisor sent Disability Verification Letters to the Complainant's professors indicating the Complainant had a verified disability but did not need any accommodations. When the Complainant asked her professors for modifications, she stated that the professors told her to speak to DSS about the modifications. Ultimately, after contacting various people at the University, the Complainant received no modifications or accommodations in her Spring 2015 courses.

During the investigation, OCR heard comments from University staff that raised concerns about a lack of understanding regarding Section 504 and Title II and their requirements. Specifically, the DSS Disability Management Advisor and Administrative Support Coordinator declared DSS would never consider "blanket" accommodations. A professor described the Complainant's requested modifications as appropriate for those with mental, not physical, disabilities. Section 504, Title II, and their regulations require the University engage the Complainant in an interactive process concerning her unique needs, which are specific to her disability and preclude broad prohibitions or categorical exclusions. These federal laws and regulations do not stipulate certain types of accommodations for certain types of disabilities. Additionally, there is no

prohibition of consistent accommodations, for instance a two day extension on all assignments, if these accommodations are determined necessary through an interactive process.

By a preponderance of the evidence, OCR concluded that the University did not comply with the requirements of Section 504 and Title II and their applicable regulations.

## **Conclusion**

This concludes the investigation of this complaint.

To address the issue alleged in the complaint, the University, without admitting to any violation of law, entered into the enclosed Resolution Agreement which is aligned with the complaint allegation and the findings and information obtained by OCR during its investigation. Pursuant to the Resolution Agreement, the University will disseminate a guidance memorandum and provide trainings on the Section 504 and Title II requirements to engage in an interactive process with students with disabilities to determine what adjustments or modifications are needed. The guidance memorandum and trainings will also include the University's process for students to seek course modifications and academic adjustments, as established in the Student disAbility Resource Center Student Handbook. Furthermore, the Resolution Agreement requires the University to offer the Complainant an opportunity to return to the College of Education to complete her credential, and if the Complainant does return, the University will engage in the interactive process to determine what adjustments or modifications are needed to ensure academic requirements do not discriminate, or have the effect of discriminating, against the Complainant based on her disability.

Based on the commitments made in the enclosed resolution agreement, OCR is closing the investigation of this complaint as of the date of this letter, and notifying the Complainant concurrently. When fully implemented, the Resolution Agreement is intended to address all of OCR's compliance concerns in this investigation. OCR will monitor the implementation of agreement until the University is in compliance with the Section 504 and Title II and their implementing regulations, which were at issue in the case.

OCR's determination in this matter should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. We are notifying the Complainant simultaneously of OCR's determination. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

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.

Please be advised that the District 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, it will seek to protect, to the extent provided by the law, personal information that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact Annie Lee, Civil Rights Attorney, at 415-486-5594 or [Annie.Lee@ed.gov](mailto:Annie.Lee@ed.gov), or Carolyn Wade, Equal Opportunity Specialist, at 415-486-5563 or [Carolyn.Wade@ed.gov](mailto:Carolyn.Wade@ed.gov).

Sincerely,

/s/

Zachary Pelchat  
Team Leader

Enclosure

CC: XXXXXXXXXXX XXXXXXXX XXXXXXX, University Counsel (by email only)