



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVENUE, SW
WASHINGTON, DC 20202-1475

REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, DC

July 8, 2016

By First Class Mail

Harold L. Martin Sr., Chancellor
North Carolina A&T State University
1601 East Market Street
Dowdy Building, Suite 418
Greensboro, NC 27411

RE: OCR Complaint No. 11-15-2201
Resolution Letter

Dear Mr. Martin:

This letter is to advise you of the outcome of the complaint that the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) received on March 18, 2015 against North Carolina A&T State University (University). The Complainant alleged that the University discriminated against her on the basis of a disability. Specifically, the Complainant alleged that, during the fall and spring semesters of the 2014-2015 academic year, the University failed to provide her with academic adjustments and auxiliary aids and services to facilitate her participation in the educational program.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of a disability in programs and activities that receive Federal financial assistance from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive Federal financial assistance from the Department. Because the University receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

Before OCR completed its investigation, the University expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement. The following is a discussion of the relevant legal standards and information obtained by OCR during the investigation that informed the development of the Resolution Agreement.

Legal Standards

The Section 504 regulation, at 34 C.F.R. § 104.43(a), provides that a qualified person with a disability may not be excluded from participation in, denied the benefits of, or otherwise

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

subjected to discrimination in any postsecondary aids, benefits, or services on the basis of disability. The regulation at § 104.44(a) requires a university to modify its academic requirements as necessary to ensure that such requirements do not discriminate or have the effect of discriminating on the basis of disability against a qualified student with a disability. The regulation at § 104.44(d) requires a university to ensure that no qualified individual 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. OCR interprets the Title II regulation to require public universities to provide academic adjustments and auxiliary aids to the same extent as required under Section 504.

Factual Background

According to the University's policies and procedures, a student with a disability should contact the Office of Veteran and Disability Support Services (OVDSS) as soon as possible prior to the beginning of classes to discuss the provision of academic adjustments or related aids and services (hereafter, "accommodations"). Students with a learning disability or XXXX must provide the office with an official evaluation from an appropriate professional, and the office prefers that the evaluation be no more than three years old.

On April 25, 2014, the Complainant registered for 3 classes for the Fall 2014 semester. On August 26, 2014, the Fall semester commenced and the Complainant began attending classes. Records from the University reflect that on August 27, 2014, the Complainant went to Counseling Services and submitted documentation to OVDSS for accommodations that was dated 2010 or 2011. Due to the age of the documentation and pursuant to the Complainant's request, the Director of Counseling Services administered a battery of tests to the Complainant between August 27th, and September 17th. In response to a request from the Director of Counseling Services, on September 17th, the Complainant provided information to complete the documentation concerning her disability. Two days later, the Director of Counseling conducted a psychological examination of the Complainant. After nearly a month passed, on October 14th, the Complainant contacted the Director of Counseling Services to inquire about the status of her request for accommodations. At that time, the Director of Counseling Services advised the Complainant that he had not yet received certain documentation from a source the Complainant provided but would move forward to process the request for accommodations.

The Complainant completed a Request for Services form in order to obtain accommodations on October 20, 2014. On that form, she noted that reading was one of the major life activities impacted by her disability. On October 22nd, the Director of Counseling provided the Complainant a completed assessment and a list of recommended academic accommodations.

Pursuant to the University's policies and procedures, a student must meet with the OVDSS director or a designee to discuss his or her disability and the functional limitations resulting from that disability. The specific accommodations to be provided to the student are determined at this meeting. On or about October 23rd, the Complainant met with the Director of OVDSS to discuss her accommodations. The Complainant alleges that, during that conversation, she advised the Director of OVDSS that she required audio books. On the same day, the

Complainant sent the Director of OVDSS an e-mail including a list of her text books and stating, “Here is the textbook information you requested for my accommodations for the audio books.” On October 24th, OVDSS advised each of the Complainant’s professors that the Complainant was registered with the office and required the following accommodations: extended time on tests/in class assignments; a quiet/low distraction setting/separate room for tests; note taker(s); and permission to use a tape recorder. The Complainant’s Disability Verification Form reflects only those accommodations and does not indicate that the Complainant required audio books.

The University did not provide the Complainant with a note taker or audio books during the remainder of the fall 2014 semester. Instead, on November 17th, the OVDSS Director submitted a request to Office of the Registrar to “retroactively withdraw” the Complainant from all courses for the fall 2014 semester. He explained that “due to late assessment and no fault of the [Complainant], [OVDSS] could not acquire the resources needed based on her disability for her to be successful in the classroom this semester. [OVDSS] will have all resources on hand spring semester 2015 to assist the [Complainant] in the classroom.” On November 25th, the Office of the Registrar granted the request to retroactively withdraw the Complainant from all courses for the fall 2014 semester.

The registration period for the spring 2015 semester was November 3rd through December 1st. During this time period, the Complainant registered for 2 classes. On December 9, 2014, the Complainant made an accommodations request to the OVDSS Director for these courses. Again, the Disability Verification Form for the Complainant indicated that she was entitled to receive certain testing modifications, a note taker, and permission to use a tape recorder; the Disability Verification Form did not address audio books. The following day, however, the OVDSS Director advised the Complainant that OVDSS would obtain the audio version of the textbooks assigned for her classes prior to the beginning of the semester. On January 12, 2015, the spring 2015 semester began and the Complainant began attending classes. However, OVDSS was unable to obtain audio books for the Complainant’s classes prior to that time.

While waiting for the publisher to provide an audio version of the Complainant’s textbooks, the University informed OCR that OVDSS provided the Complainant with 7 different alternative resources but the Complainant reported that those resources did not work for her. Those resources included a Reading Pen, which the Complainant returned to OVDSS shortly thereafter and explained that it was not effective because it read and defined one word at a time, rather than continuously reading the text.

On February 21st, the OVDSS Director submitted a request to Office of the Registrar to “medically withdraw” the Complainant from all courses for the spring 2015 semester because “she could not be supported by the resources provided by [OVDSS] for classroom accommodations.” The OVDSS Director explained that the office “researched and tried 7 different assistive resources and finally received the read aloud resource that the Complainant needed...; it was late in the semester by the time it arrived.”

On March 11th, the Complainant conveyed the following concerns to the OVDSS Director. First, OVDSS had not provided her with any audio books and, as a result, she had been flagged for poor performance in one of her classes. Second, her assigned note taker had not yet provided

her with notes for another course that had already ended due to an accelerated schedule. Third, the University only permits students to register for the same course twice. Although she was retroactively withdrawn from her courses for the fall 2014 semester, they still appeared on her transcript. Because she re-registered for one of those courses for the spring 2015 semester and then was required to withdraw for a second time due to the absence of accommodations, she would be precluded from registering from that course in the future. Fourth, she has received financial aid for a total of 15 credit hours for the fall and spring semesters; however, she would not be able to obtain any of those credits due to the absence of accommodations. The Complainant requested that all courses she registered for during the fall and spring semesters of the 2014-2015 academic year be removed from her academic record.

In response to the Complainant's concerns, the OVDSS Director asked the Complainant if she had maintained contact with her note taker to obtain her notes because the note taker had reported to the OVDSS office a few times. According to the University's narrative response, the OVDSS Director further advised the Complainant that she could pick up her notes from the OVDSS office, however, the Complainant did not respond. With respect to the Complainant's inquiry regarding the audio books, the OVDSS Director reminded the Complainant that OVDSS and the Complainant had tried many different alternative resources while waiting to receive the audio books from the publisher; but they did not work for the Complainant.

On March 13th, the OVDSS Director advised the Complainant's professors that a request for the Complainant's medical withdrawal from her courses was being processed and they should annotate accordingly in their respective roll books. The OVDSS Director also advised the Complainant that he had been working with the new Registrar to process her withdrawal paperwork and to ensure that students are not penalized for medical withdrawals.

On April 6, the registration period for the fall 2015 semester began and was scheduled to end on April 27th. On April 17th, OVDSS staff provided the Complainant with an audio book for one of her courses. On the same day, the Complainant advised the OVDSS Director that her withdrawal had not yet been processed. In light of the ongoing registration period for the fall 2015 semester, she again requested the status of her accommodations and the removal of the "withdrawals" from her transcript to permit a re-registration for certain courses. Finally, the Complainant requested assistance concerning the repayment of financial aid for courses she did not complete due to the absence of accommodations, and how she could obtain financial aid for the impending academic year.

Despite the Complainant's requests, the University did not remove the "withdrawals" from her transcript and advised her that she would remain on financial aid probation until she explained that she was forced to withdraw from her courses due to the absence of accommodations during an appeal process. Consequently, the Complainant was unable to register for any courses during the registration period for the fall 2015 semester.

Conclusion

Pursuant to Section 302 of OCR's *Case Processing Manual*, the University signed the enclosed Resolution Agreement on May 31, 2016 which, when fully implemented, will resolve the

allegation raised in this complaint. The provisions of the Agreement are aligned with the allegation and issues raised by the Complainant and the information discussed above that was obtained during OCR's investigation, and are consistent with applicable law and regulation. OCR will monitor the University's implementation of the Agreement until the University is in compliance with the statutes and regulations at issue in the case. Failure to implement the Agreement could result in OCR reopening the complaint.

This concludes OCR's investigation of the complaint. This letter 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. 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 must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, or participates in an OCR proceeding. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

We appreciate the University's cooperation in the resolution of this complaint. If you have any questions, please contact Kimberly Conway, the OCR attorney assigned to this complaint, at 202-260-0991 or Kimberly.Conway@ed.gov.

Sincerely,

/S/

Kristi R. Harris
Supervisory Attorney, Team IV
District of Columbia Office
Office for Civil Rights

Enclosure

cc: J. Charles Waldrup, J.D., Ph.D.
General Counsel
Office of Legal Affairs
Email: cwaldrup@ncat.edu