



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 20, 2016

Dr. Carol L. Folt
Chancellor
University of North Carolina at Chapel Hill
103 South Building, Campus Box 9100
Chapel Hill, NC 27599-9100

RE: OCR Complaint No. 11-16-2070
Resolution Letter

Dear Dr. Folt:

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 December 15, 2015 against the University of North Carolina at Chapel Hill (the University). The Complainant alleged that, during the 2015-2016 academic year, the University discriminated against him on the basis of a disability. Specifically, he alleged:

- (1) In XXXX, the University discriminated against the Complainant when it denied his request for accommodations during the interview portion of the admissions process to the School of Pharmacy.
- (2) The University discriminated against the Complainant and retaliated against him after he filed an internal complaint of disability-based discrimination by not providing him early consideration during the application review process in XXXX.

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 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. The laws enforced by OCR prohibit retaliation against any individual who asserts rights or privileges under these laws or who files a complaint, testifies, or participates in an OCR proceeding. 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.

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

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 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.

Universities may establish reasonable requirements and procedures for students to provide documentation of their disability and request academic adjustments and auxiliary aids and services.¹ Students are responsible for obtaining disability documentation and for knowing and following the procedures established by the university. Once the student has provided adequate notice and documentation of his/her disability and the need for modifications due to the disability, the university must provide the student with appropriate academic adjustments and auxiliary aids and services that are necessary to afford the student an equal opportunity to participate in a school's program. However, the university is not required to make adjustments or provide aids or services that would result in a fundamental alteration of the university's program or impose an undue burden.

In determining what modifications are appropriate for a student with a disability, the university should familiarize itself with the student's disability and documentation, explore potential modifications, and exercise professional judgment. The question of whether a university has to make modifications to its academic requirements or provide auxiliary aids is determined on a case-by-case basis. OCR generally does not substitute its judgment for that of qualified educators and professionals regarding modifications. Instead, OCR reviews relevant factual evidence to determine whether a university acted in a reasonable manner and whether it took appropriate steps consistent with Section 504 and Title II in making decisions regarding a student's eligibility for academic adjustments. Both Section 504 and Title II envision a

¹ The University and the Complainant frequently refer to academic adjustments and auxiliary aids as "accommodations." The Section 504 regulation addressing post-secondary education refers to "academic adjustments and auxiliary aids," while the Title II regulation refers to "reasonable modifications." When the term "accommodations" is used in this document, it refers to academic adjustments and auxiliary aids as those terms are used in 34 C.F.R. § 104.44 and reasonable modifications as that term is used in 28 C.F.R. § 35.130(b)(7).

meaningful and informed process with respect to the provision of modifications, e.g., through an interactive and collaborative process between the university and the student. If a university denies a request for a modification, it should clearly communicate the reasons for its decision to the student so that the student has a reasonable opportunity to respond and provide additional documentation that would address the university's objections.

Section 504 and Title II do not require a university to modify academic requirements that are essential to the instruction being pursued by the student or to any directly related licensing requirement. In reviewing an institution's determination that a specific standard or requirement is an essential program requirement that cannot be modified, OCR considers whether that requirement is educationally justifiable. The requirement should be essential to the educational purpose or objective of a program or class. OCR policy requires, among other factors, that decisions regarding essential requirements be made by a group of people who are trained, knowledgeable and experienced in the area; through a careful, thoughtful and rational review of the academic program and its requirements; and that the decision-makers consider a series of alternatives for the essential requirements, as well as whether the essential requirement in question can be modified for a specific student with a disability. OCR affords considerable deference to academic decisions made by post-secondary institutions, including what is or is not an essential program requirement.

In addition, when investigating an allegation of different treatment, OCR first determines whether there is sufficient evidence to establish an initial, or prima facie, case of discrimination. Specifically, OCR determines whether the University treated the Complainant less favorably than similarly situated individuals without disabilities. If so, OCR then determines whether the University had a legitimate, nondiscriminatory reason for the different treatment. Finally, OCR determines whether the reason given by the University is a pretext, or excuse, for unlawful discrimination.

Finally, the Section 504 regulation, at 34 C.F.R. § 104.61, which incorporates the procedural provisions of the regulation implementing Title VI of the Civil Rights Act of 1964, prohibits retaliation against any individual who asserts rights or privileges under Section 504 or who files a complaint, testifies, or participates in an OCR proceeding.

When analyzing a claim of retaliation, OCR will look at: 1) whether the Complainant engaged in a protected activity (e.g., filed a complaint or asserted a right under a law OCR enforces); 2) whether the University took a materially adverse action against the Complainant; and 3) whether there is some evidence that the University took the adverse action as a result of the Complainant's protected activity. If all these elements are present, this establishes an initial, or prima facie, case of retaliation. OCR then determines whether the University has a legitimate, non-retaliatory reason for its action. Finally, OCR examines whether the University's reason for its action is a pretext, or excuse, for unlawful retaliation.

Factual Background

Prior to the University expressing a willingness to enter into an agreement concerning this complaint, OCR obtained documents from the University, and subsequently conducted an

interview of a University staff person. According to information obtained thus far, OCR provides the factual background below.

The Complainant applied to the University's XXXX during the 2014-2015 admissions cycle, to matriculate in Fall 2015. The School requires interviews as part of its admissions process, and had recently moved from a traditional interview to what is called the Multiple Mini Interview (hereinafter "MMI"). During the MMI, applicants rotate through seven interview stations over the course of an hour. Each candidate invited for an interview has two minutes to review the scenario and six minutes to discuss the scenario with the interviewer. The Complainant sought certain accommodations for the interview portion of the admissions process, but was not approved all of the accommodations requested.

On XXXX, according to the University, the Complainant contacted the University's Accessibility Resources & Service (ARS) office to request certain accommodations during the interview process for the 2015-2016 admissions cycle, to matriculate in Fall 2016. Having requested accommodations during the prior admissions cycle, the Complainant noted that his medical documentation was on file with the University, and offered to provide it again. He also specified that he "would like twice the time for the reading parts (4 consecutive minutes to read each question) and twice the time for the answering sessions" Within a few days, the Assistant Director of Accessibility Resources & Services (ARS) began to organize a Documentation Review Committee (DRC) to review the accommodation request. The DRC, however, did not meet until XXXX, and did not make a decision concerning the Complainant's request for accommodations until XXXX.

On XXXX, the Complainant submitted his official application to the School. The deadline for the submission of those applications was set for XXXX however, the University encouraged applicants to submit an application "as soon as possible to ensure earlier review by the Admission Committee." The interview with University staff revealed that, to encourage applicants to submit applications early, the University set a priority deadline for October 1st, and guaranteed that, "all applicants submitted by the priority deadline, October 1st, [would] be guaranteed early consideration during the review process." As the Complainant submitted his application in advance of the October 1st deadline, the University staff advised OCR that the Complainant was considered an early applicant.²

The School did not invite the Complainant for the initial interview day in November, but instead, on XXXX, the School sent the Complainant an email, inviting him to interview on XXXX . On XXXX, the Complainant wrote to the Assistant Director of ARS requesting a response to his accommodation request. On XXXX, the DRC met and made a determination regarding the Complainant's accommodation.³

² The University notified OCR that the School of Pharmacy has discontinued the practice of giving admission priority or "early consideration" to applicants for the School of Pharmacy.

³ Despite the delay of the University's decision concerning the Complainant's request for accommodations, the Coordinator of Admissions noted that she did not believe an applicant could have submitted an application later than the Complainant and receive a November interview date. To the contrary, OCR's review of data provided by the University reveals that applicants who applied later than the Complainant received an earlier interview date than the Complainant.

Nearly two weeks later, on XXXX, the Assistant Director of ARS wrote to the Complainant with the DRC's determination with regards to the Complainant's accommodation request, and outlined what accommodations would be provided. The email did not request additional documentation, ask for any response from the Complainant, or offer the Complainant the opportunity to engage with the DRC in coming up with alternative accommodations.

The DRC determined that the appropriate accommodations would be to allow the Complainant to review the prompts for fourteen minutes (seven questions x two minutes) prior to the start of the MMI exercise. The Complainant was also allowed to take notes on the prompts and to use the notes during the interviews. The Complainant, however, would not be granted double time to respond to the prompts nor would he be allowed additional time prior to each station to review the prompts. The University informed OCR staff that the DRC reached its decision after involving a multidisciplinary team of individuals to evaluate the Complainant's request as well as the purpose and objectives of the MMI. The University informed OCR staff that the DRC rejected the Complainant's requested accommodations because the DRC determined that it would constitute a fundamental alteration of the MMI exercise.

The Complainant did not participate in the MMIs on December 14, 2015, but ultimately participated in them on February 5, 2016, with the accommodations the DCR offered to him. On March 15, 2016, the University denied the Complainant admissions to the XXXX

Conclusion

Pursuant to Section 302 of OCR's *Case Processing Manual*, the University signed the enclosed Resolution Agreement on July 19, 2016 which, when fully implemented, will resolve the allegations raised in this complaint. The provisions of the Agreement are aligned with the allegations 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.

If you have any questions, please contact Shana Heller or Kimberly Conway, the OCR attorneys assigned to this complaint. You can reach Shana Heller at 202-453-6599 or Shana.Heller@ed.gov, and Kimberly Conway 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: Kara E. Simmons, Associate University Counsel