



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION I

5 POST OFFICE SQUARE, 8th FLOOR
BOSTON, MASSACHUSETTS 02109-3921

June 2, 2017

Dr. Mary A. Papazian
President
Southern Connecticut State University
501 Crescent Street
New Haven, Connecticut 06515

Re: Complaint Nos. 01-16-2045 and 01-16-2140
Southern Connecticut State University

Dear President Papazian:

This letter is to inform you that the U.S. Department of Education, Office for Civil Rights (OCR) is closing its investigation of the above-referenced complaints against the Southern Connecticut State University (University). The Complainant alleged that the University discriminated against her on the basis of disability when the University:

- did not provide her with disability-related accommodations, X–PORTION OF SENTENCE REDACTED–X;
- X–PORTION OF SENTENCE REDACTED–X; and
- did not engage in an interactive process to ensure that appropriate accommodations and aids were in place X–PORTION OF SENTENCE REDACTED–X.

Before OCR completed its investigation, the University requested to resolve the allegations by entering into the enclosed resolution agreement (Agreement) pursuant to Section 302 of OCR's *Case Processing Manual*. A copy of the Agreement is enclosed.

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 U.S. Department of Education; and 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 on the basis of disability by certain public entities. The University is subject to Section 504 and Title II because it receives federal financial assistance from the U.S. Department of Education and is a public entity operating a higher education program, respectively.

OCR investigated the following legal issues:

1. Whether the University failed to make modifications to its academic requirements, or failed to provide auxiliary aids necessary to ensure that the Complainant was not denied the benefits of, excluded from participation in or otherwise subjected to discrimination, in violation of 34 C.F.R. § 104.44 and 28 C.F.R. § 35.130(b)(7).
2. Whether the University discriminated against the Complainant by X–PORTION OF SENTENCE REDACTED–X, in violation of 34 C.F.R. § 104.4(b), 34 C.F.R. § 104.43, and 28 C.F.R. § 35.130.

LEGAL AUTHORITY

Academic Adjustments, Auxiliary Aids, and Modifications

The Section 504 regulation, at 34 C.F.R. § 104.44(a), requires recipients, such as postsecondary institutions, to modify academic requirements when necessary to ensure that such requirements are not discriminatory on the basis of disability. The regulation also provides, at 34 C.F.R. § 104.44(d), that recipients shall take such steps as necessary to ensure that no student 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. The Title II regulation, at 28 C.F.R. § 35.130(b)(7), provides that a public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

At the post-secondary level, it is the student's responsibility to disclose a disabling condition and to request academic adjustments or auxiliary aids. Once a postsecondary institution receives documentation of a student's disability and a request for services, the institution and the student should work together in an interactive process to identify appropriate academic adjustments. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted.

Academic requirements that the recipient can demonstrate are essential to instruction or that are directly related licensing requirements will not be regarded as discriminatory. Further, modifications that would fundamentally alter the nature of the service, program, or activity, are not required. In certain circumstances, the decision that compliance would result in such fundamental alteration or undue burdens must be made by the head of the public entity or his or her designee and must be accompanied by a written statement of the reasons for reaching that conclusion. The recipient should engage with the student in an interactive process and consider whether effective alternatives exist that would allow the individual with a disability to participate without lowering essential requirements or fundamentally altering the nature of the program.

Different Treatment of Students with Disabilities

The Section 504 regulation, at 34 C.F.R. § 104.43(a), provides 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 school. Further, the regulation implementing Section 504, at 34 C.F.R. § 104.4(b)(1)(iii) and (iv), requires schools to provide aid, benefits, or services to students with disabilities that are as effective as those provided to others. The Title II regulation contains comparable requirements at 28 C.F.R. §§ 35.130(a) and (b), respectively.

To determine whether a school has intentionally and unlawfully subjected a student to different treatment on the basis of disability, OCR conducts an investigation seeking direct evidence, and indirect/circumstantial evidence, that a school has either directly or through its agent or assignee (e.g., staff, faculty, contractors) engaged in intentional discrimination. Direct evidence is information that directly illustrates a school's intent to discriminate, such as actions, statements,

and writings that admit or otherwise directly demonstrate a motive based on disability. Indirect/circumstantial evidence is information from which OCR may reasonably infer intent to discriminate. A common and instructive form of indirect/circumstantial evidence is comparative evidence about how similarly-situated individuals are treated. For this assessment, OCR seeks evidence of persons who are similarly situated to the complainant but are of a different protected class (i.e., students without disabilities), in order to assess whether these students – or “comparators” – were treated more favorably than the student or student groups at issue under comparable circumstances.

Although the use of comparative information is the most common way to prove a violation of different treatment cases, OCR may also consider other forms of indirect/circumstantial evidence, including statistical information, statements by third party witnesses, a covered entity’s inconsistency with its own practices and policies, or other evidence that might suggest disability bias or discrimination.

If OCR determines that a school did treat comparable persons or groups more favorably than it treated the student/student group who was allegedly discriminated against, then the school is afforded an opportunity to present non-discriminatory reasons to justify the different treatment. OCR scrutinizes these reasons to determine whether they are legitimately non-discriminatory, rather than a pretext for discrimination.

PRELIMINARY INVESTIGATION AND RESOLUTION

During the course of OCR’s investigation, OCR reviewed and analyzed documentation provided by the Complainant and the University, including, but not limited to, detailed notes regarding the Complainant’s accommodations, University policies and procedures, materials related to the Complainant’s coursework, and correspondence between the parties involved. In addition, OCR interviewed several witnesses, including the Complainant.

OCR’s preliminary investigation found that during academic years 2015-16 and 2016-17, students applied for accommodations and services by taking the following steps: scheduling an intake appointment with a specialist at the Disability Resource Center (DRC); providing a completed intake form and submitting requested documentation of their disability; meeting with a DRC specialist to discuss the accommodations; and providing faculty with the approved Faculty Accommodations Letter. The DRC handbook directs students to contact the DRC if there are any issues with the implementation of approved accommodations, whereupon DRC staff will work with University personnel and the student to resolve any disagreements regarding their accommodations.

Allegation 1: Academic Adjustments and Aids

X–FOUR PARAGRAPHS REDACTED–X

OCR has not yet made a determination X–PORTION OF SENTENCE REDACTED–X.

Allegation 2: X–PORTION OF SENTENCE REDACTED–X

X–TWO PARAGRAPHS REDACTED–X

OCR has not yet made a determination on X–PORTION OF SENTENCE REDACTED–X.

RESOLUTION AGREEMENT

The University requested to voluntarily resolve this matter before OCR investigated the allegations above further. OCR negotiated the attached Agreement with the University, in accordance with its case processing procedures. OCR has determined that the Agreement is aligned with the allegations and is consistent with the laws and regulations OCR enforces. Accordingly, OCR is closing its investigation as of the date of this letter, and will monitor the University's implementation of the Agreement, and will notify the parties in writing of the monitoring closure, once it determines that the University has fulfilled the terms of the Agreement.

The matters addressed in this letter are not intended and should not be construed to cover any other issues regarding the University's compliance with the regulations implementing Section 504 and Title II, or the other laws enforced by OCR that may exist but are not discussed here. This letter sets forth OCR's determination in this individual OCR case. This letter contains fact-specific investigative findings and dispositions of this individual 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 lawsuit regarding the matters raised in this case, whether or not OCR identified compliance concerns.

Please note 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, an individual may file another complaint alleging such treatment. Also, 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, OCR will seek to protect all personal information to the extent provided by law that, if released, could constitute an unwarranted invasion of privacy.

OCR thanks the University for its assistance in resolving this matter. If you have any questions regarding this letter, you may contact Civil Rights Attorney Tokufumi Noda at (617) 289-0017 or by email at Tokufumi.Noda@ed.gov.

Sincerely,

/s/

Ramzi Ajami
Compliance Team Leader

Enclosure

cc: Dr. Tracy Tyree, Vice President for Student Affairs; Ernestine Yuille Weaver, Esq.