



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION I
5 POST OFFICE SQUARE, 8th FLOOR
BOSTON, MASSACHUSETTS 02109-3921

August 7, 2017

Susan Herbst, President
University of Connecticut
352 Mansfield Road
Unit 1048
Storrs, CT 06269

Re: OCR Case No. 01-16-2103
University of Connecticut

Dear President Herbst:

This letter is to inform you that the U.S. Department of Education (Department), Office for Civil Rights (OCR) is concluding its investigation of the above-referenced complaint filed against the University of Connecticut (University). The Complainant alleged that the University discriminated against his client (Student) on the basis of disability. Specifically, the Complainant alleged that the Student's professor (Professor) refused to provide her with the following approved academic adjustments and auxiliary aids during the spring 2016 semester: (a) use of her laptop computer to take notes during class; and (b) copies of PowerPoint presentations used in class.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104 (Section 504), which prohibit discrimination on the basis of disability in programs or activities receiving financial assistance from the U.S. Department of Education. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35 (Title II). Under Title II, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The University is a recipient of financial assistance from the U.S. Department of Education and a public entity that operates a postsecondary institution and therefore is subject to Section 504 and Title II.

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

Investigation

OCR examined whether the University discriminated against the Student on the basis of disability when it failed to provide the Student academic adjustments as required in 34 C.F.R. 104.44 and 28 C.F.R. § 35.130. OCR's investigation was limited to the main campus in Storrs, Connecticut; it did not include the regional campuses.

During its investigation, OCR analyzed documents provided by the Complainant and the University, including (i) the University's policies and procedures; (ii) the Student's CSD records; and (iii) various communications involving the Student, CSD, the Professor, and other entities and individuals within the University, during January and February 2016, regarding the Student's accommodations in the course.

OCR interviewed the Student on several occasions throughout the course of the investigation. OCR also conducted an on-site visit to the main campus in October 2016, during which OCR interviewed the Professor and XXXXXXXXXX within CSD who worked with the Student.

Legal Standards

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 of federal funds.¹

Recipient colleges and universities are required by the regulations implementing Section 504, at 34 C.F.R. §104.44(d)(1)-(2), to take steps 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 auxiliary aids for students with impaired sensory, manual, or speaking skills. In addition, recipient colleges and universities are required to make modifications to their academic requirements when 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.

Relevant Facts

The Student enrolled at the University in XXXXXX and registered with CSD. The Student reported that the University, and CSD in particular, were very helpful during prior semesters. CSD regularly issued accommodation letters to the Student's professors, which included permitting her to use a laptop computer for note-taking during class, and the accommodations were provided.

During the Spring 2016 semester, the Student was enrolled in a course taught by the Professor. The Professor refused to allow her to use her laptop in class and refused to provide her with copies of the PowerPoint slides presented in class, even after receiving accommodation letters listing those as approved accommodations.

When interviewed, the Professor explained that he believed that if he could provide a justification as to why an accommodation was not needed, then he did not need to provide it. He

¹ The regulation implementing Title II is interpreted consistent with this regulation implementing Section 504. *See* 28 C.F.R. § 35.103(a).

stated that he tried to call CSD to have a dialogue about the accommodations, but his phone call was not returned. He also reported that he believed the PowerPoint presentations would be a distraction because all the material the Student needed for the exams was included in outlines that he had already provided to the Student, and he also believed he could not circulate the slides because they contained copyrighted images.

Faced with the Professor's refusal, other departments in the University became involved: CSD contacted the Office of Diversity and Equity (ODE), which contacted the Professor's supervisor and the Office of Faculty & Staff Labor Relations (OFSLR). Eventually, after the Professor's supervisor intervened, the Professor finally agreed to provide the requested accommodations. By that point, the class had met five times.

During the next lecture, the Professor provided the Student with the PowerPoint slides. CSD informed the Student later that day that she could use her laptop going forward.

Originally, an exam was scheduled for the Friday following the Monday on which the Student received the PowerPoint slides. The Student was given permission to postpone the exam one week. The University also connected the Student with a tutor, with whom she was able to meet in advance of the exam. The exams for the course were not cumulative; the material covered in that exam would not appear on a later exam, including the final.

On the morning of the rescheduled exam, the Student announced that she had decided to drop the course. She reported that she had too much anxiety about catching up and that it was affecting her other courses.

During the rest of the semester, CSD continued to work with the Student, including working with her to find a replacement lab course that she could take over the summer. The University agreed to accept a three-credit course offered by another university to satisfy the Student's XXX requirement. The Student paid for this additional course at her own expense. Although she had not completed the course, she was permitted to walk with her classmates during graduation. However, she did not officially graduate until late August 2016.

As of the date of this resolution, OCR was not aware of any University policy or procedure that directly addressed what should have happened in this situation. However, the University's website includes a page titled "Rights and Responsibilities," that lists responsibilities of students, the University, and faculty. The "Faculty Responsibilities" include:

- "Responsible for discussing with the Center any concerns related to the accommodation(s) or arrangements that have been requested by the student in their initial contacts. Faculty should meet with students who provide an accommodation letter to establish the means of providing the accommodation as early in the semester as possible."
- "Responsible for assuring that appropriate accommodations are provided, either by providing the accommodation themselves or by making appropriate arrangements with the CSD."
- "Faculty are not able to refuse to provide required accommodations, to question whether the disability exists when accommodations have been authorized by the college, or to request to examine the students' documentation without a written consent signed by the

student. However, faculty members can have input and should arrange with students the means for providing accommodation in a particular class.”

Pursuant to the legal standard above, the University must not exclude students with disabilities from participating in its educational program, or deny such students the benefits of its program. While there was a delay in the Student’s receipt of the approved accommodations, OCR has not obtained evidence to date to conclusively prove by a preponderance of the evidence that the delay amounted to such an exclusion or denial.

Resolution

As noted above, pursuant to Section 302 of OCR’s Case 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 allegations and issues and OCR determines that it is appropriate to resolve them with an agreement during the course of an investigation. Prior to the completion of OCR’s investigation, the University entered into the attached Resolution Agreement (Agreement) to resolve the allegations in the complaint. The Agreement provides that the University will ensure its procedures clarify the role of teaching professionals in the accommodation process and include the procedure to be followed if a teaching professional objects to an accommodation. The University also agreed to circulate these procedures to all teaching professionals, to ensure faculty members are trained on these topics, and to update the language in its accommodation letters to make it clear to teaching professionals what their role is in the accommodations process. Finally, the University agreed to reimburse the Student for the costs she incurred in connection with the course at issue.

Because the University voluntarily resolved this complaint, OCR ceased its investigation and did not 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.

The District has agreed to provide data and other information, demonstrating implementation of the Agreement, in a timely manner, in accordance with the reporting requirements of the Agreement. OCR may conduct additional visits and request additional information as necessary to determine whether the District has fulfilled the terms of the Agreement.

Conclusion

This resolution letter sets forth OCR’s determination in an individual OCR case and should not be construed to address any other issue regarding the University’s compliance with the laws enforced by OCR. 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.

OCR will monitor the University’s implementation of the Agreement and continue to do so until it has determined that the University has complied with the terms of the Agreement. Should the University fail to fully implement the Agreement, OCR will take appropriate action to ensure the University’s compliance with Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act including possibly initiating administrative enforcement or judicial proceedings to enforce the specific terms and obligations of the Agreement. Before initiating

administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce the Agreement, OCR shall give the University written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

It is unlawful to harass, coerce, intimidate or discriminate against any individual who has assisted in an OCR investigation, or participated in actions to secure protected rights.

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 law, personally identifiable information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

We thank the University and counsel Nicole Fournier Gelston for their cooperation in this investigation. If you have any questions about this letter, please contact Civil Rights Attorney Catherine Deneke at (617) 289-0080 or Catherine.Deneke@ed.gov.

Sincerely,

Meena Morey Chandra
Acting Regional Director W/P