



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

February 23, 2018

Marty Meehan, President,
Office of the President
University of Massachusetts System Office
One Beacon Street, 31st Floor
Boston, MA 02108

Re: Complaint No. 01-16-2120
University of Massachusetts – Boston

Dear President Meehan:

This letter is to advise you of the outcome of the complaint that the U.S. Department of Education (Department), Office for Civil Rights (OCR) received against the University of Massachusetts – Boston (the University). The Complainant alleged that the University discriminated against him on the basis of disability. Specifically, the Complainant alleged that a professor denied his request for an extension on his final paper due XXXXXXXXXXXX, which was an approved academic adjustment (Allegation 1). The Complainant also alleged that the professor retaliated against him by giving him a poor XXXXXXXXXXXX grade after he brought Allegation 1 to the attention of disability services on XXXXXXXXXXXX (Allegation 2). The Complainant also alleged that the University failed to investigate equitably the internal grievance he filed with the Office of Diversity and Inclusion on XXXXXXXXXXXX (Allegation 3).

After carefully considering all of the information obtained during the investigation, OCR found insufficient evidence to support Allegations 2 and 3. As to Allegation 1, as explained further below, 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.

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.

Background

During the investigation, OCR: reviewed documents provided by the Complainant and the University; and interviewed the Complainant, the Professor, and disability services staff.

During the 2015-2016 academic year, students applied for accommodations and services by taking the following steps: first-time students contact the University to schedule an appointment with a coordinator; the student provides documentation of his or her disability; and during a registration appointment students meet with a coordinator from the University's Ross Center to discuss disability-related accommodations.

As for deadline extensions and accommodations related to absences, the University has a component of the process called the Student Plan, which the University described as a "student-centered, strategic approach to planning for absences and/or extensions on assignments based on the syllabus of a specific course. The Student Plan is developed after an assessment is completed by the Ross Center that indicates the necessity of the accommodations of flexibility in attendance and/or extensions on assignments." Further, the University's description of the Student Plan described a process by which Ross Center staff would review the syllabus with a student to identify attendance requirements and assignment deadlines, and the staff may also consult with each instructor. The Student Plan itself is generated through a template that a student completes. The Student Plan is then explained in a faculty letter that is produced and the Ross Center staff reaches out to the student and professor to set up the Student Plan with specific accommodations in place that relate to flexible attendance and extensions; Ross Center staff members offer to help them negotiate and strongly encourage students and professors to be explicit about deadlines. A member of the Ross Center explained to OCR that the reasoning behind the Student Plan was to provide assistance from disability services to negotiate those specific accommodations; the Ross Center would be the moderator in an agreement between students and professors. The Student Plan can also be used for episodic use, which would then be a back-up plan if the need for an accommodation arises.

X-SENTENCE REDACTED-X

In XXXXXXXXXXXX, the Complainant contacted the Ross Center about accommodations for his classes; on XXXXXXXXXXXX, the Complainant met with Ross Center staff to discuss the Student Plan for two of his current classes. On XXXXXXXXXXXX, the Ross Center staff emailed the Professor to help facilitate the Student Plan; the email also directed the Complainant to complete the Student Plan form through the website and to follow up with the Professor directly. On XXXXXXXXXXXX, the Student Plan was generated and a confirmation email was sent to the Complainant; X-PORION OF SENTENCE REDACTED-X

The Professor and the Complainant spoke on the phone XXXXXXXXXXXX to discuss the parameters of the Student Plan. Although there was no written documentation of that conversation, the parties had generally agreed to the following framework for extensions: X-PORION OF SENTENCE REDACTED-X. X-SENTENCE REDACTED-X

X-PARAGRAPH REDACTED-X

X-SENTENCES REDACTED-X

There was then an email exchange between the Complainant and the Professor where the Complainant clarified that he was requesting the extension due to his disability; the Professor explained that she was considering the reasons for the extension and the parameters for asking

for the extension. The Professor then reached out to the Ross Center, after which she did not change her decision regarding the extension.

X-PARAGRAPH REDACTED-X

X-PARAGRAPH REDACTED-X

X-PARAGRAPH REDACTED-X

On XXXXXXXXXXXX, the Complainant filed a complaint pursuant to the University’s grievance procedures. The Complainant filed the ADA/Section 504 Grievance form and provided a narrative with supporting documents alleging, among other things, that he was subjected to discrimination based on both the denial of the extension of the paper X-PORION OF SENTENCE REDACTED-X. The University assigned an investigator to the grievance who conducted a phone interview with the Complainant the next day. Within a week the investigator interviewed the Professor and the Assistant Director for the Ross Center. On XXXXXXXXXXXX, the investigator issued written findings and concluded that there was “No Finding” on the issues of whether the Professor failed to follow the Student Plan and the Complainant’s final grade in the course. The written findings, as well as the investigator’s notes, indicate that the investigator considered the correspondence provided by the Complainant, relevant documentation, and interviews conducted during the investigation.

Allegation 1: Failure to provide academic adjustment

Before OCR completed its investigation of the allegation that the Professor wrongly denied the Complainant’s request for an extension for a final paper XXXXXXXXXXXX, which was allegedly an approved academic adjustment, the University expressed a willingness to resolve the allegation by taking the steps set out in the enclosed Resolution Agreement. The following is a discussion of the relevant legal standards and analysis that informed the development of the Resolution Agreement.

Legal Standard

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. 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. 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.

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. Both Section 504 and Title II envision a 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.

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).

Analysis and Resolution (No Finding)

OCR resolved Allegation 1 with the University before it made a compliance determination. OCR had preliminary concerns about the process by which the Student obtained and the University implemented accommodations according to the Student Plan. Generally, University policy provides that Ross Center staff will work with students and faculty to develop a Student Plan for accommodations related to deadline extensions and absences. In this case, after an initial meeting with the Ross Center, the Complainant may have been left to negotiate the terms of the accommodation with the Professor. The resulting framework of the accommodation does not appear to have been documented and the language of the Student Plan may not have been clarified, which may have resulted in the denial of an approved accommodation.

Professors may be an integral part of the interactive process, e.g. input into what constitutes a fundamental alteration or essential requirements for a course. However, professors are not qualified to solely determine what the requesting student may be entitled to under Section 504 and Title II. Professors do not necessarily have specialized training in the law or disability issues to make informed decisions about what is legally required by Section 504 or Title II. Thus, leaving students to negotiate with their professors to obtain accommodations compromises the interactive process, which is further compromised because of the disparity in power and authority between a student and a professor who ultimately assigns the student a grade.

However, as noted above, OCR has not made a finding with regards to the University's actual practices with respect to the Student Plan, and also whether the denial of the extension for the Complainant resulted in discrimination. Prior to the conclusion of OCR's investigation and pursuant to Section 302 of OCR's *Case Processing Manual*, the University expressed an interest in resolving this complaint. Subsequent discussions between OCR and the University resulted in the University signing the enclosed Agreement which, when fully implemented, will resolve the issues raised in these complaints. The terms of the Agreement are aligned with the complaint allegations and are consistent with the applicable laws and regulations. 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. Failure to implement the Agreement could result in OCR reopening the complaint.

Allegation 2: Retaliation

After careful investigation OCR found insufficient evidence to support the allegation that the Professor retaliated against the Complainant by giving him a low(er) XXXXXXXXXXXX grade after he brought Allegation 1 to the attention of disability services. As discussed below, OCR found that the University articulated a legitimate, non-pretextual reason for assigning the Complainant a lower grade.

Legal Standard

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, assists, or participates in a proceeding under Section 504. The Title II regulation, at 28 C.F.R. § 35.134, contains a similar prohibition against retaliation.

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 an adverse action against the Complainant; and 3) whether there is a causal connection between the protected activity and the adverse action. 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.

Analysis and Conclusion

OCR has determined that some but not all elements of the retaliation analysis have been met here. Specifically, OCR's investigation supports an inference of retaliation. OCR found that the Complainant engaged in a protected activity when he protested the denial of the deadline extension; further, the University took an adverse action against the Complainant when he received a low(er) grade in the course X-PORION OF SENTENCE REDACTED-X. OCR also determined that it can infer a causal connection between these events because they occurred so closely in time: the Complainant received the low grade soon after his emails to the Professor and the Ross Center.

However, an inference alone is not enough to find a violation. OCR found that the University gave a legitimate, non-retaliatory explanation for its conduct. The syllabus states the significance of XXXXXXXXXXXX (which accounted for XX% of a student's grade), and that the X-PORION OF SENTENCE REDACTED-X. Further, the Professor provided an explanation that the XXXXXXXXXXXX grade was broken down in equal parts X-PORION OF SENTENCE REDACTED-X. Finally, the University explained that the Complainant did not X-PORION OF SENTENCE REDACTED-X, which explained a significant reduction in his grade X-PORION OF SENTENCE REDACTED-X.

Moreover, after careful investigation, OCR found insufficient evidence that the University's legitimate explanation(s) was a pretext for retaliation. The Complainant does not dispute that he did not X-PORION OF SENTENCE REDACTED-X, and records of the Complainant's grades corroborate that X-PORION OF SENTENCE REDACTED-X had a significant impact on his XXXXXXXXXXXX grade. OCR further reviewed grades for the class and confirmed that the XXXXXXXXXXXX grade was applied consistently across all students. Further, X-PORION OF SENTENCE REDACTED-X were outlined in the syllabus, with a warning that failure to X-PORION OF SENTENCE REDACTED-X will result in a deduction of points. Based on the pre-determined guidelines for the XXXXXXXXXXXX grade and the uncontroverted evidence that the Complainant did not X-PORION OF SENTENCE REDACTED-X, and the absence of evidence indicating different treatment from other classmates, OCR concluded that there is insufficient evidence that the University's explanation was pretextual.

Allegation 3: Failure to Equitably Investigate Internal Grievance

After careful investigation, OCR found insufficient evidence to support the allegation that the University failed to equitably resolve the internal grievance the Complainant filed
XXXXXXXXXX.

Legal Standard

The Section 504 regulation, at 34 C.F.R. § 104.7(b), requires recipients that employ 15 or more people to adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints of Section 504 violations. The Title II regulation, at 28 C.F.R. § 35.107(b), requires public universities that employ 50 or more people to adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints of Title II violations.

OCR examines a number of factors in evaluating whether a recipient's grievance procedures are prompt and equitable, including whether the procedures provide for the following: notice of the procedures to students, parents and employees, including where to file complaints; application of the procedures to complaints alleging discrimination by employees, other students, or third parties; adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence; designated and reasonably prompt timeframes for major stages of the complaint process; written notice to the parties of the outcome of the complaint; and an assurance that steps will be taken to prevent recurrence of any discrimination and to correct its effects.

Analysis and Conclusion

In this case, OCR found that the University provided an equitable response to the grievance made by the Complainant. Once the Complainant filed the grievance form, the University immediately began its investigation. An investigator was assigned who conducted a phone interview with the Complainant the next day; within a week the investigator interviewed the Professor and the Assistant Director for the Ross Center; and in little over one month the investigator issued written findings to the Complainant. There was no evidence suggesting that the investigator had a conflict of interest or treated the parties differently during the process; and the evidence demonstrates that the investigator interviewed relevant witnesses and considered correspondence and documentation provided by the Complainant.

OCR recognizes that the Complainant's dispute with the University's investigation is that the University rendered an adverse finding despite the evidence he provided in support of his position (e.g., emails and written documentation). OCR, however, generally does not second-guess the findings of the investigator, but rather scrutinizes whether the procedures were equitable. To the extent the Complainant has alleged that the University failed to consider relevant evidence that his approved accommodations actually allowed for extension requests X-PORTION OF SENTENCE REDACTED-X, OCR found that the investigator did consider the relevant evidence provided, as well as interviews with the Complainant and the Professor, but ultimately found that the Professor followed the Student Plan.

However, to the extent that the Complainant raises concerns inherent in the development and implementation of the Student Plan, and/or the Complainant is concerned that the outcome was erroneous because of a misunderstanding of his Student Plan, OCR will address this issue through its resolution of Allegation 1 in the enclosed Agreement.

Based on the above, OCR found insufficient evidence to support the allegation that the University failed to equitably investigate the internal grievance the Complainant filed alleging Allegations 1 and 2.

Conclusion

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, assists, or participates in a proceeding under a law enforced by OCR. 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, you may contact Tokufumi Noda, Civil Rights Attorney, at (617) 289-0017 or by e-mail at Tokufumi.Noda@ed.gov.

Sincerely,

Ramzi Ajami
Compliance Team Leader

Enclosure

CC: Dr. Lori Corcoran; Karen Laisne, Esq.