



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

March 31, 2022

President Marty Meehan

By email: umasspresident@umassp.edu

Re: Complaint No. 01-22-2035
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, Office for Civil Rights (OCR) received against the University of Massachusetts Boston. The Complainant alleges that the University discriminated against him on the basis of disability. The complaint alleges that the University failed to provide the Complainant with the auxiliary aid or service requested by the Complainant, specifically in-person XXXXXX XXXXX XXXX, and instead only offered remote XXXXX XXXX.

As explained 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), 29 U.S.C. Section 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in any program or activity receiving federal financial assistance from the U.S. Department of Education. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. Section 12131 *et seq.*, 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 U.S. Department of Education.

Summary of Preliminary Investigation

During the investigation, OCR reviewed documents provided by the Complainant and information provided by the University.

The Complainant has XXXX XXXX XXXX and uses XXXXXX to access XXXX and XXXXX. The University provides him with a number of academic adjustments, including XXXXX XXXX, XXXXX XXXXXX, and XXXXX XXXXX.

The Complainant requested in-person XXXXX XXXXXX for his Fall 2021 courses. The University uses third-party contractors for XXXXXX XXXX. The University submitted a request for in-person XXXXX XXXXXX through the XXXXXX XXXXXXXXX (XXXXX); however, the University was not able to secure in-person XXXXX XXXXXX for the Fall 2021

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semester. The University noted it would continue to seek in-person XXXXX XXXXXX for future semesters.

The Complainant was notified of the availability of remote XXXXX as an alternative for Fall 2021. The Complainant asserts that remote XXXXX is not an effective alternative to in-person XXXXX because it has an approximately XX - XX XXXXX XXXX (for lecture-based classes only; it does not adequately XXXX XXXX XXXX) versus the XX XXXXX XXXX of in-person XXXXX (for mixed pedagogical/teaching-style classes).

On XXXXXX X, 2021, the Complainant filed for a XXXXX XX XXXXXX from the University. The Complainant XXXXXX from the Fall 2021 courses after the drop/add deadline and therefore received a grade of “X” (XXXXX) for the courses. The Complainant indicated an intention to XXXXX the following semester.

Later that month, the Complainant contacted the University about in-person XXXXX XXXX for the Spring 2022 semester. On XXXXX XX, 2021, the Complainant emailed his proposed Spring 2022 schedule to the Ross Center for Disability Services and requested early registration due to the limited number of in-person XXXXX XXXXXX. Based on his proposed schedule, the University reach out to two in-person XXXXXX XXXX on XXXXX XX and XX, 2021, and also reached out to XXXXX on XXXXX X, 2021 with requests for the proposed schedule. The University allowed the Complainant to register on November 1, 2021, which was the first day registration opened for the campus. The Complainant asserts that this was insufficient and that an earlier registration date would have afforded the University additional time to locate a XXXXX.

The University detailed efforts it made to secure in-person XXXXX XXXX for the Spring 2022 semester. It states that it: (1) reached out directly and repeatedly to in-person XXXXX XXXX who previously provided XXXX to the University; (2) submitted requests through the XXXXX; and (3) secured a parking spot close to campus for a XXXX and allowed for the daily cost of parking to be included in the XXXX fee.

The University was unable to retain an in-person XXXXX XXXX for the Complainant’s Spring 2022 semester. The Complainant is taking one online course for the semester.

Legal Standard

The Title II regulation, at 28 C.F.R. Section 35.160, requires public universities to ensure that communication with individuals with hearing, vision, or speech disabilities is as effective as communication with individuals without disabilities. To do this, universities must provide appropriate auxiliary aids and services where necessary to provide effective communication so that individuals with disabilities have an equal opportunity to participate in, and enjoy the benefits of, the services, programs, and activities of the universities.

Title II requires universities to give primary consideration to the auxiliary aid or service requested by the individuals with the disability when determining what is appropriate for that individual. “Primary consideration” means that the university shall honor the choice of the

individual with a disability unless it can demonstrate that another effective means of communication exists, or that the request would result in a fundamental alteration or in an undue burden – in which case the university still has an obligation to provide an effective auxiliary aid or service to the maximum extent possible.

Analysis

The Complainant alleges that the University denied him appropriate auxiliary aids and services for effective communication when it failed to provide him with in-person XXXXX XXXX that he requested for the 2021-2022 academic year. The University was unable to secure in-person XXXXX XXXX. OCR has not yet determined, however, whether the University failed to give primary consideration to the Complainant's request, demonstrated that it offered an alternative auxiliary aid or service that provides communication that is as effective as that provided to students without disabilities, or that the provision of in-person XXXXX would result in a fundamental alteration or in an undue burden, and if so, whether it provided an effective auxiliary aid or service to the maximum extent possible.

OCR has not completed its investigation, but has received information that no other students requested in-person XXXXX XXXX during the 2021-2022 academic year.

Resolution

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 and OCR determined that a voluntary resolution is appropriate. Subsequent discussions between OCR and the University resulted in the University signing the enclosed Agreement which, when fully implemented, will address all of the allegations raised in the complaint. OCR will monitor the University's implementation of the Agreement.

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. OCR would like to make you aware that individuals who file complaints with OCR 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 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.

Sincerely,

Tokufumi Noda
Acting Compliance Team Leader

Enclosure

cc: Karen Laisne, Esq.