

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

May 18, 2022

Dean Lisa Freudenheim *By email*: lfreudenheim@nesl.edu

Re: Complaint No. 01-22-2036 New England Law | Boston

Dear Dean Freudenheim:

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 New England Law | Boston, which OCR will refer to as the Law School. The Complainant alleged that the Law School discriminated against her on the basis of disability by:

- 1. failing to timely respond to her request for academic adjustments, and inappropriately denying XXXXXXXXXXXXXX academic adjustments that she requested; and
- 2. never providing her with a XXXXXXXXX, despite having approved that academic adjustment.

As explained further below, the Law School 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. § 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. Because the Law School receives federal financial assistance from the U.S. Department of Education, OCR has jurisdiction over it pursuant to Section 504.

OCR opened the following legal issues for investigation:

- 1. Whether the Law School discriminated against the Complainant on the basis of disability by failing to timely respond to her request for academic adjustments, and by inappropriately denying necessary academic adjustments that she requested, in violation of 34 C.F.R. § 104.44; and
- 2. Whether the Law School discriminated against the Complainant on the basis of disability by failing to provide her with an approved academic adjustment, in violation of 34 C.F.R. § 104.44.

During the investigation, OCR reviewed documents provided by the Complainant and the Law School and interviewed the Complainant and a Law School staff member. On March 29, 2022, the Law School expressed an interest in resolving the complaint pursuant to Section 302 of OCR's *Case Processing Manual*.

Background

The Complainant XXXXXXX at the Law School as a XXXXXXXXX law student in the XXXXXXXXX. Prior to the start of her XXXXXXXXXXXX, the Complainant emailed the Law School's Office of Student Services on XXXXXXXXXX, stating that she had XXXXXXX, had yet to get access to her XXXXXXXXXXX, and wanted to apply for academic accommodations. She attached documentation to this email supporting her XXXXXXXXXXXXXXXXXXXXXXX diagnosis. The next day, Student Services confirmed receipt of the documentation and provided the Complainant application forms that she needed to complete to request accommodations. The Complainant filled out and submitted the forms to Student Services that day, asking that they let her know if they needed anything else from her and inquiring what the next steps were. On the application, the Complainant stated that she had been diagnosed in XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX that she had been approved for XXXXXXXXXXXXXXXXXX" on the Law School Admission Test (LSAT), that she had received XXXXXXXXXXXXXXXXXXXXXX in the past, and that she believed she Law School. Student Services confirmed receipt of the Complainant's email on XXXXXXXXXX and informed the Complainant that they would be in touch regarding any additional information that may be needed.

¹ References to the Director in this letter are to the former Director of Student Services, who is now the Law School's Assistant Dean.

contemporaneous documentation.. The Complainant noted that she hoped her requested accommodations would be implemented soon, as she was

On XXXXXXXXXXXXXXX, Student Services emailed the Complainant to request that she provide proof of the accommodations she had received in her XXXXXXXXX and on the LSAT. That same day, the Complainant emailed Student Services the requested documentation.

typically communicate denials of accommodation requests in writing.² The Complainant told OCR that

The Complainant emailed the Director on XXXXXXXXXXXXXX, to ask what the next steps were for getting XXXXXXXX and when she could expect them to be available. Student Services staff replied that day that they would reach out to her

The Complainant responded that she had sent her medically required accommodations list a while ago and could resend it if needed.

On XXXXXXXXXXXX, the Director emailed the Complainant to inform her that she would be allowed XXXXXXXX. She also noted that this accommodation was XXXXXXXXXXXXXXXXXX. The Complainant responded that she would need to be able to XXXXXXXXXXXXXXXXXX to study for the exams during the end of the semester and she was not familiar with XXXXXXXXXXXXXXXXXXXXX but would look into them. She also wrote that the lack of accommodations had resulted in her XXXXXXXX and would likely have

In the same XXXXXXXXXXXXX email, the Director informed the Complainant that where XXXXXXXXXX are not available, the Law School would provide her with access to any existing XXXXXXXXXXXXXXXXXXX for this semester until the end of the exam period and noted that while she had previously suggested that the Complainant obtain a XXXXXXXXXXXXXXXXXX, she was now instructing her to wait until the Law School had a full opportunity to explore the different XXXXXXXXXXXXX options.

On XXXXXXXXXXXXX, the Dean's Office sent the Complainant its decision regarding her academic accommodations appeal. An ad hoc committee consisting of the Dean, a then Associate Dean, and a consulting psychologist determined that the Law School's actions, as described above, were appropriate.

The Law School represented to OCR that XXX of the XXXXX classes that the Complainant is enrolled in during

XXXXXXXXXXXXXXXXXXXX - but the XXXXXXXXX sometimes takes a

XXXXXXXXXX, the Complainant told OCR that things were getting better with regard to her class

The Law School provided OCR with its accommodations policy entitled "Students with Disabilities: Policies and Procedures," which is only available to members of the Law School community on the Law School's intranet. OCR is reviewing this policy and the Law School's general practices with respect to the provision of academic adjustments for the Complainant, as well as the general student body, as part of its investigation of OCR Complaint No. 01-22-2092.

The Law School has repeatedly declared its sincere commitment to the students of the Law School and has cooperated with OCR and acted with good faith throughout the pendency of this investigation.

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 recipient 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.

Recipients 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 recipient, assuming those procedures are adequately publicized. Once the student has provided adequate notice and documentation of his/her disability and the need for modifications due to the disability, the recipient 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 the recipient's program. However, the recipient is not required to make adjustments or provide aids or services that would result in a fundamental alteration of the recipient's program or impose an undue burden.

In determining what modifications are appropriate for a student with a disability, the recipient should familiarize itself with the student's disability and documentation, explore potential modifications, and exercise professional judgment. The question of whether a recipient 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 recipient acted in a reasonable manner and whether it took appropriate steps consistent with Section 504 in making decisions regarding a student's eligibility for academic

⁵ The Law School 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." 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.

adjustments. Section 504 envisions a meaningful and informed process with respect to the provision of modifications, e.g., through an interactive and collaborative process between the recipient and the student. If a recipient 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 recipient's objections.

Analysis

OCR is concerned that the Law School took more than XXXX months to finalize XXX of the Complainant's XXXX requested accommodations and may have taken nearly XXX months to - was not time-sensitive, and thus the Complainant appears not to have been prejudiced by the delay, the delay in granting the other XXX accommodation requests appears to have impacted the Complainant's opportunity to benefit equally from course instruction. OCR is also concerned that when the Law School did grant the XXXX accommodation – for XXXXXXXXXXXXXX – it appears not to have instructed the Complainant on how to access the accommodation or notify its IT staff of the accommodation so they could take appropriate action. As a result, the Complainant lost the opportunity to access the first several weeks of XXXXXXXXXXXXXXX during the XXXXXX semester and was ultimately not able to access any XXXXXXXXXXXX prior to XXXXXXXXXX. Furthermore, the Complainant is OCR is also concerned that the Law School, while ostensibly granting the Complainant access to XXXXXXXXXXX for all of her classes, appears to have determined that it was not appropriate to XXXXXX XXXXXXXXXX without notifying the Complainant of that determination or the reasons for it.

Resolution

Pursuant to Section 302 of OCR's *Case Processing Manual*, the Law School expressed an interest in resolving this complaint and OCR determined that a voluntary resolution is

appropriate. Subsequent discussions between OCR and the Law School resulted in the Law School signing the enclosed Agreement which, when fully implemented, will address all of the allegations raised in the complaint. OCR will monitor the Law School's implementation of the Agreement.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the Law School'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 Law School 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.

Sincerely,

/s/ Paul Easton

Paul Easton Compliance Team Leader

Enclosure

cc: Alicia Ward, Esq. (*by email*: award@hrwlawyers.com)
John Graff, Esq. (*by email*: jgraff@hrwlawyers.com)