



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

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May 10, 2016

Joel Seligman
President
University of Rochester
Office of the President
240 Wallis Hall
Rochester, New York 14627

Re: Case No. 02-16-2050
University of Rochester

Dear President Seligman:

This letter is to notify you of the determination made by the U. S. Department of Education, New York Office for Civil Rights (OCR) in the above-referenced complaint filed against the University of Rochester (the University), School of Medicine and Dentistry (the School). The complainant alleged that the University discriminated against students with disabilities, by implementing a policy prohibiting students from recording course lectures without prior permission from the course director/faculty/lecturer, including in the case of students with disabilities who are approved to record all lectures as an auxiliary aid (Allegation 1). The complainant further alleged that the School discriminated against him, on the basis of his disability, by denying him permission to record lectures in his XXXXX XXXXXXXXXX and XXXXXXXXXX course on November 12 and 13, 2015, despite having an approved auxiliary aid permitting him to record such lectures (Allegation 2).

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 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 programs or activities receiving financial assistance from the U.S. Department of Education (the Department). The University is a recipient of financial assistance from the Department. Therefore, OCR has jurisdictional authority to investigate this complaint under Section 504.

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The regulation implementing Section 504, at 34 C.F.R. § 104.44, requires recipients to modify academic requirements when necessary to ensure that the requirements are not discriminatory on the basis of disability, and to take steps to ensure that no qualified individual with a disability is subjected to discrimination because of the absence of academic adjustments or auxiliary aids. At the postsecondary level, it is the student's responsibility to disclose a disabling condition and to request academic adjustments or auxiliary aids. In reviewing allegations regarding the provisions of academic adjustments or auxiliary aids, OCR considers whether: (1) the student provided adequate notice to the recipient that the academic adjustments or auxiliary aids were required; (2) the academic adjustments or auxiliary aids were necessary; (3) the appropriate auxiliary aids or academic adjustments were provided; and, (4) the academic adjustments or auxiliary aids were of adequate quality and effectiveness.

In its investigation, OCR reviewed information and documentation that the complainant and the University submitted. During academic year 2015-2016, the complainant was a XXXXX-year student enrolled in the School; and, he is scheduled to graduate during academic year 2018-2019.

Allegation 1:

With respect to Allegation 1, the complainant alleged that the School discriminated against students with disabilities, by implementing a policy prohibiting students from recording course lectures without prior permission from the course director/faculty/lecturer, including in the case of students with disabilities who are approved to record all lectures as an auxiliary aid. The complainant informed OCR that the School implemented the policy on or about November 3, 2015.

OCR determined that the School's policy pertaining to "Video, Audio, and Recording Equipment in Other Educational Settings" (the Policy) is contained in the School's Student Handbook. The University acknowledged that it revised the Policy on November 3, 2015. The complainant and the University explained that prior to November 3, 2015, the Policy did not require students with disabilities, who were approved to record lectures and other course activities as an auxiliary aid, to seek permission from the course director/faculty/lecturer. Rather, in permitting a student to record, the student either had to have an approved auxiliary aid requiring such recording; or, the student was required to obtain permission from relevant course personnel.¹

The University stated that on November 3, 2015, the School's Senior Associate Dean for Medical Student Education revised the Policy to state that, "With the exception of students with approved accommodations and prior permission from the course director, faculty and/or lecturer, personal video, audio and recording equipment cannot be used in educational settings, including in lectures, in patient care settings and/or meetings with course and administrative staff/leadership" [emphasis added]. The University informed OCR and provided information indicating that prior to the revision of the Policy, there was some confusion amongst School faculty and staff members about the Policy, which led to inconsistent practices regarding student

¹ Specifically, the Policy stated that, "With the exception of students with approved accommodations or prior permission from the course director, faculty and/or lecturer, personal video, audio and recording equipment cannot be used in educational settings, including in lectures, in patient care settings and/or meetings with course and administrative staff/leadership".

recording.² Further, the University acknowledged to OCR that in revising the Policy to change the “or” to an “and,” as emphasized above, the School’s intention was to require students with disabilities, who are approved to record course lectures and other activities as an auxiliary aid, to also obtain prior permission from the course director/faculty/lecturer.

OCR determined that the School’s revision of the Policy on November 3, 2015, rendered the provision of recording subject to the discretion of relevant School personnel, rather than requiring that such decisions remain within the purview of the University’s Disability Compliance Director (the Disability Director) and/or the School’s Assistant Dean for Medical Education and Student Affairs (the Disability Access Coordinator)³, who were responsible for determining whether a student with a disability requires a specific academic adjustment or auxiliary aid.

During the course of OCR’s investigation, the University provided documentation to OCR indicating that the School further revised the Policy, as contained with the School’s Handbook, on March 3, 2016. Specifically, the revised Policy states that “Personal audio or video/digital recording equipment cannot be used by students in educational settings, except [...] for any medical student who has requested permission to record educational sessions as an accommodation for a disability, and has been approved to do so by the School’s Disability Access Coordinator.”⁴ The Policy further states, “As with all approved accommodations, the Disability Access Coordinator will notify the relevant course/clerkship directors when recording approval has been granted as an accommodation. Students will not also be required to obtain individual instructor permission within each course or clerkship.”⁵ Accordingly, OCR has determined that Allegation 1 has been resolved, and it will take no further action regarding Allegation 1.

Allegation 2:

² The University explained that the School generally discourages the recording of lectures because data from other medical schools indicate that recording is related to a drastic decline in student attendance, which negatively impacts student learning. The University also asserted that students have inappropriately shared recordings with students attending medical schools outside of the U.S., who are seeking to pass U.S. medical board exams.

³ The University provided OCR with documentation, including publications from its Disability Services and Support Office (the Disability Office), indicating that each school has a designated “access coordinator” who requests and maintains disability-related documents, certifies eligibility for services, and determines and develops plans for “reasonable academic accommodations.” The documentation also indicated that the access coordinator for each school works in conjunction with the University’s Disability Compliance Director, who serves in the Disability Office.

⁴ The Policy also states that the process for requesting accommodations is provided in the School’s Handbook, under the section entitled “Assistance for Individuals with Disabilities”.

⁵ In addition, the Policy states, “Notwithstanding the above, due to federal privacy laws, students with accommodations cannot record individual patient encounters in clerkship settings without additional approval of the medical center privacy officer, who may consult with the medical school’s disability access coordinator. The privacy officer’s approval will be sought by the medical school to avoid undue burden to the student. In instances where a patient case is discussed or a patient is present in the educational setting (e.g. lecture, small group), any recorded information is treated as Protected Health Information and is under the same restrictions as outlined in or implied by the Health Insurance Portability and Accountability Act (HIPAA) and medical school/hospital policies. Students must not share such content with anyone. Students must delete/destroy such content once they have completed all required assessments in that course/clerkship. The medical school will endeavor to remind students who have approved accommodations of these obligations but a failure to remind does not excuse non-compliance.”

The complainant alleged that the School discriminated against him, on the basis of his disability, by denying him permission to record lectures in his XXXXX XXXXXXXXXXXX and XXXXXXXXXXXX course (the Course) on November 12 and 13, 2015, despite having an approved academic adjustment permitting him to record such lectures. The complainant informed OCR that he was diagnosed as having an XXXXXXXX XXXXXXXXXXXX XXXXXXXX, and a XXXXXXXXXXXX XXXXXXXX – Not Otherwise Specified; and, that both disabilities “substantially limit his ability to learn” by causing him to “XXXXXXXX XXXXXXXXXXXX XX X XXXXXXX XXXX in comparison to the general population.”

The University provided documentation indicating that the complainant was enrolled in the Course during the fall 2015 semester. The University informed OCR that on June 10, 2015, and prior to the start of academic year 2015-2016, the complainant sent an electronic mail message (email) the School’s Disability Access Coordinator, and requested that the School provide him with academic adjustments. The complainant asserted that he previously provided medical documentation to support his request. The information provided by the complainant and the University indicated that at this point in time, the complainant did not specifically request the ability to record course lectures or other activities as an auxiliary aid. The University stated that the University’s Disability Director, in conjunction with the School’s Disability Access Coordinator, responded to the complainant’s request and provided him with an approved “Accommodation Plan” (the Plan), dated June 12, 2015. The Plan required that the School provide the complainant with the following academic adjustments and auxiliary aids in his courses for academic year 2015-2016, including the Course: extended time (time and a half) on timed assessments; the use of a computer for note-taking and essay examinations; a note-taker; and, a quiet, distraction-free environment.⁶

The University provided the Course syllabus to OCR, which indicated that the Course began on or about September 10, 2015, and concluded on or about December 18, 2015; and, there were two Course directors, who were charged with the overall administration of and coordination of the various components the Course. The Course also consisted of four sequential subject-area “blocks” (referred to as Block 1, 2, 3, and 4)⁷ each administered by two “block leaders”; and, each block was further divided into specialty areas that were taught by numerous School faculty members and staff.⁸

⁶ Further, during the School’s orientation, the complainant also received an iPad with a keyboard, which could be used for his note-taking and most of the electronic exams. In addition, the University provided information indicating that on or about September 17, 2015, the complainant contacted the Disability Access Coordinator and requested that he be provided with XXXXXXXXXXX XXXXXXXXXXX during anatomy lab due to signs of XXXXXXXXXXX XXXXXXXXXXX to formaldehyde and/or other chemicals; and, that she approved his request sometime between September 17 and October 29, 2015.

⁷ The four subject area “blocks” included the following: Block 1 (September 10, 2015, to October 5, 2015) – XXXXXXXXXXX XXXXXX XXX XXXXXXXXXXX, XXXXXXXXXXX XXXXXXXXXXX, XXXX XXX XXXXXXXXXXX XXXXXXXXXXX, and XXXXXXXXXXXXXXXXXXX XXXXXXXX; Block 2 (October 6, 2015, to October 26, 2015) – XXXXXXXXXXX XXX XXXXXXXXXXX XXXXXXXX, XXXXXXX XXXXXXXXXXX, and XXXXXXX XXXXXXXX; Block 3 (October 27, 2015, to November 16, 2015) – XXXXXXXXXXX XXXXXXXX, XXXXXXX XXX XXXXXXXXXXX XXXXXXXX, and XXXXXXX XXXXXXXX; and, Block 4 (November 17, 2015, to December 18, 2015) – XXXXXXXXXXXXXXXXXXX, XXXXXXX, and XXXXXXXXXXXXXXXXXXX XXXXXXXX.

⁸ The Course syllabus also indicated that after the fall 2015 semester, the School held a “Cadaver Memorial Service” on January 8, 2016.

The University informed OCR that on October 29, 2015, the complainant approached the Interim Course Director (the Course Director) and requested permission to record (both audio and video) lectures for a Block 3 specialty area because he believed that his note-taker was not effective. The Course Director contacted the Disability Access Coordinator, who suggested that the complainant first consult with his Advisory Dean, so that she could provide relevant input regarding the complainant's request.⁹ The complainant emailed the Advisory Dean on October 29, 2015, requesting permission to record Course lectures using his iPad; and, the Advisory Dean responded that she supported his request. In email correspondence on October 30, 2015, the Disability Access Coordinator notified the complainant, the Advisory Dean, and the Course Director that the complainant was approved to record Course lectures, for his exclusive use, in non-patient sessions only¹⁰; however, the Disability Access Coordinator also stipulated that in order to exercise his right to record Course lectures as an auxiliary aid, the complainant was required to obtain approval from each individual Course lecturer. As discussed with respect to Allegation 1, the School subsequently revised the Policy on November 3, 2015, to require that students with disabilities, who are approved to record course lectures and other activities as an academic adjustment/auxiliary aid, would also be required to obtain prior permission to record from the course director/faculty/lecturer. The University did not provide OCR with any information indicating whether the School would provide the complainant with an alternative academic adjustment/auxiliary aid in lieu of recording, if a lecturer did not grant the complainant permission to record.

In an email to the Disability Director sent on November 5, 2015, the complainant raised concerns about the requirement that he obtain approval from each individual Course lecturer in order to record Course lectures. Specifically, the complainant complained that requesting permission from every lecturer was burdensome for him due to the number of faculty/staff involved¹¹; there was not an established process to notify each lecturer of his ability to record as an auxiliary aid, unlike the other provisions contained within the Plan; and, that he was uncomfortable discussing recording with some of the lecturers because many were students, and as such, he also would be required to disclose his disabilities to other students.

In an email to the complainant sent on November 10, 2015, the Disability Director clarified that the complainant would not be required to secure permission to record from each lecturer directly, and that the Course Director was charged with this responsibility. The Disability Director further stated that if a lecturer objected to his recording, the School would arrange for the complainant to have a copy of the lecture notes.¹² In a subsequent email also sent on November

⁹ The University explained that each School student is assigned an "advisory dean," who functions as a first point of contact for her/his assigned students on academic and related issues. The advisory deans are also informed and consulted with respect to the provision of academic adjustments and auxiliary aids, and student's performance on exams and assessments.

¹⁰ The University did not provide OCR with any information indicating if the School would provide the complainant with an alternative academic adjustment/auxiliary aid in lieu of recording, in instances where a patient is present.

¹¹ OCR reviewed the Course syllabus and determined that there were approximately ten or more different course lecturers for each Course block.

¹² In the interim, in an email sent to the complainant also on November 10, 2015, the Course Director requested that he request permission to record from each Course lecturer. Later that day, she sent a subsequent email to the Course

10, 2015, the Disability Director informed the complainant that all of the Course lecturers had been notified that he would be able to record as an auxiliary aid.

The University informed OCR that the Course Director objected to the complainant recording two review sessions scheduled to be held on November 12 and 13, 2015, which were designed to prepare students for the Course's Block 3 exams; and after discussing her concerns with the two faculty members leading those two review sessions, she denied the complainant permission to utilize recording during the two sessions. The University asserted that the Course Director denied the complainant permission to record the two review sessions, because unlike ordinary lectures, PowerPoint slides were featured that were not made available to students after the sessions because they contained exam questions.¹³ The University further asserted that permitting the complainant to record the review sessions would not have increased his access to educational content that he had not already received; and, it may have resulted in the release of exam questions outside of those sessions. In an email sent on November 12, 2015, the Disability Access Coordinator notified the complainant that he had been denied permission to record the review sessions scheduled for November 12 and 13, 2015. The University did not provide any information to OCR indicating whether the University/School offered to provide the complainant with an alternative academic adjustment or auxiliary aid, in lieu of recording.

On May 2, 2016, the University entered into a Resolution Agreement (attached) with OCR to voluntarily resolve Allegation 2 without further investigation. OCR will monitor the implementation of the enclosed resolution agreement.

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 file a private suit in federal court whether or not OCR finds a violation.

Please be advised 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, the complainant may file another complaint alleging such treatment.

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, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

lecturers advising them of the complainant's ability to record, as an academic adjustment/auxiliary aid; and, that they should contact her if they had any objections.

¹³ The University further explained that the PowerPoint slides did not contain any new course content, but they consisted of questions used to prompt an interactive discussion in class and assist the students in reasoning their way to the correct answers.

If you have any questions regarding OCR's determination, please contact Letisha Morgan, Senior Compliance Team Investigator, at (646) 428-3827 or letisha.morgan@ed.gov; or, Félice Bowen, Compliance Team Leader, at (646) 428-3806 or felice.bowen@ed.gov.

Sincerely,

_____/s/_____

Timothy C.J. Blanchard

Encl.

cc: XXXXXXXX X XXXXXXXXX, Esq.