

discrimination on the basis of disability in any program or activity receiving Federal financial assistance from the Department. As a recipient of Federal financial assistance from the Department, the University is subject to the provisions of Section 504 and its implementing regulations.

OCR reviewed the information submitted by the Complainant and the University and conducted interviews of the Complainant and University staff and administrators. Prior to the conclusion of the investigation, the University requested to resolve Allegations 1 and 2 by signing a resolution agreement. With respect to Allegations 3 and 4, OCR found that, based on a preponderance of the evidence, there is insufficient evidence to support a violation of Section 504. Our reasoning is explained below.

Allegations 1-2

Under OCR procedures, complaint allegations may be resolved before the conclusion of an investigation if a recipient asks to resolve it by signing a Resolution Agreement. The provisions of the Agreement must be aligned with the complaint allegations or the information obtained during the investigation and be consistent with applicable regulations. Such a request does not constitute an admission of liability on the part of a recipient, nor does it constitute a determination by OCR of any violation of our regulations.

Consistent with OCR's procedures, the University requested to resolve Allegations 1 and 2 through a Voluntary Resolution Agreement (the Agreement), which was executed on October 10, 2014. Accordingly, OCR is concluding its investigation of these complaint allegations. A copy of the signed Agreement is enclosed. As is our standard practice, OCR will monitor the University's implementation of the Agreement.

Allegations 3-4

OCR applies a preponderance of the evidence standard to determine whether the evidence is sufficient to support a particular conclusion. Specifically, OCR examines the evidence in support of and against a particular conclusion to determine whether the greater weight of the evidence supports the conclusion or whether the evidence is insufficient to support the conclusion. If OCR receives conflicting information from the Complainant and the University regarding key elements of our legal analysis and the differences between the two accounts cannot be reconciled by available evidence, then OCR will not be able to establish that a violation occurred.

Legal Standards

The Section 504 regulation at 34 C.F.R. § 104.3(j)(1), provides that an individual with a disability is any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such an impairment. In the context of postsecondary and vocational education services, a qualified person with a disability is one who meets the academic and technical standards requisite to admission or participation in the recipient's education program or activity. *See* 34 C.F.R. § 104.3 (1)(3).

The Section 504 regulations further 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 otherwise be subjected to discrimination under any service, program or activity of a public entity or an entity that receives Federal financial assistance from the Department. *See* 34 C.F.R. § 104.4(a). In the context of postsecondary education, the Section 504 regulations require that a recipient make such modifications to its academic requirements as are necessary to ensure that such requirements do not discriminate, or have the effect of discriminating, against qualified individuals with disabilities. *See* 34 C.F.R. § 104.44(a). Section 504 at 34 C.F.R. § 104.44(d) requires a recipient postsecondary educational institution to take such steps as necessary to ensure that no qualified person 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. The regulation requires the provision of effective academic adjustments and auxiliary aids. Auxiliary aids may include taped texts, interpreters or other effective methods of making orally delivered materials available to students with hearing impairments.

A recipient may not provide a qualified person with a disability with an aid, benefit, or service that is not as effective as that provided to others. *See* 34 C.F.R. § 104.4(b)(1)(iii). The regulation also states that aids, benefits and service, to be equally effective, are not required to produce the identical result or level of achievement for persons with and without disabilities, but must afford persons with disabilities equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement. *See* 34 C.F.R. §§ 104.4(b)(1)(ii), 104.4(b)(2).

Section 504, at 34 C.F.R. §§ 104.4(a) and (b)(i-vii), prohibits a recipient of Federal financial assistance from providing a service, financial aid or other benefit to an individual, which is different or is provided in a different manner from that provided to others under the program. In order to establish a finding of a violation of different treatment under Section 504, OCR must determine that the Student was treated differently than similarly-situated students in a way that limited the Student's opportunity to participate in or benefit from a recipient's program or activity, and that either the recipient cannot articulate a legitimate, nondiscriminatory reason for the different treatment or that the recipient has articulated a legitimate nondiscriminatory reason for the different treatment, but the reason is pretext for discrimination. Additionally, OCR also examines whether the recipient treated the individual in a manner that was consistent with established policies and practices and whether there is any other evidence of disability discrimination.

Factual Background

The Complainant attends the University XX X XXXXXXXXX XXXXXXXX enrolled in the XXXXXXX XX XXXXXXX XXXXXXX XXX XXXXXXXXXXXX XX XXXX XXXXXXX. The Complainant began X XXXXXXX XXXXXXX XXXXX XXXXXXX XX XXXX XXXX and continues to attend the University. The class schedule for the Program consists of XXX XXXXXXXXXXXXXXXXXXXX XXX XXXXXXXXXXX XXXX XXXXXXXXXXX X XXX XX XXX XXXXXXX XXXXXXXXXXX X XXX XX. The Complainant has X XXXXXXX XXXXXXXXXXXX and is recognized by the University as a XXXXXXX XXX X XXXXXXXXXXXX for which XXX XXXXXXX XXXXXXX XXXXXXXXXXXXXXXXXXX XXX XXXXXXXXXXX XXXX XXX XXXXXXX.

Allegation 3 – Facts

The Complainant alleges that due to the University’s failure to allow XXX to register early for the Fall 2013 semester XX, the University did not have sufficient time XX XXXX XXXXXXXX
XXXXXXXXXXXXXXXX XXXXX XXXXXXXXXXXX XXXXXXXXXXXX XXXXX XXXXXXXXXXXX
XXXX XXX XXXXXXXXXXXX XXXX XXX XXXXXXXX XXX XXX XXXXXXXX. Early registration
was not an approved academic adjustment for the Complainant.

The University advised OCR that it does not have “early registration” for the Complainant’s program. According to the University, students entering the Complainant’s program are automatically pre-registered for core classes prior to their arrival on campus. When students arrive for orientation for their first semester in the program, they meet with academic advisors to discuss their schedules and their advisors work with them to register for their remaining classes. For subsequent semesters, students meet with advisors prior to registration to discuss classes and students register for courses with the assistance of advisors, if needed.

With specific respect to students with disabilities who receive auxiliary aids and services, the University advised OCR that the XXXX XXXXXXXXXXXX XXXXXXXXXXXX XXXXXXXX XX
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XXXXXXXX XXXXXXXXXXXX XXX XXX XXXXXXXXXXXX XXXXXXXX XX XXXXX XXXX XXX
XXXXXXXX XX XXXXXXXXXXXX XX XXXX XX XXXXXXXX XXXXXXXXXXXX. For students who
XXXXXXXX XXXX XXXXXXXXXXXX such as the Complainant, Disability Resources registers
students well in advance of orientation, to facilitate XXX XXXXXXXXXXXX XX XXXX
XXXXXXXXXXXXXXXX. Once students are enrolled and attending courses after the first semester and
services have been set up for the first time, regularly scheduled course registration for future
semesters occurs far enough in advance to permit the XXXXXXXXXXXX XX XXXX
XXXXXXXXXXXXXXXX.

With specific respect to the Complainant’s enrollment, the University stated that it registered the Complainant within ample time to facilitate XXX XXXXXXXXXXXX XX XXXX XXXXXXXXXXXX
XXX XXX XXXX XXXX Semester. Specifically, the Complainant’s course registration was
completed by early July 2013, which was several weeks before the XXXXX XXX XXXX
XXXXX XXXX XX XXX XXXXXXXX and several weeks in advance of regularly scheduled
course registration. The EOS Director stated that he worked with the Complainant’s XXXX
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University further stated that the Complainant’s academic advisor guided her through the
registration process. The University stated that for both the Fall 2013 and Spring 2014 semesters,
the time when the Complainant registered for classes had no impact on the University’s ability XX
XXXXXXXX XXXX XXXXXXXX XXX XXXX XXXX XXXXXXXXXXXXXXXXXXX XXX XXX.
University witnesses interviewed by OCR stated that the Complainant did not raise any concerns
with them about registration.

Allegation 3 – Analysis and Conclusion

Although early registration was not an approved academic adjustment for the Complainant, OCR determined that the University provided XXX with advance registration for her XXXX XXXX XXXXXXXX almost two months prior to the beginning of the semester, and well in advance of other students in the Program. Specifically, the University registered XXX for the entire Fall 2013 semester during the summer, XX XXX XXXX, in order to facilitate the XXXXXXXXXXXX XX XXX XXXX XXXXXXXX. Moreover, the University's witnesses stated, and OCR's investigation confirmed, that the timing of the Complainant's registration did not have any impact on the XXXXXXXXXXXX XX XXXXXXXXXXXX XX XXX XXXX XXXXXXXX or the University's ability XX XXXX XXXXXXXX XXXXXXXX. Based on the above, OCR finds insufficient evidence to support a violation of Section 504 regarding Allegation 3.

Allegation 4 – Facts

The Complainant alleges that she was treated differently than non-disabled students XX XXX XXXXXXXX by assigning the Director of the Program, a staff member, as her advisor and not a faculty member.

The University stated that students XX XXX XXXXXXXX are assigned academic advisors prior to their arrival on campus. A small group of faculty and staff serve in this capacity. However, the University advised OCR that students in the Program may seek advice from the Program Director or any faculty member. Moreover, students and academic advisors may make a change to that assignment if they identify someone who is a better fit with their career goals. Students may request a change in their advisor by submitting a Petition for Change of Advisor form.

The Complainant was specifically advised of the procedures for changing XXX advisor, and the option to do so, by the Associate Dean. The University states that it never received a request from the Complainant to make this transfer. The Complainant did not maintain that XXX made such a request.

There were XXX XXXXXXXX enrolled in the Complainant's program for the 2012-2013 and 2013-2014 academic years and these students were distributed among seven faculty advisors (99 students) and two staff advisors (39 students). Of the six students in the Program who self-identified as having a disability during this two year time period, four of them were assigned to staff advisors, one of whom was the Complainant, and two were assigned to faculty advisors. The Complainant and 22 other students, including students without disabilities, were assigned to the Director of the Program. The Complainant and one other student with a disability were advised by the Director.

Allegation 4 – Analysis and Conclusion

There is no evidence to support the Complainant's claim that XXX was treated differently because of XXX XXXXXXXX based on her assignment to the Program Director as her advisor. OCR's investigation established that the University did not assign students in the Program to their advisors based on disability status. The University's documentation showed that two other students with disabilities in the Program were assigned to faculty members as their advisors. Furthermore, the Complainant was one of 23 students who was assigned to the Program Director as his/her advisor, including one other student with a disability. Therefore, there is no support for

the Complainant's allegation of different treatment because other students with disabilities were given faculty members as advisors and students without disabilities were also assigned to the Program Director as their advisor. Further, Complainant was aware of the procedure to request a change of academic advisor and acknowledged that XXX never followed it. Based on the above, OCR finds insufficient evidence to support a violation of Section 504 regarding allegation 4.

This concludes OCR's investigation of the complaint and 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 may not harass, coerce, intimidate, or discriminate against any individual because 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, we 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.

We would like to thank the University, and its legal counsel, Mr. Daniel Munsch, for their cooperation throughout this matter. If you have any questions or concerns, please call Vicki Piel at (215) 656-8522.

Sincerely,

/S/

Vicki Piel
Team Leader/Supervisory Attorney
Philadelphia Office

Enclosure

cc: Daniel J. Munsch, Assistant General Counsel (via email w/encl.)