



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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**March 7, 2017**

**IN RESPONSE, PLEASE REFER TO: 03-16-2226**

Dr. Gary Ransdell  
President  
Western Kentucky University  
1906 College Heights Blvd., #11001  
Bowling Green, KY 42101

Dear Dr. Ransdell:

The Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) has completed its investigation of the complaint filed against Western Kentucky University (the University). Specifically, XXXXXX (the Complainant) alleged that the University discriminated against him on the basis of disability by:

1. XXXXXX; and
2. XXXXXX.

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. Because the University receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

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.

In reaching a determination, OCR reviewed documents provided by the Complainant and the University, and interviewed the Complainant and University staff. After carefully considering all of the information obtained during the investigation, OCR did not find sufficient evidence to

support a finding of a violation with respect to the Complainant's allegations. As part of our investigation, OCR reviewed the University's policies and procedures concerning the use of service animals and for addressing complaints of disability discrimination and found that they do not comply with the requirements of Section 504 and Title II. The University agreed to revise these procedures in accordance with the requirements of the enclosed Resolution Agreement (Agreement). The bases for our determinations are summarized below.

### **Legal Standards**

xx – paragraphs redacted – xx

#### *Provision of Academic Adjustments*

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 Section 504 regulation at 34 C.F.R. § 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 34 C.F.R. § 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.

In addition, the Section 504 regulation at 34 C.F.R. § 104.7(b) and the Title II regulation at 28 C.F.R. § 35.107 provide that a recipient shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part. Recipients must provide notice to students and employees of the procedure, including how and where to file a complaint.

### **Background**

xx – paragraph redacted – xx

### *The University's Interactive Process*

The University provided information on the process by which students with disabilities may request academic adjustments and related aids and services. The process explains that students should make such requests and provide disability related information to the SARC. A SARC staff person will then schedule an intake appointment. After the intake appointment, the SARC Coordinator will recommend modifications, academic adjustments, auxiliary aids, and other accommodations.

The SARC Coordinator considers the following factors in determining auxiliary aids or modifications: the nature and extent of the disability; the student's prior use of an auxiliary aid or academic adjustment; the nature and complexity of the course or academic program's content; the methods through which the course content is presented; and findings from consultation, when appropriate, with course instructors or specialists familiar with the student's disability. When a request for a service or academic adjustment is denied, the student will be provided written notification of the specific reason or reasons for the denial. The student will also be offered the opportunity to discuss with a SARC staff member the specific rationale for denying the request and consult with SARC staff member to explore alternatives. In addition, students will be informed of the right to appeal the SARC's decision.

### **Facts and Analysis**

xx – paragraphs redacted – xx

### *Disability Grievance Procedures*

As part of our investigation, OCR reviewed the University's grievance procedures for addressing complaints of disability discrimination. OCR notes that the procedures apply only to complaints by students and it directs students to file complaints with the Dean of Students, whose contact information is provided. The procedures indicate that the ADA Compliance Office shall conduct an impartial investigation and parties are provided with the opportunity to identify witnesses and provide other pertinent evidence. With respect to timeframes, individuals must file within five days of becoming aware of the alleged discrimination or denial of benefits. A written determination will be provided within 5 business days. A complainant may appeal within five business days after receiving the written report. According to the procedures, the appeal will be reviewed in an "expeditious manner." Finally, the policy states that the University will take steps to prevent disability discrimination and/or harassment and to correct its effects, if appropriate.

Based on our review, OCR has determined that the University's grievance procedures do not comply with the requirements of the regulations implementing Section 504, at 34 C.F.R. § 104.7(b) and Title II, at 28 C.F.R. § 35.107. The University's procedures state that they only apply to students and do not mention their applicability to complaints against students, employees, or third parties.

The University has agreed to resolve the identified areas of non-compliance regarding its policies and procedures for service animals and disability discrimination grievance procedures through a Resolution Agreement signed by the University on February 22, 2017. A copy of the signed Agreement is enclosed. When fully implemented, the resolution agreement will address all of the identified areas of non-compliance. As is our standard practice, OCR will monitor the University's implementation of the Agreement until the University is in compliance with the regulations implementing Section 504, at 34 C.F.R. §§ 104.4(a) and 104.7(b), and Title II at 28 C.F.R. §§ 35.136 and 35.107(b), which were at issue in the case.

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.

If you have any questions or concerns, please contact Michael Wesley, Equal Opportunity Specialist, by telephone at (215) 656-6908, or by email at: michael.wesley@ed.gov.

Sincerely,

/s/

Melissa M. Corbin  
Team Leader  
Office for Civil Rights

Enclosure