



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION III
DELAWARE
KENTUCKY
MARYLAND
PENNSYLVANIA
WEST VIRGINIA

September 25, 2017

IN RESPONSE, PLEASE REFER TO: 03172150

Dr. Mary Hendrix
President
Shepherd University
P.O. Box 5000
Shepherdstown, WV 25443

Dear Dr. Hendrix:

This is to advise you of the resolution of the above-referenced complaint investigation of Shepherd University (the University) by the United States Department of Education (Department), Office for Civil Rights (OCR). The Complainant, XXXXXX, alleged that the University discriminated against her on the basis of disability by failing to provide her approved academic adjustments of XXXXXX.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance. As a recipient of Federal financial assistance from the Department, the University is subject to Section 504 and its implementing regulation.

Legal Standard

The regulation implementing Section 504, at 34 C.F.R. § 104.3(j) defines a person with a disability as a person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such an impairment. The regulation at 34 C.F.R. § 104.3(l)(3) defines a qualified person with a disability, in postsecondary education, as a person with a disability who meets the academic and technical standards for admission or participation in the recipient's education program or activity.

The regulation implementing Section 504, at 34 C.F.R. § 104.44(a), requires a recipient to make such modifications to its academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating, on the basis of disability, against a qualified complainant with a disability. Recipients are not required to make modifications that are essential to instruction or would fundamentally alter the nature of the service, program, or activity.

In making a compliance determination regarding the provision of academic adjustments and auxiliary aids and services in the post-secondary setting, OCR considers whether the complainant provided adequate notice to the post-secondary institution of the nature of the disability and the need for a modification, adjustment, aid or service. The complainant is

responsible for providing evidence of a condition that requires academic adjustments. In some cases, this will require that the complainant provide the results of medical, psychological, or educational diagnostic tests and professional prescriptions for academic adjustments. In disputes over the need for academic adjustments, OCR considers whether the recipient took reasonable steps to obtain a professional determination of whether aids or adjustments were necessary and, if so, what kind of aids or adjustments. This may include a determination of whether the recipient acted on the basis of an assessment by professionals who had appropriate credentials and who used appropriate criteria. It is the prerogative of an educational institution to decide what requirements are essential, so long as each requirement has a rational relationship to the program of instruction and, therefore, is not a pretext for discrimination. OCR will defer generally to the academic judgment of educators, and therefore, OCR examines whether the recipient acted in a reasonable manner. Once a recipient approves an academic adjustment or auxiliary aid, it must be delivered in a manner that affords a person with a disability equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement.

Factual Background

XX – paragraphs redacted – XX

Request to Resolve Complaint through a Voluntary Resolution Agreement

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

Consistent with OCR's procedures, on July 24, 2017, the University requested to resolve the complaint through a Resolution Agreement. On September 12, 2017, the University signed this Agreement. As is our standard practice, OCR will monitor the University's implementation of the Agreement, a copy of which is enclosed. Accordingly, OCR is concluding its investigation of the allegation as of the date of this letter.

This letter is not intended nor should it be construed to cover any other issues regarding the University's compliance with Section 504 which may exist and are not discussed herein. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

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.

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.

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Thank you for your cooperation in this matter. If you have any questions, please contact me at 215-656-6935 or by email at beth.gellman-beer@ed.gov.

Sincerely,

/s/

Beth Gellman-Beer
Team Leader