



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
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January 17, 2019

IN RESPONSE, PLEASE REFER TO: 03182040

Christopher M. Fiorention, Ph.D.
President
West Chester University of Pennsylvania
700 South High Street
West Chester, PA 19383

Dear Dr. Fiorention:

The Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) has completed its investigation of the complaint filed against the West Chester University of Pennsylvania (the University) by XXXXXX (the Complainant). The Complainant alleges that the University discriminated against her on the basis of her disability by improperly denying her request for an academic adjustment allowing her to use notes on exams.

OCR enforces:

- Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance.
- Title II of the Americans with Disabilities Act of 1990 (Title II), and its implementing regulation at 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public systems of higher education.

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.

During our investigation, we interviewed the Complainant, her witness and University personnel, and reviewed documentation submitted by the Complainant and the University. After carefully considering all of the information obtained during the investigation, OCR found sufficient evidence to support the Complainant's allegation. OCR's findings and conclusions are discussed below.

Legal Standards

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. Academic requirements that the recipient can demonstrate are essential to the instruction being pursued by such student or to any directly related licensing requirement will not be regarded as discriminatory. The regulation at § 104.44(d) requires a recipient 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.

Findings of Fact

The Complainant alleged that, in the fall of 2017, her request for an academic adjustment allowing her the use of notes on tests was refused by the University's Office of Services for Students with Disabilities (OSSD). XXXXXX.

The University has a policy for students requesting academic adjustments. Under the policy, students with disabilities must self-identify and submit appropriate documentation of their status as a person with a disability and of their need for academic adjustments. Students are encouraged to meet with the Director of the OSSD (the Director) to identify specific needs. During the first week of classes, if not before, the OSSD will issue a copy of a letter of modifications for the student to present to faculty members, informing them of the student's specific academic needs. It is the responsibility of the student to present the letter of modifications to the faculty member.

XX – paragraphs redacted – XX

Legal Analysis

OCR finds that the University failed to properly consider the Complainant's request for an academic adjustment allowing her to use notes on exams in three of her courses, and this resulted in the denial of the academic adjustment in her Statistics and Computer Science courses. XXXXXX. The University denied her request, without soliciting input from the instructors of the courses in which the academic adjustment was requested. As such, OCR finds that the University failed to properly consider the Complainant's request, in violation of Section 504 and Title II.

In order to address the identified compliance concerns, the University has submitted a resolution agreement dated November 15, 2018 (copy enclosed). Upon full implementation of the agreement, the University will be in compliance with Section 504 and Title II. As is our standard practice, OCR will monitor the University's implementation of the agreement. Continued compliance with Section 504 is contingent upon the University's full implementation of the agreement.

This concludes OCR's investigation of the complaint. 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 have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the University 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, or participates in an OCR proceeding. 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.

If you have any questions regarding this letter, please contact Marcia Jones, the OCR investigator assigned to this complaint, at 215-656-8555 or marcia.jones@ed.gov.

Sincerely,

/s/

Nancy E. Potter
Team Leader

Enclosures