



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION III
DELAWARE
KENTUCKY
MARYLAND
PENNSYLVANIA
WEST VIRGINIA

December 3, 2020

In response, please refer to complaint #03202012

Dr. Eric J. Barron, President
Pennsylvania State University
201 Old Main
University Park, PA 16802

Dear President Barron:

This is to notify you of the resolution of the above-referenced complaint filed with the U.S. Department of Education (the Department), Office for Civil Rights (OCR), against the Pennsylvania State University (the University) alleging discrimination on the basis of disability. Specifically, XXXXXXXXXXXXXXXX (the Complainant) alleged that the University discriminated against her on the basis of her disability in her XXXXXX course during the Fall 2019 semester by failing to grant her an academic adjustment for the use of calculator in this course.

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, which prohibits discrimination on the basis of disability by recipients of Federal financial assistance.
- Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131, and its implementing regulation, 28 C.F.R. Part 35, which prohibits discrimination on the basis of disability by public entities.

As a recipient of Federal financial assistance from the Department and a public entity, the University is subject to Section 504, Title II and their implementing regulations.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

www.ed.gov

Legal Standards

The regulation implementing Section 504, at 34 C.F.R. § 104.4(a), provides, in part, that no qualified person 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 program or activity which receives or benefits from Federal financial assistance from the Department. The regulations implementing Section 504, at 34 C.F.R. §§ 104.4(b)(1)(ii) and (iv), provide that a recipient shall not deny a qualified individual with a disability an aid, benefit or service, or provide such aid, benefit or service to an individual that is not equal to or is different from that provided to others because of the individual's disability.

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 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/degree programs being pursued by a student with a disability or to any directly related licensing requirement will not be regarded as discriminatory within the meaning of 34 C.F.R. § 104.44. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted.

The Section 504 regulation at 34 C.F.R. § 104.44(d) further requires recipients to take such steps as are necessary to ensure that qualified individuals are not denied the benefits of, excluded from the participation in, or otherwise subjected to discrimination because of the absence of necessary academic adjustments or auxiliary aids and services.

OCR interprets the Title II regulation to require public colleges and universities to provide academic adjustments and auxiliary aids to the same extent as required under Section 504. Additionally, the Title II regulation at 28 C.F.R. § 35.130(b)(7), provides that a public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program or activity.

The Section 504 regulation addressing post-secondary education refers to "academic adjustments and auxiliary aids," while the Title II regulation refers to "reasonable modifications." When the term "accommodations" is used in this letter, it refers to

academic adjustments and auxiliary aids as those terms are used in 34 C.F.R. § 104.44 and reasonable modifications as that term is used in 28 C.F.R. § 35.130(b)(7).

Factual Background

The Complainant began attending the University's Harrisburg Campus. The syllabus for the section of the course in which she was enrolled provided the following course description: quadratic equations, equations in quadratic form, word problems, graphing, algebraic functions, negative and rational exponents and radicals. The course syllabus expressly stated that a calculator is not required for this course and the use of calculators is not permitted on quizzes or exams.

XX – Paragraphs Redacted – XX

Applicable University Policies and Procedures

Academic Accommodations

The University's Harrisburg Campus provides the following process for requesting and receiving academic accommodations, which is posted on its website:

- The Student discloses that he/she has a disability to the Disability Services Coordinator (DSC) and schedules an intake interview with the DSC during which accommodations are discussed and the DSC reviews the Student's rights and responsibilities. The DSC requests documentation of the disability and the Student completes a self-assessment.
- After receiving documentation, the DSC reviews it and with the Student's permission, consults with the person writing the documentation when necessary. The DSC presents the information at a Documentation Review Board (the DRB) meeting, who reviews the documentation submitted by the Student, the self-assessment, and notes from the intake interview and then determines the accommodations the DSC can recommend to the Student.
- The DSC then presents the recommended accommodations to the Student. If the Student agrees that the accommodations are adequate to meet his or her needs, the DSC writes an accommodations letter. If the Student disagrees with the recommended accommodations, the DSC explains the process of appealing the DRB's decision. The Student is provided with an accommodations letter for the recommended accommodations.
- The Student presents the accommodations letter to faculty members when requesting needed accommodations. The faculty member reviews the accommodations to ensure that they do not alter essential features or required elements of the course he or she teaches. After the faculty member signs off on

the accommodations, the faculty member and SDR provide the accommodations to the Student.

Pennsylvania State University's Harrisburg Campus Math Department Calculator Policy

The Math Department at the University's Harrisburg Campus has a specific policy regarding the use of calculators which is applicable to all classes in its Math Department, titled "General Calculator Policy Principles" (the Calculator Policy). The Calculator Policy does not bar calculator use in all math classes. The Calculator Policy states that if a particular calculator functionality is needed in a course, then it must be clearly described in the syllabus as one of the required materials for a course and that for a given test (i.e. quiz or exam) that uses calculators, a calculator would need to be stated as being required (with a clear class of functionality prescribed) and not simply listed as "permitted" or "suggested." The Calculator Policy also establishes specific requirements regarding calculator use in Pre-calculus courses, as follows:

- For MATH 003, 004: No calculators are required. Calculators are not permitted during quizzes and exams.
- For MATH 021, 022, 026, 041: Graphing calculators are not permitted during quizzes or exams. For a given quiz or exam, an individual instructor may either (i) prohibit use of any calculators, (ii) require precisely a four-function calculator, or (iii) require precisely a scientific calculator. The instructor's syllabus must specify which calculator type (if any) is required for that instructor's section.

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. The provisions of the Resolution Agreement must be aligned with the complaint allegations 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. This complaint is appropriate for a Voluntary Resolution Agreement under OCR's procedures.

On December 2, 2020, the University signed a Voluntary Resolution Agreement (Agreement) with OCR in order to resolve the matter. When fully implemented, the Agreement will address all of the allegations investigated. Accordingly, OCR is concluding its investigation of this complaint. As is our standard practice, OCR will monitor the University's implementation of the Agreement, a copy of which is enclosed.

This letter is not intended, nor should it be construed, to cover any other issues regarding the University's compliance with Section 504, Title II or their implementing

regulations that may exist and are not discussed herein. The Complainant may have the right to file a private lawsuit 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 University 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.

Thank you for your cooperation in this matter. We would like to thank the University, and Mr. Alan Finnecy, for the cooperation extended to OCR throughout the investigation of this complaint. If you have any questions, please do not hesitate to contact me at (215) 656-8522 or at vicki.piel@ed.gov.

Sincerely,

/s/

Vicki Piel
Team Leader/Supervisory Attorney
Philadelphia Office

Enclosure

cc: Mr. Alan Finnecy, Senior Affirmative Action Specialist