



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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August 20, 2020

**IN RESPONSE, PLEASE REFER TO: 03202244**

Dr. Richard M. Englert  
President  
Second Floor  
1330 Polett Walk  
Temple University  
Philadelphia, PA 19122

Sent by email only to: [president@temple.edu](mailto:president@temple.edu)

Dear Dr. Englert:

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 Temple University (the University) alleging discrimination on the basis of disability. Specifically, the complaint alleged that the Law School's attendance requirement (attendance policy), which provides that students must attend a minimum of 80% of the regularly scheduled class hours in a course to be considered in regular attendance, is discriminatory on the basis of disability because it is applied without exceptions for students with disabilities, who may require a modification to this attendance policy as an accommodation due to disability.

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. 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), 42 U.S.C. § 12131, and its implementing regulation, 28 C.F.R. Part 35. Title II 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.*

## **Legal Standards**

The Section 504 regulation at 34 C.F.R. § 104.4(a) provides that no qualified person with a disability shall, on the basis of disability, be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance; see also 34 C.F.R. § 104.4(b) and 28 C.F.R. § 35.130(a). Additionally, 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.

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 following provisions from the regulations under Title II of the ADA are applicable to public postsecondary institutions, as follows:

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 document, 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 Law School's Attendance Policy provides as follows:

Students must attend a minimum of 80% of the regularly scheduled class hours in a course to be considered in regular attendance. Faculty members may impose more stringent attendance requirements for a particular course by giving enrolled students reasonable advance notice of their specific attendance policies.

In determining whether a student has complied with the 80% attendance requirement, all absences count. Therefore, whether a student's absences are excused or not, the total number of absences cannot exceed 20% of the regularly scheduled classes. A student who fails to regularly attend classes will be prohibited from taking the exam and will receive a grade of FA (failure for absence) for that course.

In cases of absence due to illness, death in the family, or other emergencies, a student should contact his/her professors and the Office of Student Affairs [contact information provided]. Receipt of such a message does not excuse the student from required course work or the attendance policy. It is the student's responsibility to contact his/her professors when an absence interferes with a deadline or other requirements.

## **Complaint Allegation**

The complaint stated that the University discriminates against students with disabilities because it applies the Attendance Policy without exceptions and specifically, without considering excused absences for students which may be necessary due to disabilities. The complaint was particularly focused on the in-person, physical attendance aspects of the Attendance Policy, requiring that students must attend 80% of the regularly scheduled class hours in a course to be considered in regular attendance and to satisfy the attendance requirement of the Attendance Policy.

## **University's Response**

The University stated that the Law School is accredited by the American Bar Association (ABA), and as such, it is obligated to comply with the ABA Standards and Rules of Procedure for Approval of Law Schools, Chapter 3 of the 2019-2020 ABA Standards, and specifically, the standards for attendance for ABA-accredited institutions established therein. The University cited the following applicable provisions regarding attendance:

- ABA Standard 308(a) which states, in relevant part, that "a law school shall adopt, publish and adhere to sound academic standards, including those for regular class attendance, good standing, academic integrity, graduation, and dismissal."

- ABA Standard 311(a) which states that “a law school shall require, as a condition for graduation, successful completion of a course of study, not fewer than 83 credit hours. At least 64 of these credit hours shall be in courses that require attendance in regularly scheduled classroom sessions or direct faculty instruction.”

The University states that the Law School’s Attendance Policy is based on these ABA standards. The University further states that its Law School provides adjustments and accommodations for students with disabilities and specifically, that it works to support students who request accommodations, including attendance-related accommodations. Information about receiving adjustments and accommodations is provided on the Law School’s website, including information about the University’s Office of Disability Resources and Services (DRS) and the contact information for DRS and the Law School’s Office of Student Affairs.

According to the University, faculty members are notified at the start of each semester if there is a student enrolled in their course who has a DRS accommodation related to attendance. If no DRS accommodation is known by the Law School, and a student has missed more than 20% of a particular class, the Professor notifies the Assistant Dean for Students or the Associate Dean, who then sends an email to the student in an effort to understand if the student needs assistance, has concerns, and/or would like to discuss their circumstances; students in this situation are also invited to reach out to the Dean of Students to find a way to make up missed class(es).

In addition to the DRS, the Law School’s Office of Student Affairs works independently with students who are in need of academic modifications and arrangements. The Associate Director of Student Services, along with the Assistant Dean for Students or Associate Dean, all are available to meet with students to engage in discussions regarding requests for academic and other accommodations and they also work with students to provide necessary accommodations.

Beyond receiving attendance-related accommodations through the DRS and the Law School’s Office of Student Affairs, there are additional avenues which are available through the Law School’s Faculty Regulations for students to obtain modifications to the attendance requirements in the Attendance Policy. While the Faculty Regulations expressly incorporate the requirements of the Attendance Policy, the regulations also contain specific provisions for professors to have flexibility in applying the attendance requirements under the Attendance Policy. These regulations also specify a process by which students can seek waivers of the Attendance Policy. Finally, the Faculty Regulations allow for emergency exceptions to be made to the Attendance Policy, as does the Attendance Policy itself. In this regard, the Faculty Regulations provide as follows:

- Each faculty member, within their sole discretion, may offer alternative activities through which a student may make up one or more missed hours, including, but

not limited to, viewing videotape of missed class hour(s); listening to audiotape of missed class hour(s), or attending supplemental sessions with a faculty member. Missed class hours made up this way will not count as absences for determining whether a student met requirement of regular attendance.

- Students can file a petition with the Faculty Administrative Committee, which is authorized to grant waivers and approve individual programs which do not conform to the requirements set forth in the Faculty Regulations. In this regard, petitions for good cause for deviation provide the ground for approval by the Committee. Good cause is a matter which furthers the soundness of the educational program of the individual. Students who wish to seek a deviation in academic setting are supported by the Assistant Dean for Students, who assists students in writing a Petition to the Faculty Administrative Committee, and submits the petition on the student's behalf. The Faculty Regulations provide the Administrative Committee with authority to grant waivers and to approve individual programs which do not conform to the requirements set forth in these and other Faculty Regulations.
- Additionally, the Faculty Regulations authorize the Curriculum Committee to approve courses, including Distance Education courses, and any changes in the name, academic content, methods of delivery or method of evaluating student performance in any course, without seeking approval by faculty when such approval is not practically feasible. Moreover, the Dean or Dean's designee is authorized to temporarily suspend or alter Faculty Regulations and Policies when the Dean or Dean's designee deems it is necessary to do so in order to respond to emergencies.

### **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 August 20, 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. Additionally, we would also like to take this opportunity to thank the University's Counsel, Ms. Anna Oppenheim, for her assistance with regard to this matter. If you have any questions, please contact me at (215) 656-8522 or by email at [vicki.piel@ed.gov](mailto:vicki.piel@ed.gov).

Sincerely,

/s/

Vicki Piel  
Team Leader/Supervisory Attorney  
Philadelphia Office

Enclosures

cc: Ms. Anna Oppenheim