



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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February 3, 2023

IN RESPONSE, PLEASE REFER TO OCR DOCKET #03212183

Via Email: president@psu.edu

Dr. Neeli Bendapudi, President
The Pennsylvania State University
201 Old Main
University Park, PA 16802

Dear Dr. Bendapudi:

The U.S. Department of Education (the Department), Office for Civil Rights (OCR), has completed its investigation of the complaint against Pennsylvania State University (the University). The Complainant alleged that the University discriminated against him on the basis of disability and retaliated against him. Specifically, the Complainant alleged that the University:

1. Discriminated against him on the basis of disability in his XXXXXXXXXXXXXXXX course (the Course) by:
 - a. Failing to provide him with accommodations of extended time, recorded lecture notes and a distraction free environment for exams; and
 - b. XX
XXXXXXX
2. XX –Paragraphs Redacted – XX

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. Section 504 also prohibits retaliation.
- 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. Title II prohibits discrimination on the basis of disability by public entities. Title II also prohibits retaliation.

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

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

Prior to the conclusion of our investigation, OCR identified a concern with respect to allegation 1(a) as it pertains to the provision of extended time on quizzes and exams. The University requested to enter into a resolution agreement (the Agreement) to resolve this concern. The attached resolution agreement requires that the professor (the Professor) of the Complainant's Chemical Engineering 330 course be trained in providing extended time in the Canvas online platform. When fully implemented, the resolution agreement will address OCR's concern regarding allegation 1(a). As is our usual practice, OCR will monitor the implementation of the Agreement.

After considering all of the information obtained during the investigation, OCR did not find sufficient evidence to support the Complainant's remaining allegations. OCR's findings and conclusions are discussed below. In reaching a determination, OCR reviewed information and documents provided by the Complainant and the University and interviewed the Complainant and University staff.

Legal Standards

Disability Discrimination

The Section 504 regulation, at 34 C.F.R. § 104.4(a), provides that no person with a disability may, 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 that receives Federal financial assistance. The Section 504 regulation, at 34 C.F.R. § 104.43(a), further 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. In addition, the Title II regulation, at 28 C.F.R. § 35.130, provides that no qualified person with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity, or be subjected to discrimination by any public entity.

Academic Adjustments

The Section 504 regulation, at 34 C.F.R. § 104.44(a), provides that a postsecondary institution must make such modifications to its academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating against a qualified individual with a disability. OCR refers to these modifications as academic adjustments. Modifications may include an adaptation in the manner in which specific courses are conducted. Despite this requirement, postsecondary institutions are not required to modify academic requirements that would constitute a fundamental alteration to the program of instruction. The regulation implementing Title II, 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.

Different Treatment

When investigating an allegation of different treatment, OCR first determines whether there is sufficient evidence to establish an initial, or prima facie, case of discrimination. Specifically, OCR determines whether the University treated the Complainant less favorably than similarly situated individuals without disabilities. If so, OCR then determines whether the University had a legitimate, nondiscriminatory reason for the different treatment. Finally, OCR determines whether the reason given by the University is a pretext, or excuse, for unlawful discrimination.

Retaliation

In order for OCR to make a finding that prohibited retaliation occurred, OCR must determine whether: (1) an individual experienced an adverse action caused by the recipient; (2) the recipient knew that the individual engaged in a protected activity; and (3) there is some evidence of a causal connection between the protected activity and the adverse action. If any of these elements is not present, then OCR cannot make a finding of prohibited retaliation. If all of these elements are present, OCR would then consider whether the recipient has a legitimate, non-retaliatory reason for taking the action, and whether or not the recipient's reasons are a pretext for retaliation.

In determining whether an action is adverse, OCR considers whether the alleged adverse action caused lasting and tangible harm, whether the action reasonably acted as a deterrent to further protected activity, or if the individual was precluded from pursuing his or her discrimination claims. Merely unpleasant or transient incidents usually are not considered adverse.

Factual Summary

Background

During the spring XXXXXXXX, the Complainant was enrolled in the University and taking classes XX. All exams and quizzes in the Course were administered using the Canvas platform.

It is undisputed that the Complainant is a qualified student with a disability, and during the spring 2021 semester, the Complainant was approved for the following academic adjustments: 50% extended time to take exams/quizzes in a distraction-reduced environment, XXXXXXXX XX. On XXXXXXXX, the Complainant emailed the Professor a copy of his accommodation letter and the Professor acknowledged receipt.

Extended Time on Quizzes/Exams

The Complainant contends he was only given the regular time allotment of 6 minutes for Quiz 1 XXXXXXXXXXXX Quiz 2 XXXXXXXXXXXX Quiz 3 XXXXXXXXXXXX and Quiz 8 XXXXX XXXXXX. The University disputes the Complainant's assertion that he was not provided with extended time on the quizzes. Both parties provided documentation in support of their respective positions. Screenshots provided by the Complainant indicate that he was given extended time with respect to Quiz 8, but the time of day the quiz was set to end elapsed during the extended timeframe, resulting in him receiving 6 minutes when he was entitled to 9 minutes.

The Complainant's accommodation letter noted that instructions for extending a student's online exams/quizzes on the Canvas platform can be found online. On Canvas, time adjustments for students must be made by the instructor. During an interview with OCR, the Professor stated that providing extra time in Canvas is a two-step process, and that he was not aware of the second step at the start of the semester. In a subsequent email to OCR, however, he stated that he believed the Canvas instructions showed he only needed to perform one step to change the amount of time for a quiz. Information from the Canvas website indicates that the time for a quiz can be changed in one step, provided that the time of day that the quiz is set to end does not fall within the time limit that is changed. If the time of day the quiz is set to end at elapses during the extended time provided, it will still lock the student out of the quiz.

The Complainant said that for the first three quizzes, he brought the time issue to the Professor's attention, and as a result, the Professor granted the Complainant full credit for each. The Professor, however, only recalled the Complainant having a time issue with Quiz 1. The Complainant also contends he notified the Professor that he did not receive extended time on Quiz 8, but that the Professor did not give him full credit and he received only two out of four points on Quiz 8. Information provided by the University shows the Complainant completed Quiz 8 in 5 minutes. The Complainant's final grade for the Course was XXXXXXXXXXXX XX XX. Quiz 8 counted for 1.25% of the Complainant's overall grade, and an increase of that quiz to full points would not have changed the Complainant's XXXX grade in the course.

XX – Paragraphs Redacted – XX

Legal Analysis

Allegation 1(a)- academic adjustments

OCR's investigation found that the Complainant's approved academic adjustments for the Course included extended time on quizzes and exams, quizzes and exams in a distraction-reduced environment, and permission to record classes and lectures.

With respect to the provision of extended time on quizzes and exams in the Course, OCR has concerns that the Professor may not be using the Canvas software correctly to provide extra time to students on a consistent basis, which in turn may prevent students from receiving an academic

adjustment for additional time. In order to resolve this concern, the University has agreed to enter into the attached Resolution Agreement as explained above.

XX – Paragraphs Redacted – XX

Conclusion

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.

The Complainant has a right to appeal OCR's determination regarding allegations 1(b) and 2(a)-(c). within sixty (60) calendar days of the date indicated on this letter. In the appeal, the Complainant must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect, or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal. If the Complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the University. The University has the option to submit to OCR a response to the appeal. The recipient must submit any response within fourteen (14) calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

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.

Thank you for the University's cooperation during the investigation. If you have any questions, you may contact Gina DePietro, Team Attorney, at 215-656-8595 or gina.depietro@ed.gov.

Sincerely,

/s/

Christina M. Haviland
Supervisory Attorney

Cc: Lonnie Allbaugh