



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION III
DELAWARE
KENTUCKY
MARYLAND
PENNSYLVANIA
WEST VIRGINIA

March 10, 2022

VIA EMAIL ONLY – president@lafayette.edu

Dr. Nicole Hurd, President
Lafayette College
316 Markle Hall
730 High Street
Easton, PA 18042

Re: OCR Complaint No. 03-21-2190

Dear Dr. Hurd:

This is to advise you of the outcome of the above-referenced complaint that the U.S. Department of Education's Office for Civil Rights (OCR) received against Lafayette College, which we will refer to as the College. The Complainant alleged that the College discriminated against her on the basis of disability when it failed to provide necessary academic adjustments and auxiliary aids and services to her during the fall 2020 semester.

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. Because the College receives Federal financial assistance from the Department, OCR has jurisdiction over it pursuant to Section 504.

Before OCR completed its investigation, the College expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement. The following is a discussion of the relevant legal standards and information obtained by OCR during the investigation that informed the development of the Resolution Agreement.

Factual Background

The Complainant enrolled at the College as a first-year student for the XXXXX semester. The Complainant has a XXXXXXXXXXXXX, and she communicated with the College about her disability and the types of accommodations she believed she would need to participate in the College's program. She also shared information about the accommodations she received in high school. According to the Complainant, College staff indicated that they could accommodate her disability. College staff met virtually with the Complainant concerning her disability and how to accommodate her in the College's program, which was delivered virtually during the XXXXX semester due to the COVID-19 pandemic.

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

Prior to the start of classes, the College provided the Complainant a Letter of Accommodation, listing her approved accommodations. The first item on the list with was identified as XXXXXXXXXXXXXXXX In response, the Complainant provided numerous revisions and clarifications she wished to make to the accommodations, including more specifics about her needs for XXXXXXXXXXXXXXXX. College staff met with the Complainant about her requested revisions. The College reported that it provided information about engaging in the interactive process with the Complainant, but the College did not revise the Letter of Accommodation. According to the College, staff members attempted to provide XXXXXXXXXXXXXXXX to the Complainant throughout the semester according to the Complainant's requested XXXXXXXXXXXXXXXX preferences, including through efforts from the Office of Accessibility Services and Library officials. The College met at least some of the Complainant's requested preferences. College staff also met and communicated with the Complainant throughout the semester about her requests.

The Complainant reported to OCR that she experienced problems with the accommodations and auxiliary aids and services as provided by the College throughout the XXXXXXX semester. According to her, some of her materials XXXXXXXXXXXXXXXX she requested and needed, and XX. In addition, the Complainant reported that there were delays in receiving her materials; she had to request materials each week, item-by-item; and the College's Office of Accessibility Services would not reach out to professors to obtain the Complainant's materials. According to the Complainant, her parent often helped to XXXX materials, proofread materials, and correct errors so that the Complainant could use the materials and not fall behind. The Complainant reported to OCR that she informed the College of the problems with lack of timeliness and errors in her materials, but the College did not create a plan to correct the situation. According to the Complainant, this continued through her final exams in the XXXXXXX semester, when she identified seven errors in her Computer Science final.

The Complainant filed an internal disability discrimination complaint with the College in the XXX XXXXXXX. In this complaint, the Complainant alleged that the College failed to accommodate her disability, intentionally discriminated against her, and denied her effective communication. After the College commenced processing the grievance, the Complainant requested that the College engage an external investigator and the College hired an external investigator. OCR reviewed the investigator's report, which was the result of the investigator's extensive document review, research, and interviews with 18 witnesses. The investigator's report explains the College's efforts to provide XXXXXXXXXXXXXXXX materials to the Complainant. The report acknowledges that some of the materials the College provided contained errors and that the parties did not agree on the meaning of XXXXXXXXXXXXXXXX The parties dispute the extent of the errors in the materials provided by the College to the Complainant. Despite the struggles the Complainant identified with her materials, she reported to OCR that she received good grades in all her courses in the XXXXXXX.

The Investigator issued findings on XXXXXXXXXXXXXXXX finding insufficient evidence that the College discriminated against the Complainant, as alleged. The Investigator found that the College had engaged in an interactive process with the Complainant to identify necessary accommodations

and made extensive efforts to provide accommodations in a form of XXXXXXXXXXXX. The Complainant withdrew from the College after the XXXXXXXX semester and now attends a different post-secondary institution.

Legal Standard

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 34 C.F.R. § 104.44(a) requires a college 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. The regulation at 34 C.F.R. § 104.44(d) requires a college 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.

Colleges may establish reasonable requirements and procedures for students to provide documentation of their disability and request academic adjustments and auxiliary aids and services. Students are responsible for obtaining disability documentation and for knowing and following the procedures established by the college. Once the student has provided adequate notice and documentation of his/her disability and the need for modifications due to the disability, the college must provide the student with appropriate academic adjustments and auxiliary aids and services that are necessary to afford the student an equal opportunity to participate in a school's program. However, the college is not required to provide academic adjustments or provide auxiliary aids or services that would result in a fundamental alteration of the college's program or impose an undue financial or administrative burden.

In determining what modifications are appropriate for a student with a disability, the college should familiarize itself with the student's disability and documentation, explore potential modifications, and exercise professional judgment. The question of whether a college has to make modifications to its academic requirements or provide auxiliary aids is determined on a case-by-case basis. Section 504 envisions a meaningful and informed process with respect to the provision of modifications, e.g., through an interactive and collaborative process between the college and the student. If a college denies a request for a modification, it should clearly communicate the reasons for its decision to the student so that the student has a reasonable opportunity to respond and provide additional documentation that would address the college's objections.

A college is not required to provide an academic adjustment or auxiliary aid if it can show that the requested adjustment or aid would pose an undue financial or administrative burden. Generalized conclusions are not sufficient to support a claim of undue burden. Instead, undue burden must be based on an individualized assessment of current circumstances that show a specific academic adjustment or auxiliary aid would cause significant difficulty or expense.

Legal Analysis and Preliminary Concerns

After reviewing the information collected to date in its investigation, OCR identified some initial concerns with the College's efforts to provide necessary academic adjustments and auxiliary aids and services to the Complainant during the XXXXXXXX semester. OCR was concerned that the College's Office of Accessibility Services may not have adequately documented how it intended to implement the XXXXXXXXXXXXXXX accommodation, leading to differing expectations for everyone involved. The information OCR reviewed also led to concerns about how and whether the College took responsibility to identify and secure necessary materials for timely and accurate XXXXXXXXXXXXXXXXXXXXXXX for the Complainant, including for XXXXXXXXXXXXXXX XXXXXXXXXXXXXXX materials. OCR was also concerned that the College may not have a process in place for students such as the Complainant to report difficulties with accommodations so that the College can respond.

Resolution Agreement

As noted above, prior to OCR completing its investigation, the College requested to resolve this complaint pursuant to Section 302 of OCR's *Case Processing Manual*, which allows OCR to resolve allegations through a resolution agreement. The provisions of the Agreement signed by the College address OCR's preliminary concerns by requiring that the College review, revise and publish policies, procedures and practices related to the provision of disability-related academic adjustments, auxiliary aids, and other modifications to students with disabilities.

Conclusion

The College signed the enclosed Resolution Agreement which, when fully implemented, will resolve the allegation raised in this complaint. The provisions of the Agreement are aligned with the allegation and issues raised by the Complainant and the information discussed above that was obtained during OCR's investigation and are consistent with applicable law and regulation. Specifically, the Agreement requires the College to review and revise, as necessary, its policies and procedures regarding the provision of academic adjustments, auxiliary aids and other modifications to students with disabilities. The Agreement also requires the College to conduct training regarding the applicable policies and procedures in addition to offering training for instructional staff addressing how to select and create accessible materials for students with disabilities.

OCR will monitor the College's implementation of the Agreement until the College is in compliance with the statute and regulation at issue in the case. Failure to implement the Agreement could result in OCR reopening the complaint.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the College'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 College 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.

We appreciate the College's cooperation in the resolution of this complaint. If you have any questions, please contact Andrea DelMonte, the OCR attorney assigned to this complaint, at 215-656-8554 or andrea.delmonte@ed.gov.

Sincerely,

/s/

Melissa M. Corbin
Team Leader
Philadelphia Office
Office for Civil Rights

Enclosure

cc: James Keller, Esquire (via email only)