



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION IV

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REGION IV
ALABAMA
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October 23, 2017

Dr. Wilson G. Bradshaw
President
Florida Gulf Coast University
10501 FGCU Blvd.
Fort Meyers, Florida 33965-6565

Re: Complaint #04-15-2016

Dear Dr. Bradshaw:

The U.S. Department of Education (Department), Office for Civil Rights (OCR) has completed its case resolution process of the above-referenced complaint filed on July 31, 2013 against the Florida Gulf Coast University (University). The Complainant alleged that the University's Office of Adaptive Services (OAS) failed to provide him with Braille material for his XXX XXXX (XXXXXXXXXXXX XX XXXXX XXXXXXXXXXXX) and XXX XXXX (College XXXXXXXX) courses and denied his request for a late withdrawal, which resulted in the Complainant failing the courses and losing his Florida Bright Futures Scholarship.

OCR investigated this complaint under Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance (FFA) and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. As a recipient of FFA from the Department and a public entity, the University is subject to the provisions of Section 504 and Title II.

OCR investigated the following legal issue:

Whether the University failed to provide the Complainant the necessary academic adjustments and/or auxiliary aids, in noncompliance with Section 504 and its implementing regulation at 34 C.F.R. § 104.44(a), (d)(1) - (2), and Title II and its implementing regulation 28 C.F.R § 35.160 (b)(1) - (2).

During the course of this investigation, OCR reviewed evidence submitted by the Complainant and the University and interviewed the Complainant. A finding that a recipient has violated one of the laws that OCR enforces must be supported by a preponderance of the evidence (i.e., sufficient evidence to prove that it is more likely than not that unlawful discrimination occurred). Prior to the conclusion of the investigation, the University requested to address the complaint

allegation with a voluntary resolution agreement (Agreement) pursuant to Section 302 of OCR's *Case Processing Manual* and OCR agreed to the request. Provided below is summary of OCR's investigation to date.

Legal Standards

With respect to postsecondary education services, a qualified individual with a disability means someone who has a mental or physical impairment which substantially limits one or more major life activities and who meets the academic and technical standards requisite to admission or participation in the recipient's education program or activity. 34 C.F.R. § 104.3(j) (1) (i) and § 104.3(l) (3).

The regulation implementing Section 504 at 34 C.F.R. §104.43(a) provides 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 academic, research, occupational training, housing, health insurance, counseling, financial aid, physical education, athletics, recreation, transportation, other extracurricular, or other postsecondary education aid, benefits, or services.

Section 504 Accommodations in the Postsecondary Setting

The regulation implementing Section 504 at 34 C.F.R. § 104.44(a) provides that, in the postsecondary setting, recipients are required to make such modifications to their academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating, on the basis of disability, against a qualified applicant or student with a disability. The regulation at 34 C.F.R. § 104.44(d)(1) - (2) provides that recipients shall take such steps as are necessary to ensure that no student with a disability is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination under the education program or activity because of the absence of educational auxiliary aids for students with impaired sensory, manual, or other speaking skills. Auxiliary aids may include taped texts, interpreters or other effective methods of making orally delivered materials available to students with hearing impairments, readings in libraries for students with visual impairments, classroom equipment adapted for use for students with manual impairments, and other similar services and actions. Recipients need not provide attendants, individually prescribed devices, readers for personal use or study or other devices or services of a personal nature.

Summary of Investigation to date

The University's Policies and Procedures

The University's policy titled "Adaptive Services Policies, Accommodations and Services" (Policy) includes the University's policy on accommodation for persons with a disability, which states that "whenever an accommodation or auxiliary aid is necessary in order to ensure access to and full participation by students with disabilities in University programs or services, the University is responsible for the program or service to which the individual requires access.

Departments should work with the Office of Adaptive Services and appropriate federal and state agencies to ensure reasonable accommodations.”

The Policy also contains a provision regarding Braille and enlarged print, which states that “[t]he Office of Adaptive Services cannot guarantee visual materials in Braille. It is recommended that the individual contact the publisher of the textbook to see if they provide transcripts to Braille”. This provision also recommends that audio books be used whenever possible. During the course of OCR’s investigation, University staff said that revised its Policy regarding Braille and Enlarged Print to state that “the Office *does not provide* that visual materials will be provided in Braille”. OCR is unclear when each policy was implemented because neither policy is dated.

The University also submitted its “Disability Access and Reasonable Accommodation Policy and Procedure” (Procedures) that was approved on October 22, 2013. The Procedures lists the Office of Equity and Diversity and OAS are accountable for compliance. In the “*Students with Disabilities*” section of the Procedures, all University faculty and staff are responsible for ensuring students with disabilities achieve equal treatment and access to all University programs, services and activities. However, this section only provides instruction on how to seek reasonable accommodations for University housing and employment by going through the Office of Adaptive Services. This section contains no reference to seeking academic adjustments and/or auxiliary aids through OAS. However several sections contain information regarding the role of OAS in requesting reasonable accommodation, and next steps upon approval of a request and implementation of a reasonable accommodation.

The Procedures state that the Role of the OAS is to inform the individual requesting a reasonable accommodation of their rights and obligations and collect the necessary information to process any request. The Director of OAS informs the individual making the request of the decision in writing and advises the individual of his/her right to make a request for a different accommodation should circumstances change. The policy states “approved accommodations will be implemented as soon as practicable under the direction of the Office of Adaptive Services.”

According to the Procedures, the ADA Coordinator has responsibility for informing the requester in writing or other appropriate form of communication of a denial of requested accommodation, reason for denial, and right to file a complaint through the Office of Equity and Diversity.

Complainant’s request for Academic/Adjustments and/or Auxiliary Aids

The Complainant’s formal request for accommodations was dated XXXX XX, XXXX, along with accompanying medical documentation verifying Complainant’s disability. The Complainant signed an accommodation plan and acknowledged that he had received the accommodation plan along with OAS policies and procedures for test scheduling, note taking, tutoring, and books in alternate format. The document was dated XXXXX XX, XXXX.

The University submitted individual correspondence from the OAS Director to each of Complainant’s instructors for the 2013-2014 school year, including instructors for XXX XXXX (memo dated X/XX/XX) and XXX XXXX (memo dated X/XX/XX). The memos outline accommodations of extended exam/quiz time, low-distraction environment, tape record lectures, computer/word process (written essay exams), and note taker. In the memo dated X/XX/XX, the

Complainant was to receive books in alternate format, Braille, computer for in class writing, a large extended table for space for Braille writer, and he was to be able to email assignments to professors. In the memo dated X/XX/XX, accommodation regarding books in in alternate format was modified to state that the Complainant was to receive books in Braille and/or alternate format.

The University denies it failed to provide the Complainant with the necessary academic adjustments and/or auxiliary aids in noncompliance with Section 504. The University claims that during fall 2013 and spring of 2014, Complainant told the University's OAS that he was receiving his textbooks from the Florida Division of Blind Services (DBS) and that is the reason that the University ceased its efforts to secure funding for a Braille machine for the Complainant's courses. However, University staff stated that the Complainant was referred to a place that would provide him Braille materials. University staff also stated that the OAS can refer student to place they can obtain personal accommodations.

The University maintains that it provided alternative accommodations including tutoring, student volunteers, scheduling and rescheduling tests, and providing texts in alternative formats such as CDs. The University stated Complainant had an alternative apparatus used during his high school math and science courses which they confirmed with Complainant's high school math teacher. The University stated that they worked tirelessly and collaboratively with each of Complainant's instructors to ensure he was receiving proper accommodations. The Complainant contends that the academic adjustments and auxiliary aids the University provided him were not sufficient to provide him access to the academic information necessary for him to receive an educational benefit from his courses.

Complainant's transcripts reflect a grade of "F" for his College XXXXXXXX course (XXX XXXX) during fall 2013 and also for his XXXXXXXXXXXX XX XXXXX XXXXXXXXXXXX (XXX XXXX) during spring 2014.

Information Necessary to Complete Investigation

To complete its investigation, OCR would need to interview the Director of Adaptive Services and the Director of the Office of Institution Equity to determine the University's process for requesting academic adjustments and/or auxiliary aids. The Directors should also be asked whether the Complainant received his auxiliary aids (i.e. books and tests already printed in Braille) and if not why. OCR would also need to interview the Senior Lab Coordinator for the XXXXXXXXXXXX XXXXXXXX course and the Associate Professor for the XXXXXXXXXXXX XX XXXXX XXXXXXXXXXXX course to determine whether the Complainant received any academic adjustments and/or auxiliary aids for the courses, and if so whether he complained the services were ineffective. OCR will also need to determine the Complainant's grades for each course and whether the failure to receive his necessary academic adjustment and/or auxiliary aids negatively impacted his grades.

Conclusion

The Resolution Agreement requires the University will (1) revise its policy entitle “Adaptive Services Polices, Accommodations and Services” (Policies); (2) publish the revised Policies; (3) provide training to faculty, staff, and administrators regarding the in the OAS office regarding the revised Policies; and (4) revise the Complainant’s grades that he received in his XXX XXXX (XXXXXXXXXXXX XX XXXXX XXXXXXXXXXX) and XXX XXXX (College XXXXXXX).

The provisions of the Agreement are aligned with the complaint allegations and the information obtained during the investigation and are consistent with applicable regulations. OCR will monitor the implementation of the agreement until the recipient is in compliance with the statutes and regulations at issue in the case.

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.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If we receive such a request, we will seek to protect, to the extent possible, any personally identifiable information, the release of which could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Intimidation or retaliation against complainants by recipients of Federal financial assistance is prohibited. No recipient may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the laws OCR enforces, or because one has made a complaint, or participated in any manner in an investigation in connection with a complaint.

This concludes OCR’s consideration of this complaint, which we are closing effective the date of this letter. If you have any questions regarding this letter, please contact Ledondria H. Saintvil, Attorney, at (404) 974-9373, or me, at (404) 974-9367.

Sincerely,



Ebony Calloway-Spencer, Esq.
Compliance Team Leader

Enclosure