

evidence is sufficient to support a conclusion that a recipient, such as the University, failed to comply with a law or regulation enforced by OCR or whether the evidence is insufficient to support such a conclusion. Prior to the conclusion of OCR's investigation, the University requested to resolve this complaint in accordance with Section 302 of OCR's *Case Processing Manual*.

Background

The Complainant is a student who is deaf. She uses American Sign Language (ASL) as her primary source of communication. The Complainant initially enrolled at the University in the graduate program in fall term of XXXX. Throughout her tenure, she maintained good standing at the University. The Complainant was pursuing a Master's Degree in the University's former XXXXXXXXXXXXXXXXXXXX Program. The program was eliminated in XXXX.

Evidence supporting an OCR *Case Processing Manual (CPM)* Section 302 Resolution

The Complainant alleged that the University discriminated against her during the 2014-15 fall semester when it denied her academic adjustments, by not revising the XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX (XXXX) to alleviate the language barrier the XXXX imposed on her because she is deaf. The University provided documentation regarding its XXXXXXXXXXXX program, including information on how to earn a Master's degree. Specifically, the course handbook indicates, to earn a Master's degree in the XXXXXXXXXXXX program, a student may either complete the Clinical Mental Health or the School XXXXXXXXXXX Concentrations track. After completion of the seven core courses, all students must take the XXXX. The course handbook explains that the XXXX tests knowledge from each of the core courses. Students must attain a passing score on the exam prior to placement for practicum. Students who do not pass the XXXX after the first time are allowed to retake the exam for a maximum of two additional times. Students who do not pass the exam after three attempts are not allowed to enroll for practicum and will be terminated from the program.

The Complainant contends that, although she was given ASL interpreters and also provided extended time to take the XXXX and additional opportunities to take the XXXX, the XXXX did not measure her knowledge of the courses she took in the XXXXXXXXXXXX program. Rather, the Complainant asserts that the XXXX is discriminatory against her, a student who is deaf. The Complainant explained that it takes her longer to process what she reads because her "language," ASL, does not include some of the words, grammar, etc., that she is reading. When a person who can hear processes what they are reading, they go to their spoken language to help them to understand what is being read. The Complainant is at a disadvantage because her language is missing key words and concepts used in the XXXX.

The documentation and information obtained during the interviews conducted thus far indicate likely compliance concerns regarding the University's failure to use a course examination for evaluating the academic achievement of students who have a disability that impairs sensory, manual, or speaking skills that will best ensure that the results of the evaluation represents the student's achievement in the course, rather than reflecting the student's impaired sensory,

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manual or speaking skills (except where such skills are the factors that the test purports to measure). However, before OCR began interviews with other members of the University staff regarding this allegation, the University expressed an interest in a 302 resolution, and offered to voluntarily resolve the matter. Pursuant to Section 302 of OCR's *CPM*, a complaint may be resolved when, before the conclusion of an investigation, the recipient or public entity expresses an interest in resolving the complaint. Based on the foregoing, OCR accepted the University's request and the University entered into the enclosed Resolution Agreement (Agreement), which when fully implemented, will resolve the issues in this complaint. The Agreement requires the University to offer the Complainant the opportunity to reenroll in her program; waive the XXXX exam as a requirement for the completion of the XXXXXXXXXXXX degree for the Complainant and train relevant University staff on the requirements of Section 504.

OCR will monitor the University's implementation of this Agreement to ensure that it is fully implemented. If the University fails to fully implement the Agreement, OCR will reopen the case and take appropriate action to ensure compliance with Section 504 and Title II.

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 or public entities is prohibited. No recipient or public entity 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 the complaint, which we are closing effective the date of this letter. If you have any questions regarding this matter, please contact Terri Whynter, Senior Investigator, at (404) 974-9375 or me, at (404) 974-9367.

Sincerely,

Ebony Calloway-Spencer
Compliance Team Leader

Enclosure