



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

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ATLANTA, GA 30303-8927

REGION IV  
ALABAMA  
FLORIDA  
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TENNESSEE

December 19, 2016

Dr. Philip Oldham  
President  
Tennessee Technological University  
1 William L. Jones Drive  
Cookeville, TN 38505

Re: Complaint #04-15-2340

Dear Dr. Oldham:

This is to advise you that the U. S. Department of Education (Department), Office for Civil Rights (OCR), is closing the above-referenced complaint filed against Tennessee Technological University (University) alleging discrimination on the basis of disability. Specifically, the Complainant alleged that the University denied his request for the academic adjustments of open book quizzes and tests, including the use of math formula notes, in January 2015 and March 2015.

As a recipient of Federal financial assistance from the Department, the University is subject to the provisions of 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, which prohibit discrimination on the basis of disability. As a public entity, the University is subject to the provisions of Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§12131 et seq., and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability. Accordingly, OCR has jurisdiction over this complaint.

OCR initiated an investigation of the following legal issue: Whether the University discriminated against the Complainant on the basis of disability by denying his requests for academic adjustments in January 2015 and March 2015, in noncompliance with the regulation implementing Section 504 at 34 C.F.R. §104.44(a) and (d), and the Title II regulation at 28 C.F.R. § 35.130(a).

### Legal Standard

Section 504's implementing regulation 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 student with a disability.

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Academic requirements that the recipient can demonstrate are essential to the instruction being pursued, or to any directly related licensing requirement, will not be regarded as discriminatory.

Institutions of postsecondary education must provide appropriate academic adjustments based on students' disabilities and individual needs when necessary to avoid discrimination. In providing an academic adjustment, a postsecondary institution does not have to eliminate or lower essential requirements, or make modifications that would result in a fundamental alteration of the programs or activities being offered or impose an undue burden on the institution. Institutions of postsecondary education may establish reasonable procedures for requesting academic adjustments, and students are responsible for knowing these procedures and following them. Postsecondary institutions may require students who request academic adjustments to provide documentation of their current disabilities and the need for academic adjustments. The institutions must inform students of the documentation they require.

Although a postsecondary institution is required to modify nonessential academic requirements to ensure they do not discriminate against qualified individuals with disabilities, there is no similar requirement to change academic requirements or technical standards that can be demonstrated by the institution to be essential to its program of instruction. To demonstrate that a requirement is essential to its programs, a postsecondary institution must first: 1) conduct reasoned deliberations; 2) consider and reject alternatives; and 3) come to a rationally justified conclusion based on professional academic judgment that changing or waiving the requirement would either lower academic standards or require substantial program alteration. In determining whether deliberations are reasoned, OCR considers three factors: 1) whether the deliberative bodies were composed of persons who are trained, knowledgeable and experienced in relevant areas; 2) whether they articulated the importance of the disputed requirement; and 3) whether they made an individualized determination concerning the application of the requirement to the person challenging it.

The deliberative body should ensure that the determination is not based solely on the past tradition of the institution, such as an assertion that we have "always" done this or required this, without a valid basis for the determination. When making the individualized determination concerning the application of the requirement to a specific individual, the deliberative body should consider whether effective alternatives to the requirement exist which could allow the student with a disability to participate without waiving or lowering essential requirements. The institution should focus on the underlying reason for the requirement, and whether an appropriate alternative is available that meets the underlying reason for the requirement. If the process does not identify such alternatives, the institution is not required to modify those requirements demonstrated to be essential.

## **Summary of Investigation**

The Complainant alleged that the University discriminated against him on the basis of disability by denying his request for the academic adjustments of utilizing notes on exams, quizzes and tests, including the use of math formula notes, in January and March 2015, despite his providing medical documentation supporting the need for the requested academic adjustments.

The first step in determining whether the Student was discriminated against because of a failure to provide academic adjustments or modifications is to determine whether the Complainant had a qualified disability for which he notified the Recipient that academic adjustments were needed. The evidence obtained thus far establishes that the Complainant, who has a Section 504 qualifying language and memory processing disability, notified the University on January 16, 2014 that he needed the following academic adjustments: (1) extended time, (2) wearing a hat, (3) use of calculator, (4) low distraction environment, (5) printed copy of the lectures, (6) use of a calculator for math assignments and tests, (7) use of a word processor for all writing assignments. Additional request were submitted in February, 2014 by his physician which included: (8) being allowed to take notes when taking examinations, (9) extended time to take examinations and finish assignments, (10) a separate quiet room for examinations, (11) use of his notes during testing, and (12) opportunity to wear a hat to cover up his scalp surgical incision scar.

Second, OCR considers whether there is an adjustment or modification that would allow the Complainant to participate in the educational program or enjoy equal benefits and privileges. Information obtained thus far in OCR's investigation indicates that the University approved the following academic adjustments to help the Complainant participate in the educational program: 1) supplemental materials provided before class via e-mail; 2) calculator; 3) extended amount of time to complete in class writing assignments; 4) tests, exams, and quizzes to be given in the Disability Services Office (DSO) or a noise-reduced area agreed upon by the student; 5) ability to wear hat or head gear in class; and 6) extended time to be given on all tests, exams, and quizzes (double or triple time), thus there were clearly academic adjustments or modifications that would have allowed the Complainant to participate in the University's Programs.

Third, if there was a denial of academic adjustments, OCR considers whether the University engaged in a deliberative process to deny the Complainant's request for academic adjustments. Thus far the record shows that on January, 27, 2015, the Complainant spoke to the DSO about using lecture notes during his test and quizzes. While the evidence provided by the University does not include a formal denial of this request at this time, the evidence does show that the DSO advised the Complainant that his Professors had the discretion to grant or deny the request. In February 2015, information obtained thus far shows that the Complainant asked his Music Professor to use notes in his Music Class, but the Professor denied the accommodation citing that the Complainant's approved academic adjustments did not include being allowed to take lecture notes to the exam. The Professor also notified the DSO that allowing the Complainant to use notes during the test would make it hard for the Complainant to show mastery of the course. The DSO Coordinator upheld the denial of the Professor, and the Complainant appealed to the Director of DSO. In a memorandum written on April 9, 2015, the Director wrote that allowing the Complainant to use notes on exams, quizzes and tests would violate the instructor's policy and therefore, would not be a reasonable accommodation. The Director asserted that such a request would compromise an essential requirement of the course, which was an ability to illustrate mastery of the material and that there were no effective alternatives that could allow the Complainant to illustrate mastery of the material while still using notes on exams, quizzes and tests.

Information obtained thus far also indicates that DSO staff only evaluated the Complainant's request to use notes as it related to the Music Appreciation course because it was their belief that the Complainant only requested to use notes in this course. However, the Complainant denied only requesting the academic adjustment for that one class and alleged that he requested to use notes, including the use of math formula notes if applicable, for all of his courses on exams, quizzes and tests. Furthermore, immediately following the denial of his verbal request, the Complainant submitted a written appeal two days later specifically requesting to use mathematical and non-mathematical formula notes on exams, quizzes and tests. Also, the Complainant initially requested to use "notes" on his exams in January and did not specify that the request was specifically tailored to Music Appreciation class. Because the information provided by the University thus far does not establish whether the Complainant's request for notes was considered by the DSO staff for all the Complainant's courses, the University may have failed to fully consider the Complainant's requested academic adjustments.

In accordance with Section 302 of OCR's *Complaint Processing Manual*, a complaint may be resolved at any time when, before the conclusion of an investigation, the recipient expresses an interest in resolving the allegation. Prior to the conclusion of OCR's investigation, the University expressed interest in resolving the complaint. Subsequent discussions with the University resulted in the University signing the enclosed Settlement Agreement which, when fully implemented, will resolve the complaint. The provisions of the Settlement Agreement are aligned with this complaint and the information obtained during OCR's investigation to date, and are consistent with applicable regulations. OCR will monitor the University's implementation of the Settlement Agreement.

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 provided by law, personally identifiable information, which, if released, 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 matter, please contact Adrienne Harris, at (404) 974-9370.

Sincerely,

/s/

Melanie Velez  
Regional Director