



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

61 Forsyth St., Suite 19T10
ATLANTA, GA 30303

REGION IV
ALABAMA
FLORIDA
GEORGIA
TENNESSEE

May 17, 2016

Via email to xxxxxxxxxxxxxx and U.S. mail to:

XXXXXXXX, President
222 South Copeland St.
Suite 212, Westcott Bldg.
Tallahassee, FL 32306

Re: OCR Complaint #04-15-2461

Dear President XXXXXX,

The U.S. Department of Education, Office for Civil Rights (OCR) has completed its investigation of the complaint received on September 22, 2015, filed by the Complainant against the Florida State University (University), alleging that the University discriminated against her on the basis of disability. Specifically, the Complainant alleged the following:

1. Due to a lack of availability, the University failed to provide the Complainant with a private exam room as a testing accommodation.
2. Despite granting the Complainant a reduced course load as an accommodation and informing her that she would remain a full-time student for financial aid purposes, the University failed to keep the Complainant in full-time status, causing her to lose her financial aid.
3. The University failed to provide the Complainant a procedure for filing a complaint regarding the University's failure to provide her with needed accommodations.

OCR investigated the complaint pursuant to Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability and retaliation by recipients of Federal financial assistance from the Department; and Title II of the Americans with Disabilities Act of 1990 (Title II), as amended, 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 and retaliation by public entities, including state universities.

Accordingly, OCR investigated the following legal issues:

1. Whether the University failed to provide the Complainant with academic adjustments in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.44(a) and Title II at

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

28 C.F.R. § 35.130(b)(7); and

2. Whether the University failed to provide grievance procedures for filing complaints of discrimination on the basis of disability in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.7(b).

In reaching a determination, OCR reviewed and analyzed documents pertinent to the complaint issues. These included the *University's Equal Opportunity and Non-Discrimination Statement*,¹ *Policy 4-OP-C-7-II* (relating to the Americans With Disabilities Act),² *Policy 4-OP-C-7-I3* (relating to grievance procedures for violations of the University's Equal Opportunity, Non-Discrimination, and Non-Retaliation Policy),³ the Dean of Students' *Non-Discrimination Policy and Grievance Procedures*,⁴ the Dean of Students' *Americans With Disabilities Act Information* page,⁵ *Policies and Procedures for Applying for Services*,⁶ *Grievance/Complaint Procedures for Persons With Disabilities*,⁷ the Office of Human Resources' *Equal Opportunity and Compliance* policy,⁸ and the University's *General Bulletin*.⁹ In addition, OCR reviewed the University's final investigative file and attachments regarding the Complainant's Equal Opportunity and Compliance complaint filed on May 28, 2015. OCR also interviewed staff members of the Students with Disabilities Resource Center and the Office of Financial Aid.

Based upon a preponderance of the evidence, OCR found evidence of noncompliance with respect to legal issue #2. Set forth below is a summary of OCR's legal standard, findings, and conclusion.

LEGAL STANDARDS

The Section 504 implementing regulation, at 34 C.F.R. § 104.44(a), requires the University to make modifications to its 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. The regulation specifies that modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted.

The Section 504 regulation, at 34 C.F.R. § 104.7, requires that the University designate at least one person to coordinate its efforts to comply with Section 504. The same regulation also requires the University to adopt grievance procedures that incorporate appropriate due process standards that provide for the prompt and equitable resolution of complaints from students alleging any action prohibited by Section 504. The Section 504 regulation, at 34 C.F.R. § 104.8(a) requires the University to notify participants and beneficiaries that it does not discriminate and to identify the employee designated under 34 C.F.R. § 104.7. Similarly, the Title II regulation at 28 C.F.R. § 35.107 provides that the University shall designate at least one employee to coordinate its efforts to comply with Title II and provide students the name, office address, and telephone number of the designated employee or employees. Title II's regulation also requires the University to adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any allegation that would be prohibited by Title II.

BACKGROUND

The Complainant is a third-year graduate student who the University identified as having a disability and found eligible for accommodations. She enrolled in the University's College of XXXXXXXXXXXX in 20XX.

¹ See item 1(a) of a letter from University counsel to OCR (December 1, 2015).

² See *id.* at 1(b).

³ See *id.* at 1(c).

⁴ See *id.* at 1(d).

⁵ See *id.* at 1(e).

⁶ See *id.* at 1(f).

⁷ See *id.* at 1(g).

⁸ Available at http://hr.fsu.edu/?page=eoc/eoc_make_complaint.

⁹ Available at http://registrar.fsu.edu/bulletin/grad/pdf/2015_grad_bulletin.pdf.

Shortly after, the Complainant submitted documentation of her disability to the University's Student Disability Resource Center (SDRC)¹⁰ and she completed an interview with the SDRC. The University provided the Complainant with instructional accommodations as well as testing accommodations, which included extended time; reader and scribe or assistive technology; the use of computer; the use of a calculator; and, breaks. Initially, the University also provided the Complainant with the accommodation of testing in a "distraction reduced environment." However, in January 2014, the University replaced that accommodation with testing in a "private testing room."

FACTS AND ANALYSIS

Legal Issue One

Whether the University failed to provide the Complainant with academic adjustments in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.44(a) and Title II at 28 C.F.R. § 35.130(b)(7).

Academic Adjustments

The Complainant filed a complaint with the Office for Equal Opportunity and Compliance (EOC) on May 28, 2015. The Complainant alleged that the University denied her appointed academic accommodation of a private testing room during exams she took on December 11, 2013 and on December 9, 2014. She also alleged that the Office of Financial Aid failed to recognize her academic accommodation of a reduced course load, which caused her to lose eligibility for Federal financial aid.

When OCR determines that complaint allegations have been investigated under a recipient's internal grievance process, OCR will not conduct its own investigation. Instead, OCR reviews the results of the recipient's determination and decides whether the recipient provided a comparable resolution process under comparable legal standards and whether the remedy obtained is the same as the remedy that would be obtained if OCR were to find a violation.

OCR's review of the University's investigation shows that it investigated the complaint allegations using the preponderance of the evidence standard and interviewed the Complainant and several witnesses with information regarding the allegations. With respect to the private testing room accommodation, the University determined that the Complainant was not denied her accommodation of a private testing room on December 11, 2013, as she had not been granted that accommodation at the time. However, the University found that due to a lack of private testing rooms at the time, it denied her the accommodation on December 9, 2014. Although the Complainant was denied the private testing room accommodation, she took the exam, and passed the course. The Complainant informed OCR that she was not interested in retaking the exam in a private testing room. Additionally, the University has upgraded the system that it uses to track and plan student testing accommodations to ensure that students are able to schedule private testing rooms. The University also reconfigured its testing lab so that there are now more private testing rooms reserved for students who need this accommodation. The Complainant will be able to use these upgrades to request and schedule testing accommodations for any remaining tests.

With regard to the reduced course load allegation, the University determined that the allegation was unsubstantiated. The Complainant was granted a reduced course load accommodation which allows a student with a disability to take a reduced number of academic credits and still be categorized as a full-time student. The Complainant received the reduced course load accommodation for summer 2014 and assumed that because she was categorized as a full-time student, she would receive financial aid that semester. She did not qualify for financial aid and was required to pay out of pocket for tuition. The University's investigation determined that the Department of Education calculates eligibility based on actual credit hour

¹⁰ The Student Disability Resource Center (SDRC) is the primary advocate for students with disabilities at the University. SDRC works with faculty and staff to provide accommodations for the unique needs of students both in and out of the classroom.

enrollment and not on whether the student is labeled full or part-time in the school's academic system. The University stated that it applies the Department's standard to all students and cannot override Federal eligibility standards and found the allegation unsubstantiated.

OCR will close an allegation under CPM 110(a)(2) if OCR finds that (1) the allegation has been investigated, (2) that the resulting remedy is the same as the remedy that would be obtained if OCR were to find a violation, and (3) there was a comparable resolution process (4) under comparable legal standards. OCR determined that the University conducted an appropriate investigation that comports with this standard. Accordingly, OCR has closed this portion of the Complainant's allegation as of the date of this letter.

Legal Issue Two

Whether the University failed to provide grievance procedures for filing complaints of discrimination on the basis of disability in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.7(b) and Title II's implementing regulation at 28 C.F.R. § 35.107.

Policies and Procedures

The Complainant alleged that the University failed to provide her a procedure for filing a complaint about its failure to accommodate her. She alleged that she was unable to file her complaint on-line because the University's on-line complaint portal was not operational. She attempted to file her complaint directly with the University but could not locate any procedures for doing so or identify the ADA coordinator, even after "combing through" the University's website. The University's policies and procedures only listed types of discrimination and did not provide instructions on how to file a discrimination complaint or identify the University's ADA Coordinator. After weeks of contacting and following up with administrative staff at the University, the Complainant finally contacted a Human Resources Specialist within the EOC who forwarded her complaint to the University's designated ADA Coordinator.

Even though the Complainant experienced difficulties filing her complaint, she acknowledged that eventually, she successfully filed her complaint with the ADA coordinator. Once filed, she submitted evidence and upon the completion of the investigation 69 days later, received written notice of the University's findings. Accordingly, the Complainant was provided with a process by which to file her complaint allegations.

However, although the Complainant ultimately filed her complaint, OCR found several issues with the University's policies and procedures for filing complaints of discrimination on the basis of disability. Each is addressed below.

OCR reviewed the University's notification statement regarding its designated ADA Coordinator. The University's only designation of an "ADA Coordinator" is contained in a discreet sentence on the "ADA information" pulldown of the Dean of Students' website. The pulldown does not include the Coordinator's contact information. That information is located on the University's Office of Human Resources' webpage, in a list of employee information. The University also designates a different individual as a point of contact for any faculty, staff, student, or visitor who has a question regarding the University's nondiscrimination statement in the *Equal Opportunity and Non-Discrimination Statement*. Neither of these individuals are identified on the Students with Disabilities Resource Center's (SDRC) webpage.

When evaluating a recipient's grievance procedures under Section 504 and Title II, OCR considers a number of factors to determine if the grievance procedures meet regulatory requirements, including whether the procedures provide for:

1. notice of the procedure, including where complaints may be filed;
2. application of the procedure to complaints alleging discrimination carried out by employees, other students, or third parties;

3. adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence;
4. designated and reasonably prompt timeframes for the major stages of the complaint process;
5. notice to the parties of the outcome of the complaint; and,
6. an assurance that the school will take steps to prevent recurrence of any harassment and to correct discriminatory effects on the complainant and others, if appropriate.

OCR reviewed the University's policies and procedures regarding individuals with disabilities. The University's nondiscrimination statement prohibits discrimination on the bases of all protected categories enforced by OCR.¹¹ It is published on the University's website and is included in its handbooks. The University's *Equal Opportunity and Compliance* policy is used for complaints against faculty, staff, contractors, or visitors and prohibits discrimination against all of the legally protected categories OCR enforces. Under the policy, any complainant may file a complaint in the Equal Opportunity and Compliance Office (EOC), a section within the Office of Human Resources Department. The policy allows for an informal process and a formal process. The informal process can consist of mediation or requesting that the alleged discriminator be counseled. The formal process requires the complainant to submit a Discrimination Complaint form, which will lead to a full investigation where appropriate, and will end with a finding stating whether the University's Non-Discrimination or Sexual Harassment policies were violated. The policy also includes prohibition against retaliation for filing a complaint. The policy does not state that the University will conduct an adequate, reliable, and impartial investigation of complaints. It links to an electronic complaint form which allows a complainant to designate persons who may have knowledge of the alleged action, but the policy itself does not establish that complainants have an opportunity to present witness testimony and other evidence. Neither does it designate reasonably prompt timeframes for the major stages of the complaint process nor is there an indication that notice will be provided to the parties of the outcome of the investigation. Finally, the policy does not provide an assurance that the University will take steps to prevent the recurrence of any harassment and to correct any discriminatory effects on the complainant and others, if appropriate. For discrimination complaints against students, the policy directs complainants to visit the Dean of Students Department.

The University also has *Non-Discrimination Policy and Grievance Procedures*. The policy and procedures apply to faculty, students, administrators, and staff, and prohibits harassment and discrimination based on all of the legally protected categories OCR enforces. The policy also contains a prohibition against retaliation for filing a complaint. The policy and procedures state that any aggrieved student or employee has the right to express his/her grievance through the appropriate procedures without fear of retaliation. The policy does not provide a definition of disability harassment or outline what constitutes a hostile environment. It does not state where and to whom a complaint may be filed and does not apply to third parties. Neither does the policy state that the University will conduct an adequate, reliable, and impartial investigation of complaints, which includes complainants having the opportunity to present witnesses and other evidence. The policy does not designate reasonably prompt timeframes for the major stages of the complaint process and there is no indication that the policy requires the University to provide parties notice of the outcome of the investigation. The policy also lacks an assurance that the University will take steps to prevent the recurrence of any harassment and to correct discriminatory effects on the complainant and others, if appropriate.

Finally, the University lists additional procedures in its *Grievance/Complaint Procedures for Persons with Disabilities*. The purpose of these procedures is to ensure that the University is in compliance with Section 504 and that faculty, staff, students, applicants, and visitors with disabilities are provided a means to seek recourse in the event that a violation is perceived to have occurred. The procedures apply to any grievances or complaints alleged as violations under Title II and include denials of reasonable accommodation requests. The complaints should be filed with the Dean of Students Department (student complaints), Dean of Faculties (faculty complaints), or the Human Resources Department (staff and visitor complaints). The

¹¹ Race, color, national origin, sex, age, and disability.

policy states that the Dean of Students Department, Dean of Faculties, and Human Resources Department will refer complaints that should be processed under different procedures to the appropriate office or section. Complaints must be filed in writing and will be investigated within 20 days of receipt. The policy instructs complainants to supplement complaints with supporting documents and affidavits of persons with first-hand knowledge of the allegation. Written findings of the investigation along with recommendations for resolving the complaint will be submitted to the charging party and the responsible University administrator for further action upon completion of the investigation. Either party may appeal the findings to the University President or a designee within ten days of receiving the findings. A decision on the appeal will be rendered within seven days of receipt or the University President may choose to appoint a hearing panel to review the appeal. The hearing panel shall render a decision within 20 days of the appointment. The University President may accept, reject, or modify the decision of the review panel. An informal process is also available and a resolution agreement must be issued within ten class days for review and signature. Similar to the University's other non-discrimination policies, the policy also lacks an assurance statement.

Based on the OCR's review of the policies and procedures,¹² OCR noted the following discrepancies:

1. The name and contact number of the University's ADA coordinator and a statement that the person(s) is designated to coordinate the University's efforts to comply with Section 504 are not published.
2. The *Equal Opportunity and Compliance* policy does not state that the EOC will refer complaints that should be processed under different procedures to the appropriate office or section. Thus, it is unclear whether the EOC refers discrimination complaints to other offices or sections, when appropriate.
3. The University's policies require all complaints to be in writing, but OCR recommends that recipients also accept oral complaints.
4. The University's policies do not include a definition of disability harassment or outline what constitutes a hostile environment.
5. The policies do not consistently state that the University will conduct an adequate, reliable, and impartial investigation of complaints, which includes providing complainants the opportunity to present witnesses and other evidence.
6. The policies do not consistently require that the University provide notice of the outcome of the investigation to both parties.
7. The University's policies do not provide an assurance that it will take steps to prevent recurrence of any harassment and to correct discriminatory effects on the complainant and others, if appropriate.

In order to resolve this compliance concern with its policies and procedures, the University voluntarily agreed to take corrective actions outlined in the enclosed Resolution Agreement (Agreement). OCR will monitor the implementation of the Agreement to ensure that it is fully implemented.

CONCLUSION

This concludes OCR's investigation of the complaint and 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. The Complainant may file a private lawsuit in Federal court regardless of whether OCR finds a violation.

¹² While negotiating the Resolution Agreement, the University informed OCR that it was in the process of revising its policies and procedures.

This letter sets forth OCR's determination in an individual 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 duly authorized OCR officials and made available to the public.

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, personally identifiable information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Finally, OCR reminds the University that 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.

If you have any questions regarding this complaint, please contact Mr. Clayton Adams, investigating attorney, at (404) 974-9464, or me, at (404) 974-9376.

Sincerely,

Arthur Manigault, Esq.
Compliance Team Leader