

March 23, 2016

Garry Jones, President  
Full Sail University  
3300 University Boulevard  
Winter Park, Florida 32792

Re: Complaint #04-16-2018

Dear President Jones:

The U.S. Department of Education, Office for Civil Rights, (OCR) has completed its investigation of the above-referenced complaint filed against Full Sail University (University). The Complainant alleged discrimination on the basis of disability (quadriplegic). Specifically, the Complainant alleged that the University failed to provide her with her approved accommodations for extra time and attendance which resulted in her failing three courses and being withdrawn from the University. During the course of the investigation, the Complainant also alleged that she was granted the use of work study students as an accommodation to assist her but because the work study students were unavailable she was unable to complete assignments.

The complaint was investigated pursuant to Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. Section 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance from the Department. As a recipient of Federal financial assistance from the Department, the University is subject to Section 504.

### **Legal Standards**

The regulation implementing Section 504 at 34 C.F.R. Section 104.4(a) and (b)(1)(i-ii) provides that a recipient offering an aid, benefit, or service may not directly or through contractual or other agreements deny, exclude, or otherwise subject to discrimination a qualified person with a disability the opportunity to participate in or benefit from the aid, benefit or service or afford a

qualified person with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others.

The Section 504 implementing regulation at 34 C.F.R. § 104.7(b) requires a recipient that employs fifteen or more persons shall adopt grievance procedures that incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints alleging discrimination on the basis of disability.

The Section 504 implementing regulation, at 34 C.F.R. § 104.44(a), requires each recipient of Federal financial assistance from the Department to make such modifications to its academic requirements as are necessary to ensure that these requirements do not discriminate, or have the effect of discriminating, on the basis of disability, against qualified persons with disabilities. Under Section 504, however, recipients are not required to make modifications that would fundamentally alter the nature of their services, programs, or activities. Thus, a recipient is not required to change any academic requirements that it can demonstrate are essential to its program of instruction or to particular degrees.

OCR evaluates evidence obtained during an investigation under a preponderance of the evidence standard to determine whether the greater weight of the evidence is sufficient to support a conclusion that a recipient, (such as the University), failed to comply with the laws or regulations enforced by OCR or the evidence is insufficient to support such a conclusion. OCR reviewed documentation submitted by the University and interviewed six people including the Complainant. OCR's investigation included a review of documents provided by the Complainant and the University, including the University's Section 504 policies and procedures, the Complaint's transcript and accommodation file, emails between the Complainant and the University and, course syllabi. OCR also interviewed the Complainant, and 5 members of the University staff.

### **Legal Issue**

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

### **Background**

The Complainant was a student in the Film Production, Masters of Fine Arts program at the University. She began class on March 2, 2015. The Student was placed on academic probation in July 2015. She was withdrawn from the University on October 26, 2015, for failing to meet the terms of her academic probation.

## **Policy and Procedure**

The University's nondiscrimination statement contains prohibitions against discrimination on all the bases<sup>1</sup> enforced by OCR. The nondiscrimination statement along with the name and contact information of the Section 504 coordinator is published on the University's website and in its handbooks. Information about the University's disability services office is also published on its website and in a campus brochure and provides information about where and how a student can request accommodations, what documentation is necessary, how reasonable accommodations are determined and a list of the most commonly offered accommodations. The University's Disability Grievance/complaint procedures are also published on its website and in its student handbook. The procedures provide notice to students, and employees of the procedure, including where complaints may be filed; the application of the procedure to complaints alleging discrimination carried out by employees, other students, or third parties; adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence; designated and reasonably prompt timeframes for the major stages of the complaint process; and notice of the outcome of the complaint. However, the policy only provides that complaints be filed in written form, written notice of the outcome is only given to the complainant and only the complainant has appeal rights. Complaints should be received orally as well as in writing and written notice of the outcome and appeal rights, when offered, should be made available to both parties when appropriate<sup>2</sup>. Additionally the policy does not contain a definition of disability harassment and what constitutes a hostile environment. The policy does not state that the University will take steps to remedy the effects of harassment and prevent the reoccurrence of harassment. Therefore, the University's Disability Grievance/Complaint procedures are not in compliance with Section 504.

## **Facts**

The University's Student Success Department (SSD) houses its disability services office. According to the XXXXXXXX the accommodation process includes the following: A student requests accommodations and is asked to provide documentation of the disability and fill out an accommodation request form. Once the information is submitted the documentation is reviewed and the interactive process (students, instructors and program managers) begins to discuss the student's disability and determine what is needed for the student to be successful. An accommodation agreement is drafted and sent to the student outlining the accommodation(s) available. The student is asked to sign and return the agreement acknowledging that they understand and agree to the content of the agreement. Once enrolled with disability services, a specialist reaches out to the student to schedule the welcome meeting. In this meeting, students

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<sup>1</sup> Race, national origin, sex, disability, and age.

<sup>2</sup> Complaints regarding failure to provide academic adjustments/accommodations may only involve one student.

learn how to use the accommodation and are given the accommodation letter to share with the instructor at their discretion. The students are also taught how to communicate their needs to the instructor. The students are also informed that SSD acts as a liaison with instructors as well as deliver accommodations (proctor test). The University states that students are able to request the accommodation letter at any time via phone or email if they do not attend the welcome meeting. However, OCR could not find evidence to support that this information is provided to the students.

The Complainant first contacted SSD for accommodations in January, 2015. A review of her submitted documentation shows that her accommodation request form simply stated accessibility in response to the question “what accommodations are you seeking?” The Complainant was contacted by University staff to obtain further information about her needs and it was determined that she had limited use of her hands. It was decided that she would be given the use of work study students to assist with production. The Complainant was sent her accommodation agreement on February 3, 2015. The letter informed the Complainant of what to expect in the program, that she must attend the welcome meeting and that the following accommodations were available to her: testing accommodations (quiet room, time and half on tests, reword questions for clarity, test read aloud); time and half to complete time lab exams; access to Power Point slides for all classes; automatic eligibility for make-up work for absences directly related to your disability, exceeding 10% of the total class hours, but not to exceed 20% of the total class hours in any given month, and peer intern (work study student). The accommodation letter also advised her of the availability of the accommodation letter. The Complainant signed the agreement on February 23, 2015. The evidence shows that although the Complainant scheduled her welcome meeting she did not attend. The Complainant was provided with her accommodation letter via email dated September 14, 2015, and she was instructed to provide the letter to her professors. The Complainant contends she emailed her accommodation letter to her XXXXX andXXXX professors. The Complainant’s professors deny that they received the Complainant’s accommodation letter. The professors stated they learned about the Complainant’s accommodations when seeking information about the Complainant’s needs for production and when advising her advisor that she was missing a lot of class.

The Complainant’s program did not have exams/tests and she alleged that it was her understanding that because she did not have exams/tests in her program the extra time listed in her accommodation agreement for extra time on exams/test was meant to apply to assignments and class attendance. The XXXXX stated that the testing accommodations are given to all students with disabilities and they can use them if they choose. The evidence shows that the Complainant did not attend the welcome meeting where further explanation of the accommodations is provided to the students. The evidence does not support that extra time on exams/test stated in the Complainant’s accommodations were to translate to extra time on assignments and class attendance. The accommodation letter specifically sets out the

accommodation provided for class attendance as noted above. Additionally, OCR's review of the Complainant's request for accommodations does not include a request for additional time on assignments or class attendance. The Complainant also alleged that she informed the XXXXX orally in September 2015, that she was having difficulty getting to class and staying in class due to her disability and that her professors were counting her absent and failing her due to her absences. She alleges she asked for additional accommodations but was told there was nothing that could be done. The XXXX denied that the Complainant asked for additional accommodations. The XXXX informed OCR that she did not recall the specific meeting but the information she provided would have been the same for any student having attendance problems. She stated that she would have instructed the student to inform his/her professor that they were registered with disability services and provide them with the accommodation letter. She stated that the Complainant had an accommodation that she could miss between 10-20% of class time without having to provide an excuse. She stated that she did not tell the Complainant that there was nothing she could do but more than likely stated that if you miss more than 20% of class time there is nothing I can do for you. The XXXXX stated that all students are required to attend 80% of class or they have to repeat the course. The Complainant admitted that she never informed her professors of any difficulties she was having getting to and staying in class due to her disability. The Complainant's professors stated that they reached out to the Complainant to offer assistance and discussed her attendance. The Complainant disputes that the professors were available to assist her. She does admit that her law professor warned her that she was about to exceed her allotted absences per her accommodations.

The Complainant alleged that she failed her three classes due to her being counted absent and the unavailability of work study students. According to the evidence obtained, the Complainant failed her Visual Storytelling class due to her failure to turn in assignments and assignments not meeting the academically required parameters. The Complainant failed her Experimental Filming class due to plagiarism, failure to turn in assignments and professionalism. The Complainant admitted that she failed to turn in some assignments and that she turned in assignments late. She also confirmed that she was accused of plagiarism in her Experimental Filing class. The Complainant failed her Entertainment and Communication Law, class due to her attendance after missing more than the 20% allotted for excused absences<sup>3</sup> as provided for as an accommodation. The Complainant admitted that she was warned by her professor that she was close to exceeding the allotted time for absences.

With respect to work study students, the XXXXX, stated that the Complainant was provided with a total of 4 work study students. The first two students assisted her with production but complained that the Complainant was requiring them to run errands for her and use their money to buy things. The XXXXX stated that a meeting was held with the students and the

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<sup>3</sup> According to the University, all students are required to attend 80% of class and can fail a class if they fail to attend the required amount of time.

Complainant to go over the role of the work study students and to clarify what was allowed. The students quit after complaining that the original behavior of the Complainant continued. Two additional work study students were hired and were used by the Complainant. The Complainant denied that she required work study students to run errands but stated that she gave one of the student's money to go buy something she needed for one of her actors. She stated she used the work study students about three times including for her final project in Experimental Filmmaking. She stated that she was unable to complete the Experimental Filmmaking assignment due to not being able to use equipment without a work study student present and she was forced to use an IPAD to complete her final assignment which resulted in the project being of poor quality. Two of the Complainant's professors stated that the Complainant was restricted from using equipment due to her academic probation and the fact that there had been safety and professionalism issues with prior use of the equipment. The Complainant had requested a work study student to handle a live grenade and she had been accused of trespassing and damaging property on an offsite shoot. The professors stated that in order to ensure the safety of the work study students and volunteers, a provision was put in place that the Complainant could only film when instructors were present. The Complainant's XXXXX professor stated that the Complainant rejected the arrangements that had been made for her to complete the final assignment in XXXXX and her grade had nothing to do with her use of an IPAD. According to the professor, the project received a low grade because it needed more documentation, the Complainant did not have the talent releases signed, and she failed to fill out the blog. The Complainant admitted that she did not get talent releases and that she only turned in a draft for her final project. Other than the final project in XXXXX that she was not able to complete, the Complainant was unable to provide OCR with any information regarding which assignments she was unable to complete due to her not being able to use equipment or the unavailability of a work study student.

### **Analysis and Conclusion**

Postsecondary education recipients must provide notice of its accommodation process. The student must notify the institution that he/she has a disability and that he/she needs an academic adjustment/accommodation or auxiliary aid because of that disability. If the student has received proper notice of an institution's process for providing academic adjustments, they are expected to follow the process in seeking an adjustment. This includes the obligation to inform the institution of their disability, provide supporting documentation, and ask the institution for assistance related to their disability. Once a student takes these steps consistent with the institution's established process, it is then the institution's responsibility to ensure that any necessary and agreed upon academic adjustments/accommodations are provided to the student. If an academic adjustment/accommodation or aid is not meeting a student's needs then it is the student's responsibility to contact the institution as soon as possible so they can work together to resolve the issue.

In the present case, the Complainant was aware of the University's accommodation process and followed that process by requesting an accommodation and providing documentation to support the request. The University engaged the Complainant by seeking clarity of what she needed and consulted with staff in the Complainant's program to determine what accommodations would assist the Complainant in being successful in the program. The Complainant was offered accommodations and agreed to the accommodations by signing the accommodation agreement confirming she understood and agreed to the accommodations. The University's process required students to attend a welcome meeting to obtain their accommodation letter, which they can share with their professors at their discretion, and get more information about using the accommodation. The Complainant failed to attend the welcome meeting and did not receive her accommodation letter for seven months after she signed the accommodation agreement.

Although in this case, the Complainant was not prevented from receiving her accommodations due to the proactive measures of her professors, OCR finds that the additional step the University requires students to go through to get access to their approved accommodations problematic. At the postsecondary level, the onus is on the student to ensure that his/her professors are aware that they are entitled to accommodations and not having the accommodation letter may create a barrier to the student obtaining his/her approved accommodations.

The Complainant stated that she believed she had an accommodation for extra time to get to class and extra time on assignments but the evidence does not support that she asked for or was granted this accommodation. The Complainant alleges she reported to the SSD that she was having difficulty with attendance in her classes which was affecting her grades and that she requested additional accommodations. The University disputes that the Complainant requested additional accommodations. The University stated that the Complainant was informed that she should give her professors her accommodation letter and that per her accommodation she could miss up to 20% of class without providing an excuse. OCR could not find any independent evidence to support that the Complainant requested additional accommodations. The Complainant also alleged that she failed her classes because the University instituted a rule that she could not use equipment unless a work study student was available and she had difficulty contacting the work study students. The University stated that the rule was instituted due to safety reasons and the rule was that the Complainant could only use equipment and film in the presence of a professor. The Complainant could only provide OCR with information on one assignment where she believed the quality of the assignment was compromised due to her alleged inability to access equipment. The evidence shows that this one assignment was graded down due to the lack of documentation, failure to obtain talent releases and to fill out a blog; not inability to access the equipment. Additionally, the Complainant could not provide OCR with

information on assignments she alleged she could not complete because of the unavailability of a work study student. Finally, the evidence supports that the Complainant failed two of her classes due to the quality of the work and failure to turn in assignments and not class attendance, inability to use equipment, or unavailability of a work study student. Also, in the one class she failed due to attendance, the evidence shows that she had been warned that she was close to exceeding her allotted absences. Based on the preponderance of the evidence, OCR determines that the evidence is insufficient to conclude that the University is in noncompliance with Section 504 with respect to the issue investigated. However, OCR found that the University's Disability Grievance/Complaint procedures and accommodation procedure regarding receipt of the accommodation letter are not in compliance with Section 504.

Therefore based on a preponderance of the evidence, the University is in noncompliance with Section 504 and Title II with respect to its policy and procedures. In order to resolve this compliance concern, 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.

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 about this complaint, please contact Vicki Lewis, at 404-974-9332 or Arthur Manigault, Compliance Team Leader at 404-974-9376.

Sincerely,

Arthur Manigault, Esq.  
Compliance Team Leader

Enclosure

cc: XXXXX, University Attorney