



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

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ATLANTA, GA 30303-8927

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April 12, 2017

Wendy B. Libby, Ph.D.
President
Stetson University
421 N. Woodland Blvd.
DeLand, Florida 32723

Re: Complaint # 04-17-2023

Dear Dr. Libby:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint the Complainant filed against the Stetson University (University) College of XXX (College). The Complainant alleged the University discriminated against him on the basis of disability. Specifically, the Complainant alleged the College discriminated against him on the basis of disability when it failed to provide him with his approved auxiliary aid of an ergonomic chair during his XXXXX course final exam on XXX XX, 2016.

OCR is responsible for enforcing 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 by recipients of Federal financial assistance from the Department. As a recipient of Federal financial assistance from the Department, the University is subject to these laws. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

OCR investigated the following allegation:

Whether the University discriminated against the Complainant on the basis of disability by failing to provide his auxiliary aid of an ergonomic chair during his XXXXX course final exam on XXX XX, 2016, in noncompliance with Section 504 and its implementing regulation at 34 C.F.R. § 104.44.

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 College, failed to comply with the laws or regulations enforced by OCR or the evidence is insufficient to support such a conclusion.

During its investigation in this matter, OCR interviewed the Complainant and five College personnel. OCR also reviewed information provided by the Complainant and the College,

including: (i) the Complainant's disability documentation related to his approved accommodation, (ii) the Student's disability grievance with the College, (iii) the College's disability grievance investigation and findings, (iv) all correspondence with the Complainant regarding the alleged denial of his accommodation, (v) internal correspondence of the College related to the alleged denial of accommodation, and (vi) correspondence between the College and the Complainant regarding the alleged denial of accommodation.

Before OCR concluded its investigation of this complaint, the College offered to resolve the Complainant's allegations through a voluntary resolution agreement. Pursuant to OCR's *Case Processing Manual* at Section 302, a complaint may be resolved when, before the conclusion of an investigation, "the recipient expresses an interest in resolving the allegations and issues *and* OCR determines that it is appropriate to resolve them with an agreement during the course of an investigation."

Legal Standards

Equal Educational Opportunity

Pursuant to the regulation implementing Section 504 at 34 C.F.R. Part 104.4, "no qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance. A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service; afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others; provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others; provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others. . . otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

Obligation to Provide Auxiliary Aids

The Section 504 implementing regulation, 34 C.F.R. §104.44(d)(1) requires a recipient postsecondary institution to 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 because of the absence of educational auxiliary aids for students with impaired sensory, manual, or speaking skills.

The Section 504 implementing regulation, 34 C.F.R. §104.44(d)(2) provides that auxiliary aids may include taped texts, interpreters or other effective methods of making orally delivered materials available to students with hearing impairments, readers in libraries for students with visual impairments, classroom equipment adapted for use by 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 the Investigation

The Complainant alleged that the College failed to provide him with his approved auxiliary aid of an ergonomic chair during his XXXXXX course final examination on XXX XX, 2016. As a general rule, under 34 C.F.R. § 104.44(d)(2), postsecondary institutions are not required to provide devices or services of a personal nature.^[1] However, because the Complainant alleged that the College in fact approved and provided a chair with lumbar support as an accommodation and did not allege that the College failed to provide a specific or prescribed chair, OCR opened and investigated this complaint as a denial of an accommodation.

The evidence shows that the Complainant filed a grievance, and the grievance investigation documentation and internal emails establish that he notified an XXXXXX and XXXXXXXX that the chair was missing on the day of the exam, XXX XX, 2016. College witnesses state that the day of the exam, the Complainant arrived and notified the XXXXXX that the chair provided was not satisfactory, and that the XXXXXX called the XXXXXXXX saying the Complainant was requesting a “high backed chair.” Thus, a preponderance of the evidence shows the Complainant was denied his accommodation chair as alleged.

OCR next examined the reasons for the denial of the accommodation. The Complainant alleged that XXXXXXXXX went to get somebody else, and then staff tried to get in touch with the accommodations office, but they were unable to reach them. The Complainant alleged that College staff then claimed they could not get the correct chair because it was in a class where another exam was being taken.

Internal e-mails show that prior to the exam, the College registrar’s office notified the accommodations staff of the Complainant’s exam locations and times so the accommodation chair could be provided. College witnesses state that on the day before the exam, the XXXXXXXX made sure that the accommodation chair was present in the classroom. The College’s internal e-mails show that based an internal review, the College believes the appropriate chair, which ordinarily carries a sign asking that it not be removed, had been moved as staff set-up the room because it looked out of place. Thus, the evidence supports a finding that the chair was not present for the exam due to miscommunication or misunderstanding on the part of College staff.

In considering the reasons for the accommodation being denied, OCR also considered the surrounding circumstances and the College’s response to its absence. Witnesses and documents establish that there were efforts to procure an appropriate chair for the Complainant. Witnesses stated and the Complainant confirmed that after the Complainant told the XXXXXX that his chair was missing, the XXXXXX called the XXXXXXXX to help get him a chair. The XXXXXXXX then retrieved a chair with a high back and no arms that she believed would be sufficient, and brought it to the classroom. One witness stated that when the Complainant said this other chair “wasn’t the right one,” he described a chair “that he wanted from the

^[1] <https://www2.ed.gov/about/offices/list/ocr/transitionguide.html>

XXXXXXXXX room,” and the XXXXXXXXX retrieved a second chair based on his description and brought it for him.

There was conflicting testimony and evidence on what type of chair the Complainant requested when he found the accommodation chair absent. The XXXXXXXXXX, whom originally helped the Complainant select the accommodation chair, stated that the approved accommodation chairs are from the College’s XXXXXXXX room. The chairs in the XXXXXXXX room are black, while the XXXX chairs are green. During interviews, the XXXXXXXXX stated the Complainant described a chair “that he wanted from the XXXXXXXXX room,” she only saw two black chairs in there, and she retrieved the chair that best fit his description. She recalled that it had a bump that she assumed was a lumbar support, and she believed it had arm rests. The XXXXXXX witness did not recall if the Complainant requested a black chair or a chair from a specific room.¹ The Complainant alleged in his grievance that he told staff to “get the chair in the XXX room that has lumbar support... I told them it has a lumbar support and the arms for disability persons (sic).” The Complainant stated to OCR that the XXXX chairs are basically the same as those in the XXXXXXXXX room, and that color would not help identify the correct chair because some of the chairs in both the XXXX and XXXXXXXXX rooms have lumbar and arm rests.

The Complainant alleged that he was told his chair could not be retrieved because exams were in progress. The XXXXXXXXX’s testimony did not corroborate this statement. The College XXXXXXXXXXXXX stated his investigation found that the Complainant was never told his accommodation chair could not be retrieved due to exams in progress, and stated the XXXXXXXX room has multiple rooms accessible by alternative entrances, so a chair could be retrieved even during an exam. The XXXXXXX said that if the Complainant was told this approved accommodation could not be retrieved, then she did not hear it. In response, the Complainant maintains he was told that the chair was unavailable, and that the substitute chair was the best they could do. Thus, there was insufficient evidence to establish whether this statement was made to the Complainant.

No data showed any dispute of the Complainant’s need for this accommodation, so OCR next examined whether the academic adjustments and auxiliary aids that were provided were of adequate quality and effectiveness. The evidence supports that substitute chairs were provided to the Complainant. The Complainant stated that the first replacement chair was insufficient because the back was not stationary when you moved. He stated the second chair did not have lumbar support, he was unsure of whether it had arms, and the back also reclined when you moved. He states he ultimately used one of the regular chairs in the classroom. The XXXXXXXXX stated that the Complainant used the second substitute chair she brought, which she described as black, having a bump for lumbar support, and a high back. She states she chose it because of the limited options in the XXXXXXXXX room and because it had arm rests. The Complainant alleges that during the exam, he began experiencing pain that he alleges made it difficult to concentrate. The College’s grievance investigation does not appear to contend this fact, and data supports that his grade in the exam and the course fell in the lower spectrum of his

¹ OCR notes that the XXXXXXX stated during the College’s grievance investigation that she recalled the Complainant requested a black chair from the XXXXXXXXX room. The only other identified witness, the XXXXXXX, stated to OCR she was not specifically observing the situation with the chair, but stated during the grievance investigation that she overheard the Complainant requesting a “black chair” from a specific XXX room.

grade history at the College. Therefore, there is sufficient evidence to establish that the accommodations that were ultimately provided for the Complainant not of adequate effectiveness.

OCR next examined whether the Complainant provided notice of the inadequacy or ineffectiveness of the academic adjustment or auxiliary aid and the College's response to such notice. The Complainant alleged that he stated the replacement chair was unacceptable before he started the exam, but he was told that it was the best that could be done because his approved accommodation was in another classroom where exams were in progress. In interviews, the XXXXXXXX said that the exam had already started when she brought this chair, and she asked the Complainant if this final chair would suffice. She stated the Complainant did not say it was lacking, but he just "kept shaking his head," did not answer, and then just started to work. She did not indicate how he shook his head, such as whether it was in exasperation or in disagreement. She states that she "kept asking if the chair was ok," that he was "hard to read" because "he didn't have any really noticeable expressions," and that she kept waiting for an answer and did not get one. She states she therefore assumed the chair was sufficient because he sat and kept working.² The XXXX stated she asked if everyone was ready to start the exam, nobody spoke up, and she did not notice anything out of the ordinary. The XXXXXXXX stated the Complainant said something to the effect of "you know don't worry about it, it's fine, I'll use this," and it was a dismissive, "I will use this one."³ When asked if the Complainant said the chair was insufficient in any way, the XXXXXXXX stated she did not "recall him saying that specifically." The Complainant stated in rebuttal that the exam had already started and he was told this substitute chair was the best they could do, so "they were basically telling me they had no alternative, so I couldn't tell them to get me another chair." Based on the statement that the Complainant was shaking his head, there was no consensus of witness statements to establish if he provided sufficient notice that this final chair was inadequate or if there is insufficient evidence on this fact.

Prior to the conclusion of OCR's investigation, the College offered to resolve the complaint allegations in this complaint under CPM §302. The terms of the proposed Resolution Agreement resolves the allegations at issue by providing an individual remedy for the Complainant through an invitation to re-take a XXXXXXXX final examination in spring semester of 2017, and for OCR to provide training to College staff regarding Section 504 and the provision of academic adjustments and auxiliary aids.

OCR will monitor the College's implementation of this Agreement to ensure that it is fully implemented. If the College fails to fully implement the Agreement, OCR will reopen the case and take appropriate action to ensure compliance with Section 504. Further, the Complainant may file a private lawsuit in federal court regardless of whether OCR finds a violation.

² OCR notes this differs from the XXXXXXXX's findings during the grievance, which found the XXXXXXXX recalled that the Complainant "said with regard to the black XXXXXXXX room chair, 'this will do.'"

³ OCR also notes the XXXXXXXX found that the XXXXXXXX "had already moved on to assist students in another classroom," but the XXXXXXXX did not indicate if the XXXXXXXX was questioned about whether Complainant made any statements about the chairs' sufficiency, similar to OCR's questioning of this witness.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information that, 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.

OCR appreciates the College's cooperation in this matter and looks forward to receiving the monitoring reports, as required by the enclosed Agreement. If you have any questions, please contact Michael Bennett, General Attorney, at 404-974-9274.

Sincerely,

Andrea de Vries
Compliance Team Leader

Enclosure