



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

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ATLANTA, GA 30303-8927

REGION IV
ALABAMA
FLORIDA
GEORGIA
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May 11, 2017

Dr. Arthur Keiser
Chancellor and Chief Executive Officer
Keiser University
1900 West Commercial Blvd., Suite 180
Fort Lauderdale, Florida 33309

Re: Complaint No. 04-17-2062
Letter of Resolution

Dear Dr. Keiser:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed with our office against Keiser University (University) on November 15, 2016, alleging discrimination on the basis of disability. Specifically, the Complainant alleged that the University discriminated against him by failing to provide him with academic adjustments (note taker and closed captioning on Blackboard) during his XXXXXXXXX studies in the Fall of 2016.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. Section 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance from the Department. The University receives Federal financial assistance from the Department. Accordingly, OCR has jurisdiction over this complaint.

OCR investigated the following issue:

Whether the University discriminated against the Complainant on the basis of disability by failing to provide him academic adjustments (note taker and closed captioning on Blackboard) in noncompliance with Section 504 and its implementing regulation at 34 C.F.R. § 104.44.

During the course of the investigation, OCR reviewed documents submitted by the Complainant and the University. In addition, OCR interviewed the Complainant and the XXXX XXXXXXXXXXXX, and reviewed the emails from the Complainant's XXXXXXXXXXXX. Prior to the conclusion of OCR's investigation, the University expressed an interest in voluntarily resolving this complaint. The applicable legal standards and OCR's findings of fact thus far in the investigation are summarized below:

A. Legal Standards

The Section 504 implementing regulation, 34 C.F.R. §104.44(a), requires recipient colleges and universities to make modifications to their academic requirements that are necessary to ensure that such requirements do not discriminate, or have the effect of discriminating, on the basis of disability, against a qualified applicant or student with a disability. Academic requirements that the recipient can demonstrate are essential to the instruction being pursued by such student or to any directly related licensing requirement will not be regarded as discriminatory within the meaning of this section. 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 implementing regulation at 34 C.F.R. §104.44(d)(1) further 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 at 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.

B. Background and Findings

The Complainant was enrolled as a XXXXXXXXX student at the University in the Fall of 2016. The Complainant is XXXX and is able to XXXXXXXXXXXXX in XXXXXXXX XXXX XXXXXXXX. On XXXX XX, 2016, the Complainant applied for academic accommodations to include, *inter alia*, a note taker and closed caption video. On XXXXXX XX, 2016, the University issued an accommodation letter (Accommodation Letter). The Accommodation Letter shows that the Complainant requested the note taker and closed captioning and states that after the Accommodations Review Committee's review of the Complainant's file on record, as a XXXXXXXXXXXX student, the University has granted the closed captioning to be coordinated with the XXXX. The Accommodations Letter does not include provision of a note taker and a note taker was not provided to the Complainant.

The Complainant, who was a XXXXXXXXXXXX student from the XXXXXXXXXXXXXXXX program, had previously been provided a note taker as evidenced by an earlier accommodation letter dated XXXXXXXX X, XXXX. The University explained that because the XXXXXXXX

program was online and the lectures were on video, the closed captioning would be sufficient. There were email exchanges between the Complainant and one of his XXXXXXXXXXXX in XXXXXXXXXXXX of 2016 regarding the problems he was encountering with closed captioning, including the use of YouTube. The Complainant explained in one email that the closed captioning on YouTube contained various sentence fragments which were not real and the captions introduced a lot of confusion for him. The Complainant also discussed the Blackboard program, which provides for closed captioning service and is available to the University. In an email dated XXXXXXXXXXXX XX, 2016, the XXXXXXXXXXXX agreed that the Complainant was correct in pointing out the differences between the subtitles and the words spoken on the YouTube lecture videos but indicated that he was given the task of editing. The Complainant responded by email on the same day and reiterated his preference for a note taker which would be much easier for him to understand. The Complainant further points out that YouTube was not the approved method for closed captioning. On the same day the XXXXXXXXXXXX responded that the Complainant was right that the accommodation was not specified as closed captioning via YouTube but about close captioning in general and that YouTube was the recommendation of the XXXXXXXXXXXXXXXX office. The Complainant also sent an email on XXXXXXXXXXXX XX, 2016, prior to withdrawing from the University, to the XXXX stating that he will stop being a XXXXXXXXXXXX student and explained that the best accommodation option for him is a note taker and that there are fragments that XXXXXXXXXXXX students get but do not appear in the subtitles when using YouTube. On XXXXXXXXXXXX XX and XX, 2016, the Complainant informs the University that he is dropping out as a student in the XXXXXXXXXXXX program.

C. Conclusion

Pursuant to Section 302 of OCR's Case Processing Manual (CPM), a complaint may be resolved prior to the conclusion of the investigation if the recipient expresses an interest in resolving the issues and OCR determines that it is appropriate to resolve them with an agreement during the course of the investigation. In this case, the University expressed an interest in voluntarily resolving this complaint. OCR has received the enclosed, executed Resolution Agreement (Agreement) from the University, which, when fully implemented, will resolve this complaint. 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. Further the University is advised that the Complainant may file a private suit whether or not OCR finds a violation.

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. 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.

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Please be advised that the University may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the Complainant may file another complaint alleging such treatment.

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, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

This concludes OCR's consideration of this complaint, which we are closing effective the date of this letter. OCR is committed to a high quality resolution of every case. If you have any questions regarding this letter, please contact Ms. Mimi Loughlin, Investigator/General Attorney, at (404) 974-9444, Ms. Vahn Wagner, Senior Attorney, at (404) 974-9392, or the undersigned, at (404) 974-9366.

Sincerely,

Virgil Hollis
Compliance Team Leader

Enclosure (Executed Resolution Agreement)

cc: XXXXXX XXXXX, XXXX (w/ encl.)
Via electronic mail only