



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

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REGION IV

ALABAMA  
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June 19, 2020

**By email: [president@miami.edu](mailto:president@miami.edu)**

Dr. Julio Frenk  
President  
University of Miami  
P.O. Box 248006  
Coral Gables, Florida 33124

Re: Complaint #04-20-2111

Dear Dr. Frenk:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed on January 9, 2020, against the University of Miami (University) alleging discrimination on the basis of disability. Specifically, the Complainant alleged that the University discriminated against her by failing to provide her with effective academic adjustments.

OCR is responsible for enforcing 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 by recipients of Federal financial assistance (FFA) from the Department. As a recipient of FFA from the Department, the University is subject to Section 504. Accordingly, OCR has jurisdiction over the University.

OCR investigated the legal issue of whether the University discriminated against the Complainant on the basis of disability by failing to provide effective academic adjustments, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.44 (a).

During the complaint resolution process, OCR reviewed documents provided by the Complainant and the University, including correspondence between the University and the Complainant and her parents, the Complainant's Office of Disability Services (ODS) file, and ODS policies and procedures. OCR conducted interviews with the Complainant, Accommodations Specialist, Assistant Director of Academic Services, and the Director of the ODS.

Prior to the conclusion of the investigation, the University offered to voluntarily resolve the complaint. OCR's *Case Processing Manual* (CPM) at § 302 states that allegations under investigation may be resolved at any time when, prior to the point when the Regional Office issues

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a final determination under CPM § 303, the recipient expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified issues that can be addressed through a resolution agreement.

### **Legal Standards**

The Section 504 regulation, at 34 C.F.R. § 104.43(a), provides that a qualified person with a disability may not be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in any postsecondary aids, benefits, or services on the basis of disability. The regulation at § 104.44(a) requires a university to modify its academic requirements as 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. 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.

Universities may establish reasonable requirements and procedures for students to provide documentation of their disability and request academic adjustments and auxiliary aids and services. Students are responsible for obtaining disability documentation and for knowing and following the procedures established by the university. Once the student has provided adequate notice and documentation of his/her disability and the need for modifications due to the disability, the university must provide the student with appropriate academic adjustments and auxiliary aids and services that are necessary to afford the student an equal opportunity to participate in a school's program. However, the university is not required to make adjustments or provide aids or services that would result in a fundamental alteration of the university's program or impose an undue burden.

In determining what modifications are appropriate for a student with a disability, the university should familiarize itself with the student's disability and documentation, explore potential modifications, and exercise professional judgment. The question of whether a university must make modifications to its academic requirements or provide auxiliary aids is determined on a case-by-case basis. OCR generally does not substitute its judgment for that of qualified educators and professionals regarding modifications. Instead, OCR reviews relevant factual evidence to determine whether a university acted in a reasonable manner and whether it took appropriate steps consistent with Section 504 in making decisions regarding a student's eligibility for academic adjustments. Section 504 envisions a meaningful and informed process with respect to the provision of modifications, e.g., through an interactive and collaborative process between the university and the student. If a university denies a request for a modification, it should clearly communicate the reasons for its decision to the student so that the student has a reasonable opportunity to respond and provide additional documentation that would address the university's objections.

### **Facts**

The Complainant enrolled as a transfer student at the University for the fall 2019 semester. She registered with the University's ODS in April 2019. The Complainant provided ODS with a

private psychoeducational evaluation, dated June 14, 2017, which showed that she met the criteria for “Specific Learning Disability, with impairment in reading, with impairment in word reading accuracy, reading rate and fluency; moderate.” The evaluation recommended the following accommodations: extended time (100%) on all exams, quiet room for tests, preferential seating, copy of lecture notes and PowerPoint slides, audio books, exemption for penalty for spelling errors, ability to record lectures. The Complainant requested 100% extended time on exams and quizzes, notetaking, computer use, no penalty for spelling errors, tape record lectures, and a distraction reduced environment.

On June 12, 2019, ODS held an interactive meeting with the Complainant to discuss her academic adjustments/accommodations request. ODS notified the Complainant in a letter dated June 14, 2019, that she was approved for two accommodations: “tape record lectures (must discuss with professor)” and “extended time on examinations/1.5 (up to time and a half for in-class exams or quizzes.)” The letter stated: “We are granting you these accommodations and hereby denying you double time, notes, distraction reduced, no penalty for spelling errors, and all others.” The letter also informed the Complainant of the right to appeal the determination regarding the denied accommodations. The letter stated that grievances must be received within 10 days of the denial for auxiliary aids or services.

On August 20, 2019, an ODS Accommodations Specialist (Specialist) met with the Complainant to discuss the testing policies and explained how to schedule exams at the ODS for reduced distraction even though the Complainant was not approved for reduced-distraction testing. The University’s testing policies include specific requirements that students receiving testing accommodations must provide the official accommodation letter to their instructor within the first week of the semester; instructors may provide testing accommodations to the student, ODS provides proctoring services (specific times listed) subject to seat availability; and each student is responsible for the approval and scheduling of their exams with 7 days advance notice. The Complainant signed the form acknowledging that she read and received a copy of the ODS test taker accommodation roles and responsibilities policy. On the same date, ODS provided the Complainant with an accommodation letter to present to her professors for the fall 2019 semester.

OCR asked the ODS Director (Director) to explain the apparent contradiction between the denial of the requested distraction-reduced testing area accommodation, and the Complainant’s use of the testing facility at the ODS. The Director stated that the facility is available to all students. It is an area that can accommodate about 10 students in cubicles. The ODS does not restrict reduced-distraction testing to students with disabilities. In addition, some professors provide distraction-reduced testing on their own.

The Complainant asserted that she was administered Calculus and Chemistry exams in September and October 2019 in a manner that was not appropriate for her disability. She stated she took two Calculus exams in the classroom and was not provided extended time. She stated that she registered to take her first Calculus exam in ODS but had to cancel because the time conflicted with her schedule for a different class, therefore, she had to take the exam with her class. She stated she was unable to complete her second Calculus exam in October because she did not receive extended time. She stated that she was provided extended time on three Chemistry exams, which she took with her class, but the extended time was added on after other students completed and turned in their exams which was a distraction. She also stated that for her second Chemistry exam, in

October, there was a 30-minute pause and she had to switch rooms before she received extended time, which was also a distraction. The Complainant stated the third Chemistry exam in November 2019 was administered in the same manner the second exam.

On October 23, 2019, the Complainant and her mother met with the Accommodations Specialist in the ODS office to discuss the problems she was experiencing in the Calculus and Chemistry classes. The Complainant complained that she was not given extended time in her first Calculus exam, as the proctor stopped her at the end of the regular exam, and the professor was not present. The Complainant further complained during this meeting that she was provided extended time in her Chemistry exam, but she was required to stop at the conclusion of the regular test period and move to another room to complete it. The Accommodations Specialist assured her that she would contact the Calculus professor to ensure that her next two exams were scheduled appropriately. The Accommodations Specialist advised her that she could take future exams in the ODS if she preferred. The Accommodations Specialist sent the Complainant a follow-up email regarding their meeting. The email stated that the Accommodations Specialist spoke with the Complainant's Calculus professor and informed him that the Complainant had scheduled her two future exams with ODS, and he confirmed that the dates and times worked. She also stated that the professor wanted the Complainant to contact him after she received her grade on the first Calculus test to discuss options.

The University stated to OCR through its attorney that the Complainant registered to take her first Calculus exam in ODS with extended time but later cancelled. She stated the Complainant took her second Calculus exam with her class and with a proctor who was not aware that she was approved for extended time. The attorney stated that the classroom in which the test was proctored had another class coming in, and therefore, the extended time could not be accommodated there. The University acknowledged that the Complainant had to move to a different room to receive extended time on her second Chemistry exam.

On December 20, 2019, the Complainant sent an email to the Chemistry professor to express her disappointment with her final grade of "D" in the class. The professor responded saying she could see her exam at the beginning of the next semester; and he would discuss how she could move forward. The Complainant asked whether her grade could be adjusted and stated that if the grade could not be adjusted, she would need to follow up with ODS regarding retaking the class. The Complainant's parents sent subsequent emails to ODS staff stating that the Complainant did not receive proper accommodations in the Chemistry class, which resulted in the grade of "D" in the class.

On January 6, 2020, the Complainant and her parents met with ODS staff to discuss the Complainant's Chemistry grade and her accommodations.<sup>1</sup> The Director stated she told the Complainant and her parents that she did not have the authority to change grades and gave them information on grade appeals.

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<sup>1</sup> The Complainant took five courses during fall 2019 and received a grade of A- in Chemistry Lab and D in Principles of Chemistry (CHM 121).

On January 8, 2020, the Complainant filed an appeal of the denial of her accommodation request. In the appeal letter, she alleged that during the fall 2019 semester, the ODS denied without explanation the accommodations recommended by her psychoeducational evaluator: double time on tests and a distraction-free testing environment. She alleged that she asked an ODS employee why the requested accommodations were not granted and was told that she could appeal the denial, but if granted, the accommodations would not go into effect until spring 2020 semester.<sup>2</sup> She further alleged that the ODS instructed her to speak to her professor about her need for a distraction-free test site, but the professor refused to accommodate her, telling her that her accommodation letter did not provide for it. She requested to have her final Chemistry grade changed to a withdrawal and that she would be allowed to re-take the course with her requested accommodations. To the appeal letter she attached copies of her September 5, 2017 accommodations letter from the university she formerly attended, as well as an October 17, 2017 letter from her previous university granting a reduced course load as an additional accommodation.

The Complainant's father provided the University with a letter dated January 14, 2020, signed by another of the Complainant's psychologists and addressed "to whom it may concern." The psychologist wrote that the Complainant had ADHD with a high level of distractibility, and suffers from anxiety disorder, which was exacerbated by the failure to provide accommodations. He requested on the Complainant's behalf a distraction-free testing environment.

In a letter dated January 17, 2020, the Director responded to the Complainant's appeal. She summarized the meeting held on January 6, 2020, with the Complainant and her parents to discuss the Complainant's allegation that the University's failure to provide accommodations resulted in her receiving a "D" in the Chemistry course. In her investigation, she consulted with ODS and faculty members and reviewed the pertinent exam papers. She stated that the University provided the decision on which accommodations to grant or deny on June 14, 2019, following a collaborative meeting on June 12, 2019. She also stated that pursuant to the University's grievance procedure for accommodations, the deadline for appealing the decision was June 24, 2019. Decisions issued pursuant to appeal, or those not appealed within the designated time frame, are final. Thus, the Complainant's accommodations were limited to extended time (1.5x) and recording lectures, and she was not entitled to a reduced-distraction testing environment.

The Director, in her letter, added that the exams that the Complainant took within the ODS and in the Chemistry department were provided in a reduced-distraction environment; her final Chemistry exam was proctored in a room with six other students and the ODS minimized distractions for all students. She averred that, "Faculty and departments have the right to coordinate logistics of extended time in many ways" and that moving students to an alternate location to provide extended time is reasonable as long as there is no penalty for the time spent in changing locations.

The Director also noted that the psychoeducational evaluation that the Complainant provided as part of her initial request for accommodations reported that she had a learning disorder and cited no findings of inattention or hyperactivity. The Complainant's attention and executive functioning were in the normal range. The Director concluded that she found no evidence to support a finding that the University violated the Complainant's rights under applicable disability laws. She stated that the Complainant's failure to appeal and raise timely concerns prevented her from reconsidering the denial of requested accommodations for fall 2019. The Director, however,

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<sup>2</sup> The Accommodations Specialist contends that she did not make this statement.

acknowledged the Complainant's request for a reduced course load first made on January 6, 2020 and subsequently in the Complainant's written appeal. She stated that ODS would consider the request and issue a decision prior to the University drop date of January 29, 2020.

In an undated letter, the Complainant replied to the Director contesting her decision on the appeal. She stated that the Director did not address the question of why the ODS denied some of the recommendations in her psychoeducational evaluation, and stated that, while it was true that she took her Chemistry final exam in a separate room with other extended time students, all of her previous Chemistry exams took place in an auditorium with dozens of other students from all sections of the class. She stated that other students' getting up to leave disturbed her, and she was made to stop at the end of the regular time session to wait for the other students to leave and begin with a new timer after they had all departed.

The Complainant further stated that when she met with the ODS staff on October 23, 2019, she expressed her difficulty taking exams with the rest of the Chemistry class and was advised to speak with her professor. The professor told her that as her accommodation letter did not provide for reduced-distraction test site, he could not accommodate her.

She also alleged that she attempted to sign up for a seat in ODS to take her first Chemistry exam; however, there were no available seats in the testing facility at times that did not conflict with her other classes. She further stated that in her meeting with the Director on January 6, 2020, the Director informed her that she could reserve one of 13 seats available to take tests at the ODS. However, she was not told this by the ODS at her intake meeting, and when she inquired at ODS, she was told that ODS was aware of the shortage of seats and that she should ask her professor for accommodations. She also alleged that two days before the first Chemistry exam, the professor told her she would have to take the exam with other students and that she would receive extended time. She alleged that instead of taking responsibility, the ODS left it to the Chemistry department to work out a solution. Finally, she stated that her June 14, 2017 psychoeducational evaluation showed that she fell in the "at risk" spectrum for inattention/hyperactivity, and the psychiatrist recommended that she be provided a quiet room away from distractions in order to assist her with focus.

In a letter dated January 23, 2020, the ODS notified the Complainant that it had approved a reduced course load (6-11 credits per semester while remaining in full-time student status) in addition to her previously approved accommodations of extended time and recording of lectures. In a revised accommodation letter dated January 27, 2020, the ODS notified the Complainant's professors that her approved accommodations were reduced course load, extended time (1.5x) on exams and recording of lectures.

On January 27, 2020, the Complainant's father emailed the Director to ask why the Complainant was only being given time and a half for exams rather than double time, and not given exams in a quiet distraction-free room, as recommended by her psychiatrist. The same day, the Director responded, providing the rationale that the Americans With Disabilities Act protects individuals with substantial limitations in a major life activity such as seeing, hearing, walking or learning.<sup>3</sup>

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<sup>3</sup> As a private institution, the University is not subject to the requirements of Title II of the ADA, 43 U.S.C. 2000d *et seq.*, which applies to public entities. Such institutions may adopt Title II standards in their effort to comply with the requirements of Section 504, which are compatible.

The determination of “substantial limitation” is made by comparison to the functioning of “the average individual.” In the realm of attention and learning, diagnostic standards are based on the individual having a performance deficit in comparison with the average individual. As the evaluation demonstrated that the Complainant’s performance was average to superior in areas of academic performance, the evidence provided in the report did not support the need for extended time in the amount of double time or a distraction-reduced testing environment. This is the reason, the Director stated, that the ODS denied the requested accommodations.

On January 30, 2020, the Complainant’s father emailed the Director stating that he had shared the letter denying the Complainant’s appeal with the Complainant’s psychiatrist, who had strong objections to the findings. The Complainant’s father asked her to reconsider the denial of the accommodations.

On February 4, 2020, the Director replied to the Complainant’s father, stating that she had confirmed with University staff that without a timely appeal, no further review of the matter would be made. On the same day, the Complainant’s father emailed the Director contesting her statement that there was no timely appeal. He stated that the Complainant was appealing from the last letter of accommodation dated January 23, 2020, which did not include her requests for double time and distraction-reduced testing.

On February 7, 2020, the Director replied: “I took the time to consult with other university officials regarding the matter and the January 23, 2020 letter is an untimely appeal of the prior decision. The University does not allow [the Student], or any other student, to bypass the deadline by simply submitting additional correspondence and asking that it be reviewed.”

On February 14, 2020, the Complainant’s father emailed the Director stating that he was confused as to what was the “prior decision” to which she referred. On February 17, 2020, the Director replied that the prior decision referred to the ODS’s June 14, 2019 letter granting the accommodations of extended time and recording of lectures, and denying double time for tests, notes, distraction-reduced testing and no penalty for spelling errors. The deadline to appeal the decision was June 24, 2019.

OCR provided the Complainant the opportunity to provide additional information. The Complainant’s father responded on behalf of the Complainant. The Complainant’s father recited from the psychologist’s email responding to the denial of double time, in which the psychologist said that reviewing her test scores, the Complainant is below average in reading speed, at the grade level of 5<sup>th</sup> through 11<sup>th</sup> grade. The father said that the bottom line was that the psychologist’s opinion was that she read “very slow” due to her dyslexia, and thus needed double time. She received double time on tests all through high school, for the SAT and ACT, and while at her previous college. He said that the University acted arbitrarily in denying her the accommodation. The Complainant and her father continued to express their discontent with the academic adjustments that were denied.

The Complainant’s father also stated that any time they complained about the Complainant not receiving double time, the Accommodations Specialist told them that if she appealed, even if

successful, she would not get the accommodation until the next semester.<sup>4</sup> When they went to the Dean of the College of Arts and Sciences (Dean), he would tell them they need to talk to ODS. When they did so, ODS referred them back to the Dean's office. They were constantly sent in circles trying to get an answer. They went to the Professor, who told them he would be glad to help. He communicated with ODS, who told him not to give the double time. Then they went to the Advisor, who said the simple solution to the "D" grade was to change it to an Incomplete. They then told the Professor, who asked the Dean for permission to do this, but the Dean said he could not change the grade.

### **Analysis**

As stated above, under Section 504, the question of whether a university must make modifications to its academic requirements or provide auxiliary aids is determined on a case-by-case basis. OCR generally does not substitute its judgment for that of qualified educators and professionals regarding modifications. Instead, OCR reviews relevant factual evidence to determine whether a university acted in a reasonable manner and whether it took appropriate steps consistent with Section 504 in making decisions regarding a student's eligibility for specific academic adjustments.

The Complainant was approved for time and a half on exams and the opportunity to record lectures when she enrolled for the fall 2019 semester. The University had an interactive discussion with the Complainant to discuss her request for academic adjustments/accommodations and to explain the testing process in ODS. The Complainant received written notice of her approved accommodations that included notice of appeal rights if she disagreed with the University's decision regarding the approved accommodations.

The evidence collected by OCR, while not indicative of noncompliance with the Section 504 regulation, raises concerns regarding the administering of the Complainant's accommodations relative to the second exam in Calculus and Chemistry, and the third exam in Chemistry, inasmuch as it was administered in the same manner as the second Chemistry exam.

Prior to the conclusion of OCR's investigation, the University requested to resolve the complaint pursuant to Section 302 of OCR's CPM. To resolve the complaint, the University will provide the Complainant the opportunity to retake the second exam in Calculus and Chemistry as well as the third exam in Chemistry. If the Complainant retakes the exams and receives a high score, the University will recalculate the Complainant's final grade(s) in the courses to reflect the updated exam results for the fall 2019 semester.

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.

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<sup>4</sup> OCR contacted the University to ask if this was accurate. The University denied that the Accommodations Specialist made such a remark and added that the University's practice is to evaluate what about the approved accommodation is not working. If an alternative reasonable accommodation can be provided, ODS will provide one. However, this assumes that the student is utilizing the approved accommodation.



## Conclusion

This concludes OCR's investigation of this complaint. 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.

Please be advised that the University must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

If you have any questions about this letter, please contact Philip Weltner, Senior Attorney, at (404) 974-9402, or me, at (404) 974-9356.

Sincerely,



Wendy Gatlin  
Compliance Team Leader

Enclosure