



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

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October 1, 2021

Via email only: president@ufl.edu

Dr. W. Kent Fuchs
Office of the President
University of Florida
226 Tigert Hall
P.O. Box 113150
Gainesville, Florida 32611

OCR Complaint No. 04-21-2166

Dear Dr. Fuchs:

The U.S. Department of Education, Office for Civil Rights (OCR) has completed its investigation of the above-referenced complaint filed on April 5, 2021 against the University of Florida School of Veterinary Medicine. The Complainant alleged that the University discriminated against her on the basis of disability by failing to provide her with an effective accommodation for her disability. Specifically, the Complainant, whose disability is Auditory Processing Disorder, or APD, and Specific Learning Disorder in reading comprehension, alleged that she requested Captioned Access Real-time Translation, or CART, for accessing class lectures beginning the spring 2021 semester, but the College denied her request.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 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; and Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131 *et seq.*, and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by certain public entities. As a recipient of Federal financial assistance from the Department of Education and a public entity, the University is subject to these laws and to OCR's jurisdiction.

OCR investigated the legal issue of whether the University failed to provide the Complainant with an academic adjustment for her disability, in violation of Section 504 and its implementing regulation at 34 C.F.R. § 104.44; and Title II and its implementing regulation at 28 C.F.R. § 35.130.

During the investigation, OCR reviewed documents provided by the Complainant and the University, including the Complainant's medical documentation, approved letters of accommodation, internal grievance and response, transcript, and correspondence between the University and the Complainant. OCR also conducted interviews with the Complainant, the

Assistant Vice President for Accessibility and Gender Equity, the Disability Resource Center's Interim Director and the Assistant Director for Assistive Technology.

Prior to the completion of OCR's investigation, the University requested to resolve the issue of this complaint under Section 302 of OCR's *Case Processing Manual* and has agreed to enter into a resolution agreement that will resolve the allegations. OCR's *Case Processing Manual* at Section 302 states that allegations under investigation may be resolved at any time when, prior to the completion of the investigation, 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 concerns that can be addressed through a resolution agreement. The provisions of the resolution agreement must be tied to the allegations, and the evidence obtained during the investigation will be consistent with applicable regulations. Following are the relevant legal standards and OCR's summary of the evidence obtained during OCR's investigation, to date.

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. The regulation at § 104.44(d) requires a university to ensure that no qualified individual 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. Auxiliary aids may include taped texts, interpreters or other effective methods of making orally delivered materials available to students with hearing impairments.

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 would result in a financial and administrative 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.

The Section 504 regulation does not require a postsecondary institution to provide the most sophisticated auxiliary aids available; however, the university must give primary consideration of the individuals requests and the aids provided must effectively meet the needs of the student. An institution has flexibility in choosing the specific aid or service it provides to the student, as long as the aid or service selected is effective.

The Title II regulation at 28 C.F.R § 35.160 (a) and (b) mandates that public entities must take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others. Public entities shall furnish appropriate auxiliary aids and services where necessary to afford individuals with disabilities an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of the public entity. The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place. In determining what types of auxiliary aids and services are necessary, a public entity shall give primary consideration to the requests of individuals with disabilities. In order to be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability.

Postsecondary education institutions may establish reasonable procedures for requesting academic adjustments. An institution has flexibility in choosing the specific aid or service it provides to the student, as long as the aid or service selected is effective in order to ensure that communications with applicants, participants and members of the public are as effective as communication with others. *See* 28 C.F.R. § 35.160.

Factual Findings

The Complainant was diagnosed with APD and Specific Learning Disorder in reading comprehension. The Complainant explained to OCR that her brain does not properly process the sounds into information.

The Complainant began her first year of study in the University's College of Veterinary Medicine in fall semester 2020, in the Doctor of Veterinary Medicine program, or DVM. She is registered with the University's Disability Resource Center, or DRC. On July 30, 2020, the DRC Learning Specialist provided the Complainant with a disability accommodations letter for the fall 2020 semester that approved closed captioning video of classroom lectures, preferential seating and 150% extended time on tests.

On November 2, 2020, the Complainant underwent a psychological evaluation. According to the psychological report, the Complainant's diagnosis is Specific Learning Disorder, with Impairments in Reading Comprehension (due to auditory processing deficit and processing speed deficit), which requires accommodations for her learning disability in the area of processing speed and auditory processing, due to her comprehension deficits. Recommended accommodations include preferential seating (front and center, or away from distractions); simplify or repeat complex directions; provide both oral and written instructions when possible; reduce the length of her written assignments and/or allow extra time to complete written assignments/projects; extra time on class exams or work tasks and continuation of closed-captioning.

On December 22, 2020, the DRC approved identical accommodations for the Complainant's spring 2021 semester that it approved for the fall 2020 semester.

On January 12, 2021, the Complainant emailed her DRC Learning Specialist to request a meeting with her and/or the Assistant Director for Assistive Technology to discuss an adjustment to her accommodations that would help improve her learning and understanding. On January 14, 2021, the Complainant followed-up with an email to the Learning Specialist that included her recent psychological report. On January 15, 2021, the Complainant had a meeting with the Learning Specialist and the Assistant Director. The Complainant stated that at this meeting she was provided access to Otter.ai, an artificial intelligence aided closed circuit captioning transcription application, and she agreed to try it out over the weekend.

On January 19, 2021, the Complainant emailed the Learning Specialist and Assistant Director to inform them that the Otter.ai application did not work well. She explained that the application did not translate the advanced terms of veterinary medicine well and she experienced problems with the translation of simple sentences. In addition, she advised that she had to listen harder to make sure that Otter.ai was translating the correct words. The Complainant then requested CART services since Otter.ai was ineffective. On January 21, 2021, the Assistant Director responded to the Complainant's email stating that she was researching potential options with veterinary medicine and would follow-up with her. The Complainant responded the same day to clarify that she was requesting CART services for her lecture classes only and not for clinical skills or anatomy at that time.

On January 26, 2021, the Complainant emailed the Assistant Director to follow-up on her request for CART services because she was starting new classes the following day. The Assistant Director responded that she was working with the technology support available within veterinary medicine to explore the Zoom platform's built-in automatic transcription feature and stated that she expected to share a follow-up plan with the Complainant the following day.

On January 27, 2021, the Complainant responded to the Assistant Director's email stating that she would not test a new automatic system that she knew would not accurately translate the advanced terminology of veterinary medicine. The Complainant stated that she had reviewed the Zoom transcripts and determined that they did not meet her disability-related needs. Finally, she reiterated her request for CART services.

On January 29, 2021, the Complainant met with the Assistant Director and the DRC's Interim Director to discuss her request for CART services. The Assistant Director's summary of the meeting state that they utilize one specific company for live captioning services and they do not choose which specific captionist attends classes. The Assistant Director stated that they were working directly with veterinary medicine's IT department to have Zoom's automatic transcription enabled for the Complainant's classes and informed the Complainant that she could audio record lectures to supplement until the closed captioning was processed. She added that the captioning department was working to ensure a 12-24-hour turnaround time for the videos. Additionally, the Interim Director approved notetaking services for the Complainant.

During an interview with OCR, the Assistant Director stated that during the meeting with the Complainant, she and the Interim Director discussed adding the Zoom Live feature to all lectures, which used Zoom for classes. Zoom Live is an artificial intelligence automated speech recognition transcription program similar to Otter.ai but it must be turned on by the professor. She stated that Otter.ai is a stand-alone tool that any student can use for notetaking. The Complainant told the Assistant Director that the Zoom Live feature resulted in the same problems because it garbled medical terms. The Assistant Director stated the Complainant insisted on 100% accuracy, which she asserted is simply not achievable. The Interim Director stated, during her OCR interview, that she told the Complainant that there is no way to guarantee 100% accuracy. She noted that the Complainant's documentation did not recommend a live captionist.

On February 1, 2021, the Complainant filed a grievance with the Assistant Vice President for Accessibility and Gender Equity against the University and the DRC for failing to provide appropriate and effective accommodations to access her educational environment.

On February 1, 2021, the Complainant emailed the Interim Director, Assistant Director and the Assistant Vice President, stating that after she met with DRC staff on January 29, 2021, who informed her of the availability of the Zoom auto-transcription feature, she attempted to use the transcription feature. On the morning of February 1, 2021, however, Zoom was not available and therefore, she did not have meaningful access to her primary scientific courses. That afternoon it was enabled for one of her classes, but the software changed words which made them incomprehensible. The Complainant stated further that the transcription feature did not accurately transcribe medical terminology. An example of the difficulty the Complainant had with Zoom transcription is below:

And it's a pork [Changed to: poor] cross section because it's got a thicker wall. Let's go look at another one like that. [Changed to: I don't like them.] [Changed to: like this I can deal with.] This is an artery, because this to me looks like to arteries. So, I was going to call that a vein which again [changed to: It came realist realists] [Changed to: which I can realistically do] so. So this is an accurate artery and it sec [changed to: and it's actually it] made us liars because you can see here you got a few Mariela [Changed to: Mariella] [Changed to: Mariela], which are actually on the modularity side of the arteries [Change to: artery] so we're all line here.

The Complainant further stated in her email that the promised 12 to 24-hour turnaround time for the captioning of class videos was not met. She noted that her classmates have access to the Zoom cloud recording with Zoom's auto-transcription; however, the auto-transcription is not fully

accurate and her processing disability does not permit her the same access to the auditory information presented as her classmates, which puts her several days behind them.

On February 11, 2021, the Complainant emailed the DRC staff to advise that the Zoom transcription was still not available for every class, and it continued to be an ineffective form of live captioning. She stated that some of her classmates similarly experienced inaccuracy in the Zoom transcriptions. She stated that if students without disabilities struggled to decipher non-sensical information and guess words via the Zoom platform, the DRC could not expect a student with a processing disorder to successfully do so. On February 14, 2021, the Complainant attended a Zoom meeting with the Assistant Vice President to discuss her grievance.

On February 26, 2021, the Assistant Vice President provided a response to the Complainant's grievance. He wrote that the University's decision on providing live captioning as opposed to automated artificial intelligence transcription was based on the perceived reasonableness of the request. The Assistant Vice President also stated that there were no students at the University on any level who were receiving live captioning for APD. The Assistant Vice President also stated that the students who received live captioning were Deaf or hard of hearing. Other students who sought an accommodation for APD have been offered artificial intelligence-enabled transcription, namely Otter.ai, which he stated had an 80-85% accuracy rate, and an Otter.ai program used with the Zoom classroom application by the University has been rated 96% accurate. He added that the audio file and transcript of the classes are saved and retrievable.

The Assistant Vice President's also noted that veterinary medicine had offered to provide a tutor for the Complainant and to extend her test dates. In addition, her professors were providing class notes and slides for every class with the medical terminology included. He wrote that one of her professors had not been using the Zoom transcription services, but the DRC would correct this. The DRC also agreed to pay for a note-taker for all the Complainant's classes. She was supposed to receive closed-caption videos from the DRC within 24 to 48 hours after a class session, but the DRC was trying to reduce the turnaround time to a 12 to 24-hour time frame. His response stated that he understood that she sometimes has an exam scheduled within that time, but she had the accommodation of being allowed to adjust the test dates to allow her to review the transcripts.

The Assistant Vice President stated to OCR that his letter denying the Complainant's request for CART services was based on all of the information provided to him, including the Complainant's medical documentation. He said that DRC's interactive process strives for consistency and reasonableness. OCR asked if other colleges provided the accommodation requested by the Complainant. He stated that no comparable institutions provide live captionists in this situation and stated that the Complainant's documentation did not support her request for a live captionist.

The Assistant Director also advised OCR that the Complainant's documentation indicated that she had hearing within the standard range but could benefit from the use of an FM system to screen out background noise. The DRC offered to provide this, but the Assistant Director stated that the Complainant did not want to use the FM accommodation. The DRC then offered the Complainant the use of the Otter.ai audio recording/real time transcription service. The Complainant stated that its transcriptions were not accurate. The DRC advised that they did not approve the Complainant's request for the live captionist trained in medical terminology and the Assistant Director said –

without further information - that the request was unreasonable. The DRC offered the following accommodations: FM system, peer notetaker, and closed-caption post-production videos of lectures, which can be paused to review subject matter. She stated that the Complainant had not used any of the offered accommodations.

The Assistant Director also stated that other students with diagnoses of moderate, severe or profound hearing loss or attention deficit disorder are able to use the closed captioning feature by relying on contextual clues. She reached out to the University's audiology school to ask for recommendations. The audiology school recommended that the Complainant use audio recordings of lectures. The audiology school said that having too much information can be detrimental to students with this type of processing disorder.

The Assistant Director informed OCR that she met with the Complainant many times. When the Complainant expressed concerns with turn-around time for captioning, the DRC immediately got in touch with veterinary medicine to make sure that the recordings were provided as soon as possible. Veterinary medicine agreed to allow her to reschedule her exams on occasions when she received captioned videos late. To the Assistant Director's knowledge, the Complainant never used this accommodation. The Assistant Director said she has worked with other students who have APD and are hard of hearing, Deaf and Deaf/blind; she stated that none of these students has complained about the auto transcription and most find it helpful.

The Complainant stated that she has continued to work with DRC staff in attempting to find a solution to her problems with accessing the veterinary medicine program through classes. The Complainant stated that she provided them with sample printouts of the Zoom/Otter.ai transcriptions that show that the transcription apps are incapable of accurately representing medical terminology, which results in nonsensical sentences. She stated the DRC purports to have transcripts to students within a 24-48 hour window, but she has received only one transcript in that timeframe. It typically takes more than 48 hours. The Complainant stated that this is important because the classes are tightly packed and rapidly paced. She is tested twice a week, on Monday and Thursday or Friday, often the exams are on the day following the day the material was covered in the lectures. She said that she cannot keep up if she has to continue to view the closed-caption videos of the Zoom classes which denies her the same opportunities as her classmates.

During a follow-up call with the Complainant, she stated that DRC staff offered to provide an FM system for her use, but she declined the use of the FM system because she has bilateral hearing aids that work better than any FM system. They are programmed by an audiologist who is trained in APD to delete background noise and to focus on the speaker. Furthermore, the FM system was not useful because it can only be used when the user and the speaker are in the same room, and most of the Complainant's fall 2020 and spring 2021 classes were held virtually. In addition, the Complainant said that she reads lips to understand speakers and noted that she understands visually much better than by listening. Finally, the Complainant explained that because her disability is a function of the brain, not the ears, listening devices such as hearing aids and FM are not an effective solution.

With regard to the note taker and tutor accommodations that the staff said they offered but she did not use, the Complainant said she informed the Assistant Director and Interim Director that she

already had notes from a classmate and had access to study guides. She stated that she does not need a tutor. With regard to her reason for not using the accommodation of the postponement of tests, the Complainant said that this does not work because pushing one test back from Friday to Monday pushes the preparation for the next tests back and thus creates a cascading effect of losing time. She does not want to postpone tests.

The Complainant advised OCR that the Learning Specialist told her in an email on January 19, 2021, that she was approved for CART services. OCR did not receive a copy of this email. The Complainant also said that she understands that no automated transcription is 100% accurate. However, the inaccuracy of the Otter/Zoom artificial transcription is virtually useless when used to transcribe advanced medical terminology. The artificial intelligence services do not caption who is speaking and she is greatly concerned because as she begins her second year, the workload almost doubles. She attends classes from 8:00 a.m. until 5:00 p.m. every day and then has to play back the captioned videos that she receives sometimes after the exams on the subject.

University staff told OCR that the most recent audiological assessment that the Complainant provided was from 2015. They stated that the University has not received notice of an updated audiological assessment. The 2015 assessment recommended that the Complainant repeat the audiology assessment every two years. The Complainant's last assessment on file with the University did not recommend CART services for the Complainant.

During this investigation, the Complainant provided OCR with a letter from her audiologist dated August 6, 2021, who is an Assistant Professor of Audiology at the University of Miami. The audiologist specifically recommended live in-person captioning with the explanation that artificial intelligence captioning can have errors, especially in attempting to capture medical terminology.

On September 27, 2021, the University confirmed that the Complainant had provided them with a copy of the August 6, 2021, letter from her audiologist.

Analysis

The evidence to date shows that the University engaged in an interactive process with the Complainant to provide various approved accommodations for her disability, including closed captioning video of classroom lectures, preferential seating and 150% extended time on tests. However, the evidence also shows that the Complainant repeatedly informed the University with specific detail that the closed captioning or artificial intelligence services provided to transcribe the advanced medical terminology essential to her education program was ineffective, but the Complainant and the University were unable to reach a resolution.

On September 27, 2021, prior to the conclusion of the investigation, the University offered to voluntarily resolve this complaint under Section 302 of OCR's *Case Processing Manual*, and OCR determined there was sufficient evidence to support a voluntary resolution in this matter.

Conclusion

To resolve any compliance concerns raised in this complaint, the University signed a voluntary resolution agreement stating the University will notify the Complainant in writing of its intention

to reassess her request for academic adjustments or auxiliary aids for her Auditory Processing Disorder and provide her with ten (10) calendar days to submit any additional documentation that she wishes for the University to consider in support of her request. Within five (5) business days of the Complainant's submission of additional documentation to support her request, the University will re-assess the Complainant's request by engaging in an interactive process with the Complainant to determine the appropriate, effective academic adjustments and auxiliary aids necessary to afford her an equal opportunity to participate in the University's programs and activities. If the University denies the Complainant's request, it should clearly communicate the reasons for its decision so that the Complainant has a reasonable opportunity to respond and provide additional documentation that would address the University's objections. At the conclusion of the interactive process, the University will provide – within two (2) business days - the Complainant and her instructors with an accommodation letter that sets forth, in detail, the approved academic adjustments and/or auxiliary aids and services and implement the approved academic adjustments and/or auxiliary aids and services within three (3) business days. The University will also provide Section 504 and Title II training to University faculty, staff, administrators who have responsibility for evaluating students for disability-related requests for academic adjustments and/or auxiliary aids and services.

OCR received the enclosed resolution agreement, which when fully implemented, will resolve the compliance concerns identified from this investigation. OCR will monitor the University's implementation of this resolution agreement to ensure that it is fully implemented. If the University fails to implement the resolution agreement, OCR will reopen the case and take appropriate action to ensure compliance with Section 504 and Title II.

Please be advised that the University must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the individual may file another complaint alleging such treatment. OCR would also like to make you aware that individuals who file complaints with OCR 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 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 if released.

We look forward to your cooperation during the resolution of this complaint. If you have any questions, please contact Philip Weltner, the OCR attorney assigned to this complaint, at 404-974-9402, or me, at 404-974-9356.

Sincerely,

/s/

Wendy Gatlin
Compliance Team Leader