



**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS**

500 WEST MADISON ST., SUITE 1475
CHICAGO, IL 60661-4544

REGION V
ILLINOIS
INDIANA
IOWA
MINNESOTA
NORTH DAKOTA
WISCONSIN

February 2, 2015

Dr. Richard L. Pattenaude, President
Ashford University
400 North Bluff Boulevard
Clinton, Iowa 52732

RE: OCR Docket No. 05-14-2481

Dear Dr. Pattenaude:

This is to advise you of the disposition of the above-referenced complaint, filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR) on August 6, 2014, alleging discrimination on the basis of disability on the part of Ashford University (University). OCR has completed its investigation, which included review of documents submitted by the Complainant and the University, and interviews with the Complainant and current and former University staff.

Specifically, the Complainant alleged that the University discriminated against her on the basis of disability ([X-disability description redacted],[X-disability description redacted]) when it:

1. failed to provide her with requested extensions of time to complete assignments in her BUS 681 and BUS 680 courses in Fall 2013 and Spring 2014, respectively; and
2. failed to provide her with a prompt and equitable grievance procedure to redress her claims of disability discrimination in January 2014 and April 2014.

OCR investigated this complaint pursuant to its enforcement authority under 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. Section 504 prohibits discrimination based on disability on the part of recipients of Federal financial assistance (FFA) from the Department. As a recipient of FFA, the University is subject to Section 504. Accordingly, OCR had jurisdiction over this complaint.

For the reasons set forth below, OCR finds insufficient evidence to conclude that the University violated Section 504 as claimed in Allegation 1, but sufficient evidence to conclude that the University violated Section 504 as claimed in Allegation 2.

Allegation 1

Applicable regulations and legal standards

General non-discrimination provision

The regulation implementing Section 504 at § 34 C.F.R. 104.4(a) provides, in relevant part, that no qualified person with a disability shall, on the basis of disability, be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity that receives Federal financial assistance from the Department.

Academic adjustments

The regulation implementing Section 504 at 34 C.F.R. § 104.44(a) requires that postsecondary education institutions make such modifications to their academic requirements as 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.

Postsecondary institutions may not impose significant additional burdens on students with disabilities in order for them to receive appropriate academic adjustments. However, under the applicable regulations, postsecondary education institutions may require students to follow reasonable procedures to obtain disability-related academic adjustments. Students are responsible for knowing and following those procedures.

The student bears the initial responsibility for identifying him or herself as a student with a disability and requesting academic adjustments using the procedures established by the postsecondary education institution. A student's request for an academic adjustment must be sufficiently direct and specific, identifying the type of academic adjustment sought, to allow the institution to respond negatively or affirmatively to the request. Generally, a postsecondary institution's evaluation of a student's request for an academic adjustment requires a fact-specific, case-by-case inquiry, involving an interactive process with information exchanged between the student and the postsecondary institution to determine what academic adjustment is appropriate to meet the student's needs. If the request for an academic adjustment is not initially granted, the student and the postsecondary institution should engage in an interactive process to determine what, if any, academic adjustment or modification will be made, and the appropriate scope of the academic adjustment. The

interactive process may be brief, with a student requesting an academic adjustment and an institution granting it with minimal documentation requirements, or it may be more protracted, with various exchanges between the student and the postsecondary institution about the nature of the academic adjustment.

Factual summary

The Complainant attended the University as an online student for several years before withdrawing in the summer of 2014. She reports having multiple disabilities, including “[X-disability description redacted]” and a [X-disability description redacted] that she reports results in [X-description of disability redacted]. At all times relevant to this complaint (Fall 2013 and Spring 2014) the Complainant was approved through the University’s Access and Wellness office to receive double time to complete assignments and projects.

According to the University’s procedures, academic adjustments and modifications are memorialized in an approved “accommodations letter” provided by Access and Wellness in PDF form. Upon receiving the accommodations letter, students are to notify their course instructors of their accommodations, typically via an email with the approved accommodations letter attached. The Complainant reported having complied with this process throughout her attendance at the University.

In the October-November 2013 term (running from October 1 to November 11, 2013), the Complainant enrolled in BUS 680, taught by Instructor A. The evidence indicates that the Complainant sent Instructor A an email on October 2, 2013, advising him that she is a student with a disability for which Access and Wellness had approved accommodations, attaching a PDF copy of her authorized accommodations letter, and inviting Instructor A to contact her with any questions regarding her accommodations. On October 3, 2013, Instructor A responded to the Complainant’s email with a one-word acknowledgment, reading “Thanks.” There is no evidence to suggest that he ever raised any questions regarding the Complainant’s accommodations, though Instructor A stated that he did not recall the email exchange and the University has no record of it. Email correspondence between the University and the Complainant indicate that the Complainant dropped BUS 680 in late October 2013 for medical reasons.

Shortly after her withdrawal from Instructor A’s BUS 680 course, the Complainant enrolled in another course with Instructor A (BUS 681) for the term running from October 29 to December 9, 2013. There is no indication that the Complainant submitted her accommodations letter to Instructor A in conjunction with BUS 681. However, the Complainant contacted the office of Access and Wellness when Instructor A deducted points for work the Complainant submitted more than the 4 days beyond the scheduled due date. The email exchange occurred between November 11 and 12, 2013, and reflecting the Complainant’s assertion that she was entitled to double time (7 days) as an academic adjustment, and the points should not have been deducted. Instructor A’s reply indicates he

believed the Complainant was approved for 1.5 times (4 days) extended time to complete assignments and projects, as was customary, and that he had appropriately accommodated her. Nonetheless, Instructor A advised the Complainant that he remained willing to recalculate the Complainant's grades for any work she submitted within the double-time parameters if she provided documentation of her current accommodations. The Complainant did not provide a copy of her authorized accommodations letter in response, nor did she provide it to Instructor A at any point during Instructor A's BUS 681 course. Instead, she dropped the course.

In the winter of 2014 (the term running January 21 to March 3, 2014), the Complainant re-enrolled in the BUS 680 course, this time taught by Instructor B. The Complainant again withdrew from the course in February 2014, following a flare-up of her spinal degeneration. Before she withdrew, she was involved in a dispute with Instructor B over whether she could have one additional day to complete assignments, in addition to the seven days her authorized accommodations letter already afforded her. The Complainant suggested that she would require this additional day on a one-time basis, and objected that Instructor B was inflexible in declining to offer her an additional day. The University stated, and the documentation supports that Access and Wellness never approved additional time, beyond double time, for the Complainant to complete assignments. Instructor B explained to the advisor, and later to OCR during her interview, that the Complainant had already fallen behind in the first four weeks of the course, and that affording her an additional day to complete one week's worth of work would not afford her any substantial benefit. Ultimately, it was agreed that the Complainant would drop the course and retake it the following term. The Complainant presented no evidence to suggest that she produced documentation supporting her need for an additional day to complete assignments beyond double time, or that any interactive process between Access and Wellness and the Complainant took place regarding a request for such an extension.

Analysis and findings

The parties agree that, beginning in January 2013 and continuing through the Complainant's disenrollment from University in the Spring of 2014, the University agreed, in relevant part, to provide the Complainant with double time to complete assignments, including required online posts and responses to her classmates' posts. The parties further agree that the University produced an accommodations letter to that effect for the Complainant to present to her instructors in January 2013, some nine months before any of the events giving rise to the instant complaint.

With regard to Fall 2013 BUS 680, the Complainant did not timely file this complaint with OCR. The Complainant first filed her OCR complaint on May 5, 2014, more than 180 days after the events that transpired in Instructor A's BUS 680 course in October 2013. While she filed an internal grievance within 180 days of those events, her grievance raises Instructor A's failure to provide double time in BUS 681, not BUS 680. Accordingly, OCR cannot

conclude that a waiver of the timeliness requirement is appropriate as to Instructor A's BUS 680 class, and OCR accordingly cannot find the University in violation of Section as to those events.

With regard to Fall 2013 BUS 681, there is insufficient evidence to conclude the University discriminated against the Complainant as alleged. The evidence does not establish that the Complainant provided Instructor A notice of her accommodations during that course (though she had done so previously). The University's procedures provide expressly that notice should be provided to each instructor in each new term, OCR cannot conclude that the Complainant complied with the University's procedures in this regard. Moreover, Instructor A made clear in an email exchange with the Complainant that while he had not seen documentation of the Complainant's entitlement to double time to complete assignments, he remained willing to recalculate the Complainant's grades for any work on which points were deducted for late submission within the double-time parameters. The Complainant did not provide a copy of her accommodations letter in response to this communication; rather, she dropped the course. OCR cannot conclude that this series of events constituted a violation of Section 504 on the University's part, considering the totality of the circumstances.

In addition, OCR finds insufficient evidence to conclude that the University violated Section 504 as to Instructor B's BUS 680 course in the Spring of 2014. The Complainant does not allege that Instructor B failed to afford her the double time on assignments to which she was entitled. Rather, she claims that Instructor B refused to grant her double time, plus an additional day to complete certain weekly assignments. Neither party asserts, and OCR's investigation found no evidence to suggest, that Access and Wellness ever agreed to provide the Complainant more time than the double time her January 2013 accommodations letter afforded her. The Complainant alleges that a flare-up related to her disability caused her to need one additional day to complete assignments in April 2014. However, OCR's investigation revealed no evidence to suggest that the Complainant presented documentation of this need to Access and Wellness, or that Access and Wellness agreed to afford the Complainant an additional day beyond her existing accommodation. Based on this information, OCR cannot conclude that Instructor B failed to provide the Complainant with any accommodations to which she was entitled in BUS 680. Thus, OCR cannot conclude that the University violated Section 504 as alleged in Allegation 1.

Allegation 2

Applicable regulations and legal standards

Grievance procedures

The Section 504 implementing regulation at 34 C.F.R. § 104.7 requires recipients employing fifteen or more persons to adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints

alleging any action prohibited by Section 504. Such procedures need not be established with respect to complaints from applicants for employment or from applicants for admission to postsecondary educational institutions.

In evaluating whether a recipient's grievance procedures are prompt and equitable, OCR reviews all aspects of a recipient's policies and practices, including the following elements that are critical to achieve compliance with Section 504:

1. notice to students and employees of the procedures, including where complaints may be filed;
2. application of the procedure to complaints alleging discrimination and harassment carried out by employees, other students, or third parties;
3. provision for adequate, reliable, and impartial investigation of complaints, including the opportunity for both the complainant and respondent to present witnesses and other evidence;
4. designated and reasonably prompt timeframes for the major stages of the complaint process;
5. written notice to both parties of the outcome of the complaint and any appeal; and
6. assurance that the recipient will take steps to prevent recurrence of any discrimination or harassment found to have occurred, and to correct its discriminatory effects on the complainant and others, if appropriate.

To ensure that students and employees have a clear understanding of what constitutes prohibited disability discrimination, the potential consequences for such conduct, and how the recipient processes complaints, the recipient's grievance procedures should also include the following in writing:

1. a statement of the recipient's jurisdiction over Section 504 complaints;
2. adequate definitions of prohibited conduct, including discriminatory harassment and an explanation as to when such conduct creates a hostile environment;
3. notice that Section 504 prohibits retaliation;
4. the evidentiary standard that must be used (preponderance of the evidence) in resolving a complaint;
5. notice of potential remedies for students; and
6. Notice that students may bypass any informal complaint resolution mechanisms (e.g. mediation) and proceed directly to the filing of a formal discrimination grievance (in cases not involving sexual harassment or assault).

The procedures for addressing and resolving complaints of discrimination should be written in language that is easily understood, should be easily located, and should be widely distributed.

Factual summary

The University offers a grievance procedure for purposes of seeking redress to a variety of complaints, including those of disability discrimination. Students may initiate the complaint process at http://www.ashford.edu/student_services/grievance.htm, or, according to the University's grievance coordinator, the grievance process may be initiated through less formal means, such as a referral from a student's advisor. The detailed procedures by which grievances are processed can be found at http://wac.6fdc.edgecastcdn.net/006FDC/AU/catalog/13_Archive_AU_Catalog_v2_2013_14_WASC_1_15_14.pdf

The University noted that the grievance procedure found at the above link differs in some respects from the procedure that existed at the time of the events giving rise to the instant complaint. The procedures then in effect encouraged students to file a complaint with the dispute resolution center within 30 calendar days of the incident prompting the grievance, at which point dispute resolution center staff would review the complaint to determine if it would be appropriate for resolution through the dispute resolution procedure. The former processes provided that the investigation of the complaint would be completed within 30 days, with the results to be delivered to the student via U.S. mail, and the option to appeal within 10 business days of the date of the University's response.

The University's grievance coordinator stated that the process from beginning to end lasts 45 days. Though that timeframe appears to be consistent with the procedures as they now appear, the timeframe is not reflected in the policies as written at the time of the events giving rise to this complaint. Nonetheless, the parties agree that the grievance coordinator advised the Complainant as early as January 2014 that resolving a grievance takes approximately 45 days from beginning to end.

The Complainant appears to have first broached the subject of filing an internal grievance in a November 11-12, 2013, email exchange involving her, Instructor A, and her Access and Wellness advisor. However, documentary evidence in the form of a January 14, 2014, email from the Complainant demonstrates that she declined to continue with the grievance process, stating, "While I do appreciate you listening, I thought you understood that my concerns are immediate and I do not have 45 days. I am not interested in this process at all."

On April 23, 2014, the Complainant filed a grievance alleging disability discrimination (in the form of failure to provide proper academic adjustments) on the part of Instructor A in Fall 2013 BUS 681 and Instructor B in Winter 2014 BUS 680. The grievance coordinator reported that she experienced delays processing the Complainant's grievance because the Complainant was resistant to speak with the grievance coordinator without the presence of her Access and Wellness advisor. The grievance coordinator was eventually able to arrange an interview with the Complainant via teleconference on May 23, 2014, during which the

Access and Wellness advisor was also present. The grievance coordinator told OCR that the difficulties she had persuading the Complainant to agree to an interview delayed the process by “about a week;” the grievance coordinator offered no explanation for the remaining time that passed between the receipt of the grievance and the initial interview with the Complainant.

During her interview with the grievance coordinator, the Complainant detailed a number of concerns, including the alleged failure of Instructor A to open the email attachment setting forth her approved accommodations in Fall BUS 680 and his subsequent failure to afford her double time to complete assignments to which she was entitled in BUS 681. She also described concerns she had with Instructor B’s apparent failure to deal properly with a student who was cheating, and to take the Complainant’s hospitalization during the course of either the winter or spring 2014 terms into account, in granting her an extra day extension beyond the double time that was approved as an academic adjustment.

The grievance coordinator reported that she did not interview either Instructor A or Instructor B as part of her investigation. She stated that she did engage in a detailed examination of the electronic records of the courses in question, all of which were conducted online, to ascertain whether any discrimination in course discussions or other communications was apparent; the grievance coordinator indicated that she had the ability to engage in extensive data mining as part of her investigation.

The resolution process concluded with the grievance coordinator’s issuing a letter finding no merit to any of the Complainant’s discrimination allegations on August 1, 2014. The process lasted 100 days from receipt of the grievance to issuance of a determination. The grievance coordinator stated that she kept the Complainant apprised of delays in the process, but that the deliberative process (conducted by a panel of department heads) was delayed until July due to scheduling conflicts on the part of the panelists. According to the grievance coordinator, the scheduling conflicts resulted in the unavailability of panelists and delayed the process approximately three weeks. However, the grievance coordinator stated that panelists serve on a rotating basis, and did not offer an explanation for why no substitute panelists could have been appointed to review the grievance coordinator’s investigative findings in light of how long the resolution process had already taken (68 days as of the beginning of July). The grievance panel did not actually receive the matter for deliberation until July 25, 2014, more than three months after the grievance was filed. The grievance coordinator did not assert that the Complainant’s grievance was particularly substantively complicated such that a significant delay in its resolution would be warranted. The Complainant did not receive the mailed copy of the University’s determination, as it was directed to an incomplete address; the Complainant thus had to contact the grievance office to request that a copy be sent to her in a password-protected PDF.

Analysis and Findings

The Complainant alleged that she filed a grievance alleging disability discrimination in January 2014 and did not receive a determination until August 2014, constituting a failure on the University's part to afford her a grievance process that was prompt and equitable.

The evidence establishes that although the Complainant pursued a formal grievance alleging disability discrimination in April 2014, she did not receive a determination until August 1, 2014, 100 days later, and well beyond the 45 day time frame the University purported to follow. Though the grievance coordinator testified credibly that part of the delay in resolving the grievance was attributable to the Complainant's own reluctance to participate in an interview with the grievance coordinator, the coordinator acknowledged that she was able to speak to the Complainant in a conversation facilitated by the Access and Wellness specialist on May 23, 2014, and that the investigation was otherwise completed in June 2014. An additional three weeks resulted from the unavailability of a grievance panel to deliberate on the coordinator's findings until July; the unavailability of a deliberative body to issue findings for such a long period is particularly bothersome given that the University's grievance panels generally serve on a rotating basis (suggesting that convening a group of panel members on relatively short notice should be feasible even if particular individual members are unavailable at a given moment). OCR concludes, based on this evidence, that the process afforded the Complainant was insufficiently prompt to comply with the applicable Section 504 regulation.

In addition to the delayed result, OCR determined that the grievance procedure afforded the Complainant was problematic in multiple respects. Specifically, the grievance coordinator did not interview Instructor A or Instructor B, or fully mine the email exchanges to determine whether Instructor A ever received the accommodation letter, as the Complainant contended. Additionally, the procedures in place at the time the Complainant's grievance was received appear to require an informal resolution process as a prerequisite to proceeding to a formal resolution process, which is inconsistent with the applicable regulations. This defect appears to continue to exist in the University's revised procedures.

Following investigation by the grievance coordinator, the grievance panel determined (after receiving the matter for deliberation on July 25, 2014, more than 3 months after the grievance was filed), in relevant part, that neither Professor A nor Professor B had denied the Complainant disability-related accommodations to which she was entitled. The grievance coordinator informed the Complainant of this determination in a letter dated August 1, 2014, but failed to send the letter to the Complainant's correct address. Thus, the Complainant did not receive notice of the outcome until August 6, 2014, when she advised the University that she had not received a copy of the determination.

Based on these concerns, OCR has determined that the University did not afford the Complainant a prompt and equitable procedure for resolving her internal disability discrimination grievance. Therefore, the University failed to comply with Section 504 in that regard.

The attached Resolution Agreement will, when fully implemented, remedy the compliance concerns identified with respect to the grievance process afforded Student A and the University's grievance procedures generally.

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.

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.

The Complainant may file a private suit in federal court, whether or not OCR finds a violation.

If you have any questions regarding this letter, please contact Brian Bigelow, Senior Regional Attorney, at 312-730-1565 or brian.bigelow@ed.gov.

Sincerely,
/s/

Karen E. Tamburro
Supervisory Attorney

cc: [X-counsel's name redacted], Esq. (via email)