

July 2, 2015

Dr. Joe Gow
Chancellor
University of Wisconsin – La Crosse
135 Gaff Main Hall
La Crosse, Wisconsin 54601

Re: OCR #05-15-2091

Dear Dr. Gow:

The U.S. Department of Education's Office for Civil Rights (OCR) has completed its investigation of the above-referenced complaint against the University of Wisconsin – La Crosse. The complaint alleges discrimination on the basis of disability. Specifically, the Complainant, XXXXXXXX, alleges that the University discriminated against her in respect to her housing and roommate assignments, and in response to her disability in the classroom, causing her to withdraw from the University in November 2014; and that the University's textbook rental service is in an inaccessible location.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12132, and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance from the Department of Education and a public entity, the University is subject to the provisions of Section 504 and Title II with respect to this complaint.

OCR investigated this complaint by interviewing the Complainant and University staff. OCR also reviewed documents submitted by both parties. OCR's determinations are set forth below.

University Policies and Procedures

The University publishes its Notice of Nondiscrimination¹ in its Student Handbook (Handbook) and online. The Notice prohibits discrimination on the basis of disability.

¹ <http://www.uwlax.edu/Student-Life/Student-handbook/>

The University's Student Grievance Procedures,² which are published online and in the Handbook, allow for students, including students with disabilities, to file complaints of discrimination. The Handbook and the University website also publish information for students with disabilities to request academic adjustments and auxiliary aids.³

The University's Residence Hall Application Process⁴ can be completed online. The application requests that applicants "list any medical conditions which may necessitate special consideration during room assignments."

Allegation 1

The Complainant alleges that the University discriminated against her in respect to her housing and roommate assignments, and in response to her disability in the classroom.

Applicable Legal Standards

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

Additionally, the Section 504 regulation at 34 C.F.R. §104.44(a) requires a recipient to make such modifications to its 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 disabled applicant or student. Recipients are not required to make modifications that would fundamentally alter the nature of the service, program or activity. The Section 504 implementing regulation at 34 C.F.R. §104.44(d) requires a recipient to take such steps as are necessary to ensure that persons with disabilities are not denied the benefits of, excluded from participation in, or otherwise subjected to discrimination because of the absence of educational auxiliary aids or services.

Under section 104.45(a) a recipient that provides housing to its students who do not have disabilities shall provide comparable, convenient, and accessible housing to students with disabilities at the same cost. At the end of the transition period provided for in subpart C, such housing shall be available in sufficient quantity and variety so that the scope of choice of living accommodations for students with disabilities is, as a whole, comparable to that for students without disabilities. Postsecondary recipients are not required to provide personal devices and services such as attendants or other services of a personal nature.

² <http://www.uwlax.edu/Student-Life/Student-handbook/?mid=3241>

³ <http://www.uwlax.edu/access-center/>

⁴ <http://www.uwlax.edu/ResLife/Application-Process/?mid=5610>

At XXXXXX, the Complainant and her family informed the Director of Eagle Gray Hall (Director) that emergency services did not have to be called each time the Complainant XXXX. However, the University took the position that its procedures required such a call in the event of any medical emergency involving a student. The family also informed the Director that XXXXXXXXXXXXXXXX and that the family was unhappy with the fact that Student A was not in the room at the time the Complainant XXXX. University staff informed OCR that they were unaware before XXXXXXXXXXXXXXXX that the Complainant and her family had expected XXXXXXXXXXXXXXXX during evening hours.

The Complainant's Father contacted the Director to express his concern that DRS had not informed residence life and the University police about Student A's medical condition. He also said that the Complainant or Student A might want to change rooms. In her September 7 response, the Director said that DRS would be contacting the family soon about creating a care plan, and that any room change would not take place until a care plan was in place. Once the care plan was in place, the Complainant could request a room change with her resident assistant. The Director informed OCR that students requesting roommate changes need to first speak with their resident assistant.

University's Response

On September 4, representatives from residence life, student life, and DRS met to discuss the Complainant's episode the previous evening and to create a care plan for her. Also attending the meeting was the Student Life and CARE Coordinator (Coordinator). The Coordinator subsequently summarized the meeting in an email to her colleagues, listing the following action steps:

1. DRS would schedule a meeting with the Complainant and her family;
2. DRS would obtain a copy of her XXXXXXXX schedules;
3. DRS would discuss with the family their arrangements for XXXXXXXXXXXX and determine whether the family planned to arrange for 24-hour care in light of the September 3 episode;
4. DRS would emphasize the importance of the Complainant wearing her medical bracelet at all times;
5. DRS would inform the family that it is "an unreasonable request" for the family to ask that the University refrain from calling emergency services immediately when the Complainant XXXXX
6. The Director would speak with Student A to better understand the arrangements the family made with her regarding the Complainant's care when a XXXXXXXXXXXXXXXX was not on duty.

Later on September 4, the Director met with Student A, who informed her that she still wanted to be the Complainant's roommate but that the Complainant had informed Student A that she wanted a new roommate. Student A said that she had not understood

all that the Complainant and her family expected of her when she agreed to be the Complainant's roommate.

On September 9, the Complainant and her parents met with DRS staff to discuss a care plan and to clarify the obligations and expectations regarding the Complainant's roommate. In its written response to OCR, the University stated that DRS staff "encouraged the family to obtain XXXXXXXXXX" for 24-hour care and that "the University would not be responsible for assigning a student to serve in that role." OCR interviews with staff members from DRS, residence life, and student life confirmed that that the University informed the Complainant and her family that the University would not prohibit them from making private arrangements with a roommate to act XXXXXXXXXX but that the University would not be a party to such an agreement.

In an email to the Complainant's professors, DRS wrote, "If [the Complainant] XXXX and XXXXXX university personnel will be expected to call University Police...." The email stated that if the Complainant XXXXXXXXXX, she was free to decline further medical assistance. The email also included a copy of the Complainant's Accommodation Form, which repeated these directions as well as listing various academic adjustments. In her request for academic adjustments, the Complainant stated that she needed someone with her "constantly."

OCR interviewed one of the DRS staff members who attended the September 9 meeting. The staff member informed OCR that the Complainant and her family did not believe a XXXXXX was necessary. The family also said that they did not believe it was necessary for University staff to call emergency services in the event of another XXXXX episode, unless the Complainant XXXXX for five minutes or more. However, since the University's policy states that University police should be contacted immediately in the event of a medical emergency, the family agreed not to press the issue. Earlier that day, the Complainant had signed her Accommodation Form, which would allow the University to contact police immediately in accordance with University policy.

The University added to the Care Plan the stipulation to call University Police immediately, and sent it by email to the Complainant and her family on September 12. In addition, the University attached to the email a proposed Care Plan for Residential Living (RL Care Plan). The RL Care Plan clarified that the University recommended there be a XXXX available when Student A was in University housing; that any agreement for a roommate to serve as a XXXX would be between the Complainant and the roommate; and that the University would not expect a student to provide attendant care. Also, the Director sent the Complainant an email discussing possible living arrangements. The Complainant responded that she had not been staying in the dorm room because she did not feel safe anymore; the Complainant had moved her personal items out of the dorm room and was living with her parents. The University added information to the RL Care Plan, at the Complainant's request, that the University had no expectations of the Complainant's roommate or residential staff to provide XXXXXXXXXX.

September 15 XXXXXXXX Episode

On September 15, the Complainant had a second XXXXepisode, in a classroom. When University Police arrived, the Complainant was XXXXXX. She was XXXXXXXXXXXX in accordance with the Care Plan. Student Life notified her instructors. Following this episode, on September 19, the Complainant notified the University that she would be terminating her housing contract and would no longer live in the residence halls.

September 23 XXXXXX Episode

On September 23, the Complainant had her third episode, again during class. She was XXXXX for approximately 20 minutes before emergency responders arrived and took her to the hospital. That same day, the Complainant's Father notified Student Life that the Complainant would be dropping her ENG 202 class. Student Life notified the Complainant's instructors about her absence. The following day, the Complainant notified Student Life that she would be dropping a second class, HIS 101. Student Life responded and sent information to the Complainant about her options for medical withdrawal, and requested a meeting to discuss the Complainant's academic options. Student Life also inquired about whether the Complainant could receive a backdated withdrawal to the beginning of the semester in order to receive a tuition refund and the effect on the Complainant's scholarship if she were to withdraw.

October 2 XXXXXXXX Episode

Approximately 10 days later on October 2, the Complainant had her fourth XXXXX episode at the University, again during a class. The Complainant was taken to the hospital after remaining XXXX 27 minutes. Student Life notified the Complainant's instructors about her absence.

October 13 XXXXXXXX Episode

Almost two weeks later, on October 13, the Complainant had her fifth episode while she was in the University library, and again was transported to the hospital.

October 22 Meeting with Vice Chancellor

On October 22, the Coordinator met with the Complainant and her family. The Vice Chancellor also attended the meeting. The Complainant asserted in her complaint that at this meeting, the Vice Chancellor and the Coordinator did not offer her any option other than a medical withdrawal. Both the Vice Chancellor and the Coordinator, in separate interviews with OCR, said that they offered medical withdrawal to the Complainant in addition to other options. They informed OCR that they wanted to explore ways to help the Complainant succeed at the University.

Specifically, the Coordinator and Vice Chancellor said they attempted to discuss with the family the option of distance learning or the possibility of moving the Complainant's XXXXX within the classroom to enable XXXXX to move her out of the classroom if she had another episode. The Vice Chancellor and Coordinator also told OCR that they raised the possibility of soliciting additional ideas from the Complainant's medical provider to help the Complainant continue her studies at the University. The Vice Chancellor said she also asked the family if they had any ideas about how to help the Complainant succeed at the University.

According to the Vice Chancellor and Coordinator, the Complainant and her family were not receptive to the idea of distance learning; asserted that moving XXXXX within the classroom would not be workable; and said that they would consider providing the contact information of the Complainant's doctors, although they never did so. They did not provide any additional ideas about how to help the Complainant succeed at the University. The Complainant's Father wanted to know if a withdrawal could be backdated to the beginning of the semester, to enable a full tuition refund. The Vice Chancellor and Coordinator also discussed the fact that the Complainant's periods of XXXXXXXXXX at the University had lasted much longer than 1-2 minutes that the Complainant had previously experienced. The first episode had lasted 9 minutes and the subsequent four episodes had lasted 15-30 minutes each. The family said that the Complainant was undergoing medical tests to determine the reason for the increase in length of her episodes, and her greater difficulty recovering from them.

The Complainant asserted to OCR that the Coordinator told her on October 22, that her episodes had disrupted the classroom. The Coordinator acknowledged to OCR that she had told the Complainant that her episodes disrupted the classroom because class had to be stopped when XXXXXXXX. The Coordinator also pointed out that since the episodes were longer than the one to two minutes the Complainant had previously experienced, a significant amount of classroom time had been lost.

Sixth XXXXX Episode

The Complainant's sixth episode occurred in class on October 23. The Complainant was transported to the hospital after she remained unconscious for 21 minutes. On November 10, 2014, the Complainant withdrew from the University and received a 100% tuition reimbursement.

Analysis and Conclusion

The Complainant did not provide specific examples of alleged different treatment by the University on the basis of disability. Rather, she contends that the University's handling of her disability issues led her to withdraw from the University in November 2014. The evidence indicates that the University provided academic adjustments to the Complainant

through its Office of Disability Resource Services. These included academic adjustments geared toward classroom learning about which the Complainant raises no allegations at any point. The University also included as an academic adjustment a requirement that University staff contact emergency services if the Complainant had a XXXXXX episode, consistent with University policy regarding medical emergencies. The Complainant and her family disagreed that University staff should contact emergency services during a XXXXXXXX episode that lasted less than five minutes. However, OCR finds that University's decision in this respect to be reasonable under the circumstances. Moreover, since all of the Complainant's XXXXXX episodes on campus lasted substantially longer than five minutes, the Complainant and the University are not in disagreement over the need to have involved emergency services during the fall 2014 semester.

Regarding the Complainant's roommate and housing arrangements, the University treated the Complainant as it treats other students. She was allowed to select her roommate, and when she expressed a desire to change roommates, the University indicated the process by which she could do so. The Complainant did not engage in that process; instead she left University housing and moved in with her parents. The evidence indicates no discrimination or different treatment. The University was under no obligation to provide a XXXXXXXX, and the Complainant rejected its advice to obtain a full-time XXXXXXXXt. OCR finds that the Complainant's decision to ask her roommate to serve as her XXXXXX in the evenings—an arrangement that the University repeatedly refused to become a party to—may have contributed to the Complainant's desire for a new housing arrangement.

Regarding the effect of the Complainant's disability in the classroom, the Complainant identified one act of alleged discrimination. The parties agree that the Coordinator pointed out that the XXXXXX episodes were causing a disruption to the Complainant's classes. The evidence bears out this statement. The Complainant XXXXXX four times during class in approximately one month; each time, she was XXXXXX for at least 15 minutes, and emergency responders came to the scene, effectively ending the class session. However, the evidence indicates that the Coordinator made this comment during a broader conversation geared toward finding a way to allow the Complainant to succeed at the University. OCR does not find that the Coordinator's single comment amounts to an act of disability harassment that is severe, pervasive, or persistent so as to deny the Complainant the educational benefits and opportunities offered by her academic program. There is insufficient evidence that the University treated the Complainant differently based on her disability with respect to her housing and roommate assignments, or in the classroom. Based on the above information, OCR finds that the University did not discriminate against the Complainant with respect to the first allegation.

Allegation 2

The Complainant alleges that the University's textbooks rental service is in an inaccessible location.

Applicable Standards Accessibility, general: The implementing regulation of Section 504, at 34 C.F.R. § 104.21, states that no qualified person with a disability shall, because a recipient's facilities are inaccessible to or unusable by persons with a disability, be denied the benefits of, excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which the regulation applies. The implementing regulation of Title II, at 28 C.F.R. § 35.149, states that no qualified person with a disability shall, because a recipient's facilities are inaccessible to or unusable by persons with a disability, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program, service or activity.

Accessibility, existing facilities: The Section 504 regulation, at 34 C.F.R. § 104.22(b), and the Title II regulation at 28 C.F.R. § 35.150(b), require institutions to operate programs, services (for Title II) and activities offered in "existing facilities" so that, when viewed in their entirety, they are readily accessible to persons with disabilities. Under Section 504, an "existing facility" is a building, or part thereof, where construction was commenced on or before June 2, 1977. Under Title II, an "existing facility is a building, or part thereof, where construction was commenced on or before January 25, 1992." In general, an institution may comply with this requirement, called "program access," through the redesign of equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries, alteration of existing facilities and construction of new facilities, or any other method that results in making each of its programs and activities accessible to persons with disabilities. The institution is not required to make structural changes to existing facilities where other methods are effective in achieving compliance with this section. In choosing among available methods for providing program access, the institution shall give priority to those methods that offer programs and activities to disabled persons in the most integrated setting appropriate.

Notice: The implementing regulation of Section 504, at 34 C.F.R. § 104.22(f) (under "existing facilities") also provides that "the recipient shall adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by persons with disabilities." The implementing regulation of Title II, at 28 C.F.R. § 35.163(a) provides that public entities must also ensure that interested persons, including persons with impaired vision or hearing, can obtain information about the existence and location of accessible services, activities and facilities. The regulation further requires that covered entities provide signs at all inaccessible facility entrances to direct users to an accessible entrance or a location where they can obtain information about accessible facilities. The international symbol of accessibility (ISA) must be used at each facility entrance that is designated as accessible.

If a recipient or public entity utilizes the relocation option of program accessibility, it must provide reasonable notice to students, parents and others who may have a disability and require relocation of programs, activities or services.

Accessibility, new construction: The Section 504 regulation, at 34 C.F.R. § 104.23, apply to any facility or part of a facility where construction was commenced on or after June 3, 1977. The regulation implementing Title II, at 28 C.F.R. § 35.151, apply to any facility or part of a facility where construction was commenced after January 26, 1992. These facilities are termed, "new construction" and the altered portion of existing facilities are termed, "alterations." The regulations require that each such facility or part of a facility constructed by, on behalf of, or for the use of a recipient shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by persons with disabilities. In addition, under Section 504, each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient after June 3, 1977, in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by persons with disabilities.

The Section 504 and Title II regulations, respectively at 34 C.F.R. § 104.23(b) and 28 C.F.R. §35.151(b), provide that when an existing facility or part thereof is altered in a manner that affects or could affect the usability of the facility or part of the facility, it shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by persons with disabilities. The Section 504 regulation, at 34 C.F.R. § 104.23(c), designates the American National Standards Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped [ANSI 117.1-1961 (1971)(ANSI)] as a minimum standard for determining accessibility for facilities constructed or altered on or after June 3, 1977, and before January 18, 1991, and the Uniform Federal Accessibility Standards (UFAS) for facilities constructed or altered on or after January 18, 1991. The Title II regulation, at 28 C.F.R. §35.151(c), designates the UFAS or the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG) as a minimum standard for determining accessibility for facilities constructed, or altered on or after January 26, 1992.

The regulations implementing Title II and the ADA Accessibility Guidelines (ADAAG) were amended in September 2010. Title II adopted new accessibility guidelines, 2010 ADA Standards for Accessible Design (ADA Standards), which became effective March 15, 2011. 28 C.F.R. § 35.151(c)(3) now provides, "If physical construction or alterations commence on or after March 15, 2012, then new construction and alterations subject to this section shall comply with the 2010 Standards." OCR Notice of Interpretation, Federal Register, Vol. 77, No. 50, pages 14972-14976 (March 14, 2012) allows use of the ADA Standards under Section 504.

A facility, or portion thereof, constructed on or after June 3, 1977, but before January 26, 1992, is deemed an existing facility under Title II, but is deemed new construction under Section 504. If a facility meets the Section 504 new construction standards, it is accessible throughout the facility and meets the Title II program accessibility standards. If the facility does not meet the Section 504 new construction standards, the facility may or may not comply with the Title II program access standards

For the new construction facilities, OCR determined if the facility met the specific accessibility standard for the facility based on the date of construction of the facility.

Maintenance of Accessible Facilities: A public entity must maintain in operable working condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities. This requirement does not prohibit isolated or temporary interruptions in service or access due to maintenance or repairs. This standard is codified in the regulation implementing Title II of the Americans with Disabilities Act (Title II), at 28 C.F.R. § 35.133, and is also generally applicable to recipients of Federal financial assistance under Section 504.

Accessibility, new construction: The Section 504 regulation, at 34 C.F.R. § 104.23, apply to any facility or part of a facility where construction was commenced on or after June 3, 1977. These facilities are termed, "new construction" and the altered portion of existing facilities are termed, "alterations." The regulations require that each such facility or part of a facility constructed by, on behalf of, or for the use of a recipient shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by persons with disabilities. In addition, under Section 504, each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient after June 3, 1977, in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by persons with disabilities.

Background

The University informed OCR that the Student Center, in which the Textbook Rental Service is currently located, was built in 1984 and has not been remodeled since that time. The ANSI standards are the applicable standards to evaluate the allegation.

Factual Summary

The complaint alleged that the University's textbooks rental service is in an inaccessible location. Specifically, the Complainant stated that when she went to rent her textbooks at the beginning of the 2014-2015 school year, an employee of the textbook service informed her that the employee would need to retrieve the textbooks for the Complainant. The aisles in between the textbooks shelves were not wide enough for the Complainant's

XXXXXX. Support posts protrude into the aisles, preventing an individual in a XXXXXX from using the aisles.

According to the University, when a student visits the Textbook Rental Location, staff members greet them and are available to help both disabled and non-disabled students with printing their course schedules, locating, and/or obtaining books off of the shelves.

During the investigation, OCR learned that the University has not provided notice to interested persons that it will reassign programs and activities to accessible buildings from existing buildings that are inaccessible.

Analysis and Conclusion

The University does not presently provide effective access to the Textbook Rental Location, which is located in the basement of the Student Center. As such, the University is not in compliance with the Section 504 regulation, at 34 C.F.R. § 104.22(b), because the program in the basement of the Student Center, when viewed in its entirety, is not readily accessible to persons with disabilities. In addition, the University fails to provide appropriate notice as required by the Section 504 regulation, at 34 C.F.R. § 104.22(f) as to the existence and location of services, activities, and facilities that are accessible to and usable by persons with disabilities or its willingness to move programs and activities to provide access.

The University is currently constructing a new Student Center, which is scheduled to open in January 2017. According to the design for the new Center, the width between the bookshelves will be four feet. Both disabled and non-disabled persons may need assistance to obtain books on high shelves, and staff members will be available to assist them.

Based on the information provided, OCR finds that the Textbook Rental Services, in its current location, is not readily accessible to and usable by persons with disabilities. OCR has ensured that the enclosed Agreement from the University is aligned with the complaint allegation, and is consistent with the applicable regulations and legal standards. OCR will monitor the University's implementation of the Agreement.

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

The 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 privacy.

We wish to thank you and your staff, particularly, Paige Reed, University Counsel, for the cooperation and courtesy extended to OCR during our investigation. If you have any questions regarding this letter, please contact Amy Truelove at (312) 730-1610 or by email at amy.truelove@ed.gov.

Sincerely,

Dawn R. Matthias
Team Leader

Enclosure

cc: Ms. Paige Reed
University Counsel