



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

September 23, 2016

Dr. Rebecca Blank
Chancellor
University of Wisconsin at Madison
161 Bascom Hall
Madison, Wisconsin 53706

OCR Case No. 05-16-2219

Dear Dr. Blank:

The U.S. Department of Education, Office for Civil Rights (OCR) is closing its investigation of this complaint against the University of Wisconsin at Madison. The Complainant alleges that the University discriminated against her on the basis of disability in December 2015 when it dismissed her from her post-doctoral fellowship at the Wisconsin State Laboratory of Hygiene. The Complainant also alleges that her dismissal was an act of retaliation for her attempt to seek clarification and advice from a third party about academic adjustments.

OCR enforces Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131–12134, and its implementing regulation, 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities. Section 504 and Title II also prohibit retaliation. As a public entity and a recipient of Federal financial assistance, the University is subject to the requirements of Section 504 and Title II.

The University has signed the enclosed Resolution Agreement, which is aligned with the complaint allegations and is dispositive of the issues raised in the complaint. The following is a summary of OCR's investigation and the Agreement's terms.

Facts

The Complainant spent approximately five months as a post-doctoral fellow in biomedical genetics at the University, beginning in July 2015. Her fellowship was based at the Wisconsin State Laboratory of XXXXXXXXXXXXXXXXXXXX. The Complainant's fellowship was intended to last two years. However, in December 2015 the University dismissed her, concluding that her "overall performance does not meet the level required for this position."

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

During her fellowship, the Complainant reported that she experienced a series of medical symptoms. She was diagnosed with XXXXXXXXXXXXXXXX, which affected XXXXXXXXXXXXXXXX. She alleges that her disabilities prevented her from completing one of the competencies of her fellowship: performing precise and accurate pipetting in a laboratory setting. The Complainant's fellowship would have provided the training for her potentially to become a director of a biomedical laboratory later in her career, a position in which she would supervise others performing laboratory assays, rather than performing them herself. Nevertheless, the pipetting competency was one of her program's requirements.

The Complainant requested accommodations from the University, beginning in October 2015. In addition to classroom and scheduling accommodations, she sought additional opportunities to practice her laboratory work, as well as mechanical and/or human assistance with pipettes. The University contends that it provided informal responses to some of these requests during the fall semester, for instance by allowing the Complainant additional practice opportunities and by allowing her to try several ergonomic pipettes. However, the University did not formally grant or deny any accommodation request until the very end of the Complainant's fellowship. In the meantime, her pipetting did not improve.

As the University and the Complainant discussed possible accommodations, the Complainant sought input from a third party: the American Board of xxxxxxxxxxxx. The Complainant sent an e-mail to the XXXXX on December 3, 2015, describing the effects of her disability on her ability to pipette, and requesting "an official position from the XXXX regarding an appropriate accommodation (or accommodations) in regards to logging laboratory cases when pipetting skills are impaired due to medically documented reasons." The Complainant contends that on the following day, her supervisor told her she would seek to dismiss her from her fellowship, citing her e-mail to the XXXXX. OCR has not interviewed the Complainant's supervisor for her response to this assertion.

The University dismissed the Complainant on December 22. On the same day, it also provided her with a formal response to her request for accommodations. The University granted some requests, but denied several others, such as the Complainant's request for mechanical or human assistance with her pipetting assays, and her request to perform mock sample runs in the laboratory. Several weeks later the Complainant sought to appeal the denial of several requested accommodations, and the University upheld the denial. Its letter of April 21, 2016, states: "Because your fellowship and employment relationship with XXXX terminated on January 19, 2016, this appeal is, in effect, moot....However, even if you were still employed by XXXX, I would sustain the decision of XXXX to deny...the provision of additional assistance to perform the laboratory pipetting." The letter did not contain a detailed explanation for this decision, nor did it address several other requested accommodations that XXXX had denied.

Resolution Agreement

Prior to the conclusion of this investigation, the University requested to resolve the complaint through a section 302 agreement. The enclosed Resolution Agreement is fully aligned with the complaint allegations. It requires XXXX to:

- draft a nondiscrimination and disability services statement confirming that XXXX implements the University's policies to not discriminate or retaliate on the basis of disability, and providing information to students and employees of XXXX about University policies and resources;
- train all XXXX staff on the Universities disability policies; and
- provide individual relief to the Complainant in the form of back pay for the months between her dismissal from the University and her subsequent rehire by another academic institution.

OCR will monitor the agreement. Please note that the first monitoring deadline is December 31, 2016.

Thank you for your assistance and cooperation during OCR's investigation—and particularly for the assistance of Sierra Beckles-Young, counsel to the University. If you have questions about this letter, you may contact Michael O'Donnell of my staff at 312-730-1636 or michael.odonnell@ed.gov.

Sincerely,

Dawn R. Matthias
Team Leader

cc: Sierra Beckles Young