



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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CHICAGO, IL 60604

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July 20, 2020

Mr. Dean L. Bresciani
President
North Dakota State University
Department 1000, P.O. Box 6050
Fargo, North Dakota 58108

Via electronic mail only to: XXXXXXXXXXXXXXXXXXXX

Re: OCR #05-20-2149

Dear President Bresciani:

This is to advise you of the disposition of a complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), in February 2020 against North Dakota State University University (University). The complaint alleged the University discriminated against the Complainant (Student A) on the basis of disability in XXXXXXXXXXXX when Instructor A denied a request to use a graphing calculator in Math 165.

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. Section 504 prohibits 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. §§ 12131 - 12134, and its implementing regulation at 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance from the Department and a public entity, the University is subject to these regulations. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

University Policies and Procedures

The University Non-discrimination Notice provides prohibits discrimination based on disability in employment and educational programs and activities.¹ The University has also adopted and published guidelines for how students may request “reasonable accommodations”² to ensure “access to and inclusion in academic and campus programs for students with disabilities.” Information about the University’s Disability Services office (Office) is available online.³

¹ https://www.ndsu.edu/fileadmin/policy/100.policy_updated.pdf (last visited July 14, 2020).

² <https://www.ndsu.edu/fileadmin/policy/606.pdf> (last visited July 14, 2020).

³ <https://www.ndsu.edu/disabilityservices/> (last visited July 14, 2020).

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

Facts

Student A advised OCR that he is majoring in civil engineering. He has been registered with the Office as a student with a disability since XXXXXXXXXXXXX. Student A registers for disability-related modifications each semester.

Student A requested the use of a graphing calculator for Math 102 during the XXXXXXXXXXXXX. The Office's Director at that time consulted with at least one math department employee who determined that the use of a graphing calculator "would fundamentally alter the essential components of the course." Student A provided a XXXXXXXXXXXXX to the Office, which states that Student A "is accessing or allowed to access all of the accommodations that he needs in order to be successful – except one...a graphing calculator." The Evaluation continued, "This accommodation appears to be not only reasonable, but also a necessary accommodation." The XXXXXXXXXXXXX recommended Student A be permitted to use a graphing calculator "to pass his math and engineering classes."

Student A registered for the Class to be taken in the XXXXXXXXXXXX semester. The Class' professor (Professor) taught the Class at least twice before XXXXXXXXXXXX. All of the Professor's syllabi contain the statement, "All exams are closed-book, closed-note, and no calculators." In terms of course goals, each syllabus states:

To give students an understanding of and an appreciation for the theory and many applications of differential and integral calculus of one variable. Both computational and conceptual skills will be developed. The students will be exposed to both theoretical and applied points of view and applications to other disciplines will be stressed. This course also develops student capabilities related to several [University] Objectives.

Student A requested to use a graphing calculator in the Class. He met with the Office's Director, an Accommodations Coordinator, and the Professor on XXXXXXXXXXXXXXX, to formulate a plan. Student A had two advocates present at the meeting. The Director reviewed the Class' learning objectives and essential requirements, consulted with the Professor, reviewed the Class syllabus, and analyzed the "Testing Accommodations" guidance of the U. S. Department of Justice, Civil Rights Division, Disability Rights Section. The Director and Professor agreed Student A could take exams with a basic calculator as a reasonable modification. However, the Director and Professor concluded that since the use of a graphing calculator would compromise the conceptual aspect of the Class, a graphing calculator would fundamentally alter the Class' learning objectives. Student A had a plan approved for the XXXXXXXXXXXX semester, but since it did not include the use of a graphing calculator, Student A withdrew from the Class.

In XXXXXXXXXXXXXXX, Student A met with at least one Office employee to discuss academic adjustments and auxiliary aids to be provided during the XXXXXXXXXXXX semester. Since Student A had not registered for classes, it was determined a meeting would be convened after he registered. On XXXXXXXXXXXX, Student A met with the new Office Director, at which time he was registered for the Class. Student A once again requested permission to use a graphing calculator as a reasonable modification. The University informed OCR that the new

Director consulted with the Professor and the math department chair. The three agreed that allowing Student A to use a graphing calculator in the Class would fundamentally alter the essential learning objectives. Therefore, the University again denied Student A's request to use a graphing calculator. Student A withdrew from the Class shortly thereafter.

The University provided OCR syllabi from XXXXXXXXXXXXXXX for each of the 16 professors who taught the Class. Six instructors did not permit the use of any type of calculator; five were silent regarding the use of a calculator; three expressly forbade the use of only a graphing calculator; one permitted the use of a graphing calculator; and, one permitted a "scientific" but not a graphing calculator. The University acknowledged that a graphing calculator can be used on certain portions of the Advanced Placement Math Examination (Exam). If a student scores at least a "3" on the Exam, the University provides him/her equivalent credit for the Class.

Legal Authority and Standards

The regulation implementing Section 504, at 34 C.F.R. § 104.4(a), provides, in part, 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 or benefits from Federal financial assistance from the Department. The regulations implementing Section 504, at 34 C.F.R. §§ 104.4(b)(1)(ii) and (iv), provide that a recipient shall not deny a qualified individual with a disability an aid, benefit or service, or provide such aid, benefit or service to an individual that is not equal to or is different from that provided to others because of the individual's disability.

The regulation implementing Section 504, at 34 C.F.R. § 104.44(a), requires that postsecondary 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. 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. Recipients are not required to make modifications that are essential to the instruction being pursued or that would fundamentally alter the nature of the service, program or activity. Determinations as to whether academic adjustments and/or auxiliary aids and services will cause a fundamental alteration to a particular program or course must be made using reasoned deliberation, including a diligent assessment of available options.

The Section 504 regulation at 34 C.F.R. § 104.44(d) further requires recipients to take such steps as are necessary to ensure that qualified individuals are not denied the benefits of, excluded from the participation in, or otherwise subjected to discrimination because of the absence of necessary academic adjustments or auxiliary aids and services.

Analysis

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

Prior to the conclusion of this investigation, the University requested to resolve the complaint with a voluntary resolution agreement. OCR has determined that it is appropriate to resolve the complaint at this juncture pursuant to Section 302 of the *Case Processing Manual* because OCR's investigation has not proceeded to a point where a finding is clear. OCR would need to gather additional information, including interviewing the former Director, the current Director, the Professor, and math department chair to determine whether the University, in concluding that a graphing calculator would constitute a fundamental alteration to the Class, used reasoned deliberation including a diligent assessment of available options.

On July 15, 2020, the University submitted the enclosed, signed resolution agreement (Agreement) to OCR. When fully implemented, the Agreement will address the complaint allegation. OCR will monitor the University's implementation of the Agreement. When OCR concludes the University has fulfilled the terms of the Agreement, OCR will close the case. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the University may not harass, coerce, intimidate, discriminate or otherwise retaliate against any individual because he or she asserted a right or privilege under a law enforced by OCR or filed a complaint, testified, or participated in the complaint resolution process. If this happens, the individual may file a retaliation complaint with OCR.

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

OCR thanks XXXXXXXXXXXXXXXXXXXXXXXXXXXX, for the cooperation extended to OCR in resolving this complaint. We look forward to receiving the University's first report about its implementation of the Agreement by August 1, 2020.

If you have any questions, please contact Mark Erickson at (312) 730-1574 or Mark.Erickson@ed.gov.

Sincerely,

Aleeza Strubel
Supervisory Attorney

cc: XXXXXXXXXXXXXXXXXXXXXXXXXXXX

Enclosure