



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

1999 BRYAN ST., SUITE 1620
DALLAS, TX 75201-6810

REGION VI
ARKANSAS
LOUISIANA
MISSISSIPPI
TEXAS

August 16, 2018

Ms. Katherine A. Green
Associate General Counsel
University of North Texas System
1155 Union Circle #310907
Denton, Texas 76203

Re: The University of North Texas at Dallas College of Law
OCR Number: 06-15-2518

Dear Ms. Green:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, has completed its investigation of the above-referenced complaint, which was received by OCR on September 16, 2015, and filed against the University of North Texas at Dallas College of Law (UNT DCOL or Recipient) Dallas, Texas. The complaint alleged that the UNT DCOL discriminated against the complainant on the basis of disability. Specifically, the complainant alleged that:

1. During the Fall 2015 semester, the UNT DCOL failed to provide the complainant with her approved accommodation of extended time on two quizzes taken, on September 6, 2015 and September 13, 2015, in her Torts class and did not provide her with a note taker as required;
2. During the Fall 2015 semester, staff in the disability services office at UNT DCOL did not know what process was required for the complainant to get accommodations which resulted in her accommodations not being implemented or not being provided; and
3. The UNT DCOL does not provide access to classes located above ground level to mobility-impaired individuals when the building elevator and the freight elevator are not operational.

OCR opened the following issues for investigation:

1. Whether the Recipient failed 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 student, by failing to provide the complainant with necessary academic adjustments and/or auxiliary aids during the fall 2015 semester (*i.e.*, (1) not providing extended time on two quizzes, on

September 6, 2015 and September 13, 2015, in Torts and (2) not providing a note taker), in violation of Section 504, at 34 C.F.R. § 104.44, and Title II, at 28 C.F.R. § 35.130;

2. Whether the Recipient subjected the complainant to discrimination based on her disability by excluding her from participation in, denying her the benefits of, or otherwise subjecting the complainant to discrimination regarding a postsecondary education aid, benefit or service (*i.e.*, disability services office staff were not aware of the requirements for the complainant to receive appropriate academic adjustments/auxiliary aids), in violation of Section 504, at 34 C.F.R. § 104.43, and Title II, at 28 C.F.R. § 35.130;
3. Whether persons with disabilities are denied the benefits of, excluded from participation in, or otherwise subjected to discrimination by the UNT DCOL because the UNT DCOL's facility is inaccessible (*i.e.*, classrooms not located on the ground floor are inaccessible to or unusable by persons with disabilities when the elevators are inoperable and the elevators provided cannot be used independently), in violation of Section 504 and Title II, at 34 C.F.R. §§ 104.21-104.23, and 28 C.F.R. §§ 35.149-35.151, respectively.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794 (amended 1992), and its implementing regulation, 34 C.F.R. Part 104, as well as Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation, 28 C.F.R. Part 35, which prohibits discrimination on the basis of disability by recipients of Federal financial assistance and public entities. As a recipient of Federal financial assistance from the Department and a public entity, the UNT DCOL is subject to Section 504, Title II and their implementing regulations.

A finding that a recipient has violated one of the laws that OCR enforces must be supported by a preponderance of the evidence (*i.e.*, sufficient evidence to prove that a particular proposition is more likely than not). When there is a significant conflict in the evidence and OCR is unable to resolve that conflict (for example, due to the lack of corroborating witness statements or additional evidence), OCR generally must conclude that there is insufficient evidence to establish a violation of the law.

During the course of this investigation, OCR reviewed documentation and information provided by the complainant and the UNT DCOL. Based on our review and analysis of the information obtained during this investigation, OCR has determined that there is sufficient evidence to support a finding of a violation of Section 504 and Title II for issues #1 and #3, but not issue #2. On August 15, 2018, the UNT DCOL voluntarily submitted the enclosed Resolution Agreement (Agreement or RA) to resolve the compliance issues identified in this investigation. OCR has determined that the Agreement is aligned with the complaint allegations and the information obtained during the investigation and is consistent with applicable law and regulations.

The Agreement, when fully implemented, resolves the complaint. Specifically, the Agreement requires the UNT DCOL to take the following actions: (1) change the complainant's fall 2015 Legal Writing and Research I course grade from a grade of Fail ("F") to a grade of Withdraw ("W"); (2) hold a new accommodation meeting with the complainant to discuss what accommodations, if any, she requires to continue her studies at the UNT DCOL; (3) provide

training to appropriate personnel about the Recipient’s obligations under Section 504 and Title II to provide accommodations to individuals with disabilities; and (4) post an Elevator Accessibility Policy which lists the person who should be contacted if the elevator in the UNT DCOL’s building is not working properly and describes the procedure that will be followed to provide temporary access through the freight elevator until the passenger elevator is fixed.

ISSUE #1: Whether the Recipient failed 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 student, by failing to provide the complainant with necessary academic adjustments and/or auxiliary aids during the fall 2015 semester (i.e., (1) not providing extended time on two quizzes on September 6, and 13, 2015 in Torts and (2) not providing a note taker), in violation of Section 504, at 34 C.F.R. § 104.44, and Title II, at 28 C.F.R. § 35.130.

Allegation

The complainant alleged that, during the fall 2015 semester, the UNT DCOL failed to provide her with the approved accommodations of extended time on two quizzes taken, on September 6, 2015 and September 13, 2015, in her Torts class and also failed to provide her with a note taker.

Facts and Analysis

OCR’s investigation shows that, on July 23, 2015, the complainant submitted medical documents to the Recipient listing the complainant’s disabilities as being wheelchair-bound, having cerebral palsy, and vision issues. The complainant submitted her request for specific accommodations on August 26, 2015 and the Recipient approved the complainant’s requested accommodations that same day. On August 26, 2015, the UNT DCOL also provided the complainant with a letter to give to her professors which notified them that the following accommodations had been approved for the complainant:

- (1) Needs to be able to sit in the front row in class,
- (2) Extended time for in class assignments: tests and quizzes of 2.0x,
- (3) Extended time for exams of 2.0x,
- (4) Distraction-reduced testing environment,
- (5) Note taking assistance from a volunteer student and
- (6) Wheelchair desk.

a. Accommodation of 2.0x extended time on quizzes and exams

Regarding the complainant’s allegation that she did not receive extended time for two Torts quizzes on September 6, 2015 and September 13, 2015, OCR interviewed the Director of Legal Educational Technology (Technology Director) who oversees the technology that is law school-specific. On September 3, 2015, the complainant’s e-mail to the Recipient’s Assistant Dean of Student Life (Dean of Accommodations) about upcoming quizzes in Torts and Civil Procedure was forwarded to the Technology Director. The Technology Director explained that the UNT DCOL’s professors use one of two different types of software for quizzes/exams: Canvas and

ExamSoft. The Canvas software does not remember accommodations so the Technology Director had to wait until one of the complainant’s professors published a quiz/exam on Canvas and then manually go into the software for every one of the complainant’s quizzes/exams and add in the accommodation. With the ExamSoft software, on the other hand, the Technology Director only had to enter a student’s accommodation one time. The ExamSoft software remembers the accommodation and provides it on every quiz or exam until someone changes the accommodation. During the fall 2015 semester, the complainant was enrolled in the following courses: Community Engagement, Bedford Mentor Program, Fundamentals of Being a Lawyer, Legal Methods, Civil Procedure I, Legal Writing and Research I, Torts, and Contracts. The Technology Director confirmed that the complainant’s Torts and Contracts courses used Canvas software, where accommodations must be manually entered for every quiz/exam. While the complainant’s Civil Procedure course used ExamSoft software, which remembers accommodations.

The UNT DCOL provided OCR with copies of computer printout logs detailing the dates and times when the complainant logged on and off for every online quiz and exam she took for her fall 2015 classes as well as the grading sheets for all of the complainant’s fall 2015 classes. For Torts, the complainant’s grade was calculated based on her scores on 8 quizzes, one midterm exam and one final exam. A chart with the details for the complainant’s 8 quizzes, midterm exam and final exam is below. The two Torts quizzes at issue are Quiz #1 (September 6, 2015) and Quiz #2 (September 13, 2015).

ITEM	DATE	STANDARD TIME (in minutes)	COMP’s TIME (in minutes)	2.0x TIME RECEIVED?	TIME TAKEN BY COMP. (in minutes)	COMP’s SCORE
Quiz #1	9/6/2015	30	60	Yes	29 out of 60	7 out of 10
Quiz #2	9/13/2015	30	30	No	29 out of 30	6 out of 10
Quiz #3	9/27/2015	30	60	Yes	56 out of 60	6 out of 10
Midterm Exam	10/8/2015	90	180	Yes	162 out of 180	20 out of 50
Quiz #4	10/18/2015	30	60	Yes	42 out of 60	6 out of 10
Quiz #5	11/2/2015	25	50	Yes	48 out of 50	6 out of 10
Quiz #6	11/8/2015	25	50	Yes	47 out of 50	5 out of 10
Quiz #7	11/15/2015	25	50	Yes	27 out of 50	8 out of 10
Quiz #8	11/22/2015	20	40	Yes	33 out of 40	7 out of 10
Final Exam	12/10/2015	240	480	Yes	428 out of 480	141 out of 500

OCR’s examination of the computer records for the two Torts quizzes at issue taken on September 6, 2015 and September 13, 2015, shows that the class was given 30 minutes to complete the September 6, 2015 quiz and could receive 10 possible points for that quiz. The complainant received 60 minutes to complete the September 6, 2015 quiz, which is twice the amount of time the other students received for this quiz. The computer log shows the complainant took 29 of the 60 possible minutes to complete the September 6, 2015 quiz and received 7 out of 10 possible points.

The computer log for the second Torts quiz at issue, on September 13, 2015, shows that the class was given 30 minutes to complete the quiz and could receive 10 possible points. The complainant did not receive her approved accommodation of 2.0x extended time for this quiz and she only received the same 30 minutes as the other students. The complainant took 29 minutes to complete this quiz and received 6 out of 10 possible points.

The complainant states that she notified the Dean of Accommodations, on September 15, 2015, that she had not received 2.0x extended time, on her September 6, 2015 or September 13, 2015, Torts quizzes and says that she did not receive any response. The complainant informed OCR that she did not receive an adjustment in points and was not allowed to re-take either of the Torts quizzes at issue. OCR's investigation showed that the Dean of Accommodations responded to the complainant's September 15, 2015 e-mail the same day by telling the complainant that she should make sure the Technology Director was notified of upcoming quizzes and by forwarding the complainant's e-mail to the Technology Director. The Technology Director states that, in response to receiving the forwarded September 15, 2015 e-mail, she examined the computer records and confirmed the complainant received her accommodation of 2.0x extended time for one of the two Torts quizzes at issue, but not both quizzes.

OCR's investigation did not uncover any information to show that the Technology Director informed the Dean of Accommodations that the complainant had not received her accommodation of 2.0x extended time for one of the Torts quizzes at issue. OCR also did not obtain any evidence to show that the Dean of Accommodations followed-up with the Technology Director to determine whether the computer logs supported the complainant's claim, followed up with the complainant to clarify whether she received her accommodation of 2.0x extended time for either of the Torts quizzes at issue, or discussed alternative options with the complainant, such as re-taking either of the Torts quizzes at issue. The Dean of Accommodations admitted that she does not know if the complainant received extended time on either of the two Torts quizzes at issue or was allowed to re-take either of those quizzes with her accommodation in place.

Additionally, although the issue of whether the complainant received 2.0x extended time for other classes besides Torts was not specifically opened for investigation, OCR's investigation also revealed evidence showing that the complainant did not receive her accommodation of 2.0x extended time in Legal Writing and Research. Specifically, 10% of the complainant's final grade in Legal Writing and Research was based on weekly grammar quizzes which were given in-class. The Legal Writing and Research professor informed the Assistant Vice Chancellor of Equity, Diversity and Inclusion that, for each weekly grammar quiz, the professor put multiple choice questions on a PowerPoint document and each student used a clicker to enter his/her responses. The professor tried to give everyone the same amount of time so he waited until everyone or almost everyone had answered a given question and then moved to the next question. The complainant stated that she did not receive 2.0x extended time for any of the weekly grammar quizzes and was not allowed to re-take any of those quizzes. OCR's investigation shows that the complainant received the same amount of time as the other students for the weekly grammar quizzes in Legal Writing and Research and did not receive her accommodation of 2.0x extended time for any of those quizzes. This information is relevant and persuasive to the compliance concerns already uncovered for this issue because it constitutes an

additional example of the Recipient's failure to provide the complainant with her accommodation of 2.0x extended time on quizzes/exams. Based on the information above, OCR has determined that the complainant did not receive 2.0x extended time for her September 13, 2015 Torts quiz or for the weekly grammar quizzes in Legal Writing and Research.

b. Accommodation of note taker

The complainant alleged that, during the fall 2015 semester, the UNT DCOL failed to provide her with an approved accommodation of a note taker for all of her courses. The Recipient's data response includes copies of e-mails in September of 2015, when the complainant was introduced to two student volunteer note takers who had agreed to provide the complainant with a copy of their class notes. One of the students suggested sending a copy of her notes to the complainant once per week.

In a September 23, 2015 e-mail, the complainant informed the Assistant Disability Services Coordinator and the Dean of Accommodations that one of the volunteer note takers had been out sick and the other one had only sent some of her weekly notes. The Assistant Disability Services Coordinator clarified that she was only responsible for approving the complainant's accommodations and that the Dean of Accommodations was responsible for ensuring the complainant received her accommodations.

The Dean of Accommodations responded to this allegation and said that she met with the complainant the day after her September 23, 2015 e-mail complaining about not receiving sufficient notes and that she answered all of the complainant's concerns, but this assertion is refuted by the complainant who says that she told the Dean of Accommodations that the note takers were not working out because she was not receiving any notes and that the problem was not resolved. The Dean of Accommodations stated that she spoke to the 2nd note taker who had been out sick, but had no notes of when the discussion occurred or what was discussed. The Recipient did not provide any other documents regarding the issue of whether the complainant received note taker services during the fall 2015 semester, such as copies of additional notes the complainant received for other classes.

Under Section 504 and Title II, recipients of Federal financial assistance and public post-secondary education programs must provide such academic adjustments or auxiliary aids as may be necessary to ensure that their academic requirements do not discriminate or have the effect of discriminating, on the basis of disability, against any "qualified" person with a disability. To establish a violation of this requirement in this case, OCR must determine the following: (1) that the complainant is a "qualified person with a disability"; (2) that the complainant provided adequate notice to the Recipient that the complainant believed he or she needed academic adjustments; (3) that the requested academic adjustments were necessary; and either (4) that the Recipient did not provide the academic adjustments; or (5) that the academic adjustments provided were not of adequate quality and effectiveness. For purposes of this letter, the terms *academic adjustments* and *accommodations* are used interchangeably.

As stated above, in order to establish a violation of Section 504/Title II in this case, OCR must first determine whether the complainant is a “qualified person with a disability.” Under Section 504 and Title II, a “qualified person with a disability” is a person who meets the essential eligibility (including academic and technical) requirements for admission to or participation in the recipient’s/public entity’s education program or activity, and who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. In the academic adjustments/auxiliary aids context, a “qualified person with a disability” must have an actual impairment that substantially limits one or more major life activities.

In this case, the complainant is wheelchair-bound, has cerebral palsy and vision problems. The complainant meets the definition of a person with a disability because her ability to complete the major life activity of walking is substantially limited by her physical impairments. Also, the complainant met the essential eligibility requirements for admission to the UNT DCOL because she was admitted to attend. Further, the UNT DCOL did not dispute that the complainant meets the definition of a qualified individual with a disability. Therefore, OCR has determined that the complainant meets the definition of a qualified person with a disability.

OCR policy provides that students with disabilities have the obligation to provide adequate documentation to postsecondary education institutions evidencing the existence of their disability(ies) and their need for academic adjustments or auxiliary aids. The question whether a student has provided documentation sufficient to evidence the existence of a disability requiring an academic adjustment/auxiliary aid must be decided on a case-by-case basis using a standard of reasonableness.

OCR found that the UNT DCOL has written procedures in place to request accommodations. Specifically, the Recipient’s website includes a link to the process for individuals to request and receive accommodations or auxiliary aids. The process includes the following basic steps:

- Students must submit a request for accommodation and/or auxiliary aids and services to the Assistant Dean of Students (Dean of Accommodations) which includes;
 - A medical diagnosis from an appropriate professional identifying the disability and current diagnostic evaluation;
 - A list of proposed accommodations/auxiliary aids;
- The Recipient will review the documentation and meet with the requesting student;
- A determination of whether accommodations or auxiliary aids or services are appropriate will follow after an individual assessment of a student's written documentation and a personal meeting with the student.

The complainant met her burden of following the Recipient’s procedures to provide the UNT DCOL with notice of her disabilities and to request accommodations. On July 23, 2015, the complainant submitted medical documents to the recipient which listed the complainant’s

disabilities as being wheelchair-bound, having cerebral palsy, and vision issues. On August 26, 2015 the complainant submitted her request for specific accommodations which were approved that same day by the UNT DCOL. On August 26, 2015, the UNT DCOL provided the complainant with a letter to give to her professors to notify them that the following accommodations had been approved for the complainant:

- (1) Needs to be able to sit in the front row in class,
- (2) Extended time for in class assignments: tests and quizzes of 2.0x,
- (3) Extended time for exams of 2.0x,
- (4) Distraction-reduced testing environment,
- (5) Note taking assistance from a volunteer student and
- (6) Wheelchair desk.

Based on the information above, OCR has determined that the complainant met her obligation to provide adequate documentation to the UNT DCOL of her need for accommodations.

In accordance with Section 504 and Title II, once students provide their institutions sufficient notice of their disabilities and their need for academic adjustments or auxiliary aids, the institutions must provide those academic adjustments or auxiliary aids that are necessary; in addition, the academic adjustments and auxiliary aids that are provided must be of adequate quality and effectiveness.

Regarding the issue of 2.0x extended time, OCR's investigation shows that the complainant received the accommodation of 2.0x extended time for her September 6, 2015 Torts quiz, but not her September 13, 2015 Torts quiz. Both the computer logs and the Technology Director confirm the complainant received the same 30 minutes as every other student for her September 13, 2015 quiz and did not receive her accommodation of 2.0x extended time. Additionally, although OCR's investigation was not specifically focused on whether the complainant received 2.0x extended time for other classes besides Torts, OCR found evidence to show that the complainant also did not receive her accommodation of 2.0x extended time in Legal Writing and Research for her weekly, in-class grammar quizzes which accounted for 10% of the complainant's final grade in Legal Writing and Research.

With respect to the accommodation of a note taker, OCR's investigation found that the UNT DCOL had an arrangement in place for two of the students in the complainant's classes to provide the complainant with a copy of their notes. On September 23, 2015, the complainant notified the Assistant Disability Services Coordinator and the Dean of Accommodations that she was not receiving this accommodation. The Dean of Accommodations said that she met with the complainant the day after her September 23, 2015 e-mail and answered all of the complainant's concerns, but this assertion is refuted by the complainant who says that she told the Dean of Accommodations that the note takers were not working out because she was not receiving any notes and that the problem was not resolved. The Dean of Accommodations added that she spoke to the 2nd note taker who had been out sick, but had no notes of when the discussion occurred or what was discussed. The one document provided by the UNT DCOL in response to this allegation is an outline for a portion of the fall 2015 Torts class from one of the complainant's two note takers which was provided in September of 2015. OCR's investigation

did not uncover additional information to show that the complainant received any other notes for her fall 2015 classes or that the Dean of Accommodations took any other steps to ensure the complainant was receiving this accommodation such as: following up with either of the two note takers to verify what notes, if any, they had provided to the complainant or selecting other students to take notes for the complainant.

Conclusion

Based on the information above, OCR has determined that sufficient evidence exists to support a finding of a violation for issue #1 because: (1) the complainant is a “qualified person with a disability”; (2) the complainant provided adequate notice to the Recipient that she believed she needed the accommodations of 2.0x extended time and note takers by submitting a request for accommodations with supporting medical documentation on August 26, 2015; (3) the requested academic adjustments were necessary and approved by the Recipient on August 26, 2015; and (4) the accommodations provided were not of adequate quality and effectiveness. Specifically, the complainant did not receive her accommodation of 2.0x extended time for her September 13, 2015 quiz in Torts. Additionally, although it was not specifically an issue under investigation by OCR, this agency found that the complainant also did not receive her accommodation of 2.0x extended time for her weekly grammar quizzes in Legal Writing and Research, which is additional evidence that the failure to provide the complainant with her accommodation of 2.0x extended time was more systemic in nature and not an incidental, one-time event. Further, the evidence obtained by OCR shows that the Recipient only provided the complainant with a partial outline for her fall 2015 Torts class and no other notes for Torts or any of her other classes (Community Engagement, Bedford Mentor Program, Fundamentals of Being a Lawyer, Legal Methods, Civil Procedure I, Legal Writing and Research I, and Contracts), during the fall 2015 semester.

Issue #2: Whether the Recipient subjected the complainant to discrimination based on her disability by excluding her from participation in, denying her the benefits of, or otherwise subjecting the complainant to discrimination regarding a postsecondary education aid, benefit or service (i.e., disability services office staff were not aware of the requirements for the complainant to receive appropriate academic adjustments/auxiliary aids), in violation of Section 504, at 34 C.F.R. § 104.43, and Title II, at 28 C.F.R. § 35.130.

Allegation

The complainant alleged that, during the fall 2015 semester, staff in the disability services office at the UNT DCOL did not know what process was required for the complainant to get accommodations which resulted in her accommodations not being implemented or not being provided.

Facts and Analysis

The recipient provides individuals with a general overview of the process to request and receive accommodations on its website (lawschool.untsystem.edu), under the “Current Students” tab, “Office of the Dean of Students” link, and the “Disability Accommodations for Students” link.

This portion of the recipient’s website has links to required forms (request for accommodations, physical disability documentation, psychological disability documentation, etc.) as well as the name, job title and e-mail address and phone number of the contact person (Dean of Accommodations). The Assistant Director of Disability Services stated that the complainant submitted her medical documents on July 23, 2015, but did not submit her request for accommodations until August 26, 2015. The complainant’s request for accommodations was approved by the Assistant Director of Disability Services that same day. According to UNT’s Academic Calendar, fall 2015 classes began on August 24, 2015 so the complainant’s request for accommodations was approved two days after classes began.

During the fall 2015 semester, the Assistant Director of Disability Services clarified that she would have made the final decision regarding the complainant’s requested accommodations. The Assistant Director of Disability Services worked at the Texas Department of Assistive and Rehabilitative Services (DARS) for more than 25 years as a Rehabilitation Specialist helping people with disabilities prepare for or keep their jobs and joined the Recipient’s Disability Services office in February of 2015. The Assistant Director of Disability Services processes requests for accommodations for the UNT system and estimates that she has processed more than 300 accommodation requests in her time with the Recipient.

OCR’s investigation shows that the Recipient has a procedure available on its website which details the process for an individual to receive accommodations. The Assistant Director of Disability Services, who made the final decision regarding the complainant’s requested accommodations, has the relevant work experience necessary to properly process the complainant’s request for accommodations and is familiar with the Recipient’s procedures to obtain an accommodation. The complainant states that the Assistant Director of Disability Services was not familiar with the layout of the UNT DCOL’s building. However, knowledge of the layout of the UNT DCOL’s building was not necessary to make a determination of any of the requested accommodations and the complainant admits that she was satisfied with the list of accommodations she received.

Conclusion

Based on the information above, OCR has determined that there is insufficient evidence to support a finding of a violation for issue #2 because the Assistant Director of Disability Services, who processed the complainant’s request for accommodations, was aware of the requirements for the complainant to receive appropriate accommodations based both on relevant work experience in the field as well as familiarity with the Recipient’s procedures for an individual to request and obtain accommodations.

ISSUE #3: Whether persons with disabilities are denied the benefits of, excluded from participation in, or otherwise subjected to discrimination by the UNT DCOL because UNT DCOL’s facility is inaccessible (*i.e.*, classrooms not located on the ground floor are inaccessible to or unusable by persons with disabilities when the elevators are inoperable and the elevators provided cannot be used independently), in violation of Section 504 and Title II, at 34 C.F.R. §§ 104.21-104.23, and 28 C.F.R. §§ 35.149-35.151, respectively.

Allegation

The complainant alleged that the UNT DCOL does not provide access to classes located above ground level to mobility-impaired individuals when the building elevator and the freight elevator are not operational.

Facts and Analysis

The Director of System and External Relations (Maintenance Director) explained that the UNT DCOL's building has three elevators, two of which (one passenger elevator and one freight elevator) can reach the floors where the UNT DCOL is located. The Maintenance Director provided OCR with a description of the process used at the building where the UNT DCOL is located for an individual who has mobility impairments to gain access to classes located above the ground floor if the main passenger elevator is not working. First, the individual is supposed to call the building's security desk and indicate which floor the person is on. Next, maintenance will be called on the radio and the maintenance person who is closest to the individual will take them to the freight elevator which can take the individual to any floor in the building. The Maintenance Director informed OCR that this system has been used with other students in the years before the UNT DCOL began operations in 2015 and the process worked well. The UNT DCOL provided OCR with a copy of a September 15, 2015 e-mail from the Maintenance Director to the complainant which included a description of the process described above.

The Maintenance Director added that the security desk is in the lobby in plain sight of both the front door and the elevators. If an elevator in the UNT DCOL's building is not working, security personnel posts temporary signs near the non-functional elevator which direct individuals to contact the Security desk. Those temporary signs are placed on all of the floors by the elevator that is not working and not just on the ground level. The Maintenance Director does not recall a situation where the passenger elevators and the freight elevator were all not working at the same time. OCR's review of the UNT DCOL's elevator maintenance records for the fall 2015 semester confirm the statement from the Maintenance Director and show that, other than routine maintenance, the passenger elevators functioned normally.

OCR's investigation did not show that the complainant was harmed by the elevators being non-functional. According to the complainant, she missed about 20 minutes of one Contracts class when the passenger elevator was not working on one occasion and she had to wait to receive assistance to the freight elevator. The complainant admits that she was not penalized for being tardy.

Conclusion

The UNT DCOL has an established procedure in place to assist individuals with mobility impairments reach higher level floors if one of the passenger elevators is not working and the complainant was made aware of this policy on September 15, 2015. OCR's investigation did not uncover any evidence to show that the complainant or any individual with mobility impairments was unable to reach the floors where the Recipient is located during the fall 2015 semester or that the complainant was harmed when she missed part of one class due to the

passenger elevator not working on one occasion. However, OCR's investigation did uncover a compliance concern because there is no evidence to indicate that the Recipient makes its elevator policy available to the public so visitors with disabilities to the building would be aware of a procedure by which they could access higher level floors if the passenger elevators are not working. Thus, individuals with disabilities are excluded from participation in events at the facility when any of the passenger elevators are inoperable or being repaired because those individuals would not be made aware that a system is in place to assist them in reaching higher level floors, but individuals without mobility impairments would have the option of using stairs to reach events on higher floors. Thus, OCR has concluded that there is sufficient evidence to support a finding of a violation for issue #3.

As stated above, OCR has determined that there is sufficient evidence to support a finding of a violation of Section 504 and Title II for issues #1 and #3, but not issue #2. On August 15, 2018, the UNT DCOL voluntarily submitted the enclosed Agreement to resolve the compliance issues identified during OCR's investigation. OCR has determined that the Agreement is aligned with the complaint allegations and the information obtained during the investigation and is consistent with applicable law and regulations.

The Agreement, when fully implemented, resolves the complaint. Specifically, the Agreement requires the UNT DCOL to take the following actions: (1) allow the complainant to re-take any of her fall 2015 semester classes, at no expense, and then re-calculate the complainant's semester grade point average and cumulative grade point average; (2) remove the complainant from the status of Academic Probation and Academic Dismissal; (3) hold a new accommodation meeting with the complainant to discuss what accommodations, if any, she requires to continue her studies at the UNT DCOL; (4) provide training to appropriate personnel about the Recipient's obligations under Section 504 and Title II to provide accommodations to individuals with disabilities; and (5) post an Elevator Accessibility Policy which lists the person who should be contacted if the elevator in the UNT DCOL's building is not working properly and describes the procedure that will be followed to provide temporary access through the freight elevator until the main passenger elevator is fixed.

OCR will monitor the implementation of the Agreement by the UNT DCOL to determine whether the commitments made by the UNT DCOL have been implemented consistent with the terms of the Agreement and will notify you when the provisions of the Agreement have been satisfied. Although verification of the remedial actions taken by the Recipient can be accomplished by a review of reports and other documentation provided by Recipient, in some instances, a future monitoring site visit may be required to verify actions taken by the Recipient. If the UNT DCOL fails to implement the Agreement, OCR may seek compliance with the federal civil rights laws through any means authorized by law, including the enforcement of the specific terms of the Agreement.

This concludes OCR's investigation of the complaint. These findings should not be interpreted to address the UNT DCOL'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. 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 UNT DCOL 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.

If you have any questions, please feel free to contact the attorney-investigator, Richard Cho, by telephone at (214) 661-9631 or by e-mail at: Richard.Cho@ed.gov. You may also contact team leader Adriane Martin by telephone at (214) 661-9678 or by e-mail at: Adriane.Martin@ed.gov.

Sincerely,

Taylor D. August
Regional Director
Office for Civil Rights
Dallas Office

Enclosure: Resolution Agreement