



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION VI
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TEXAS

July 31, 2018

Re: OCR Docket #06172110

Dr. Ray L. Belton, President-Chancellor
Southern University and A&M College
P.O. BOX 9374
Baton Rouge, LA 70813

Via first class mail and e-mail (ray_belton@sus.edu)

Dear Dr. Belton,

The U.S. Department of Education, Office for Civil Rights (OCR), Dallas Office, has completed its investigation of the above-referenced complaint which was received in our office on February 14, 2017, and filed against the Southern University and A&M College (Recipient or SUAM), in Baton Rouge, Louisiana. The Complainant alleged that the SUAM discriminated against XX---phrase redacted---XX on the basis of disability.

OCR is responsible for determining whether entities that receive or benefit from Federal financial assistance from the Department, or an agency that has delegated investigative authority to the Department, are in compliance with Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794 (amended 1992), and its implementing regulations at 34 C.F.R. Part 104, which prohibits discrimination on the basis of disability. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12132, and its implementing regulations at 28 C.F.R. Part 35. Under Title II, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against public entities. The SUAM is a recipient of Federal financial assistance from the Department and is a public entity. Therefore, OCR has jurisdictional authority to process this complaint for resolution under Section 504 and Title II.

OCR investigated the following legal issue:

Whether the SUAM 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 during the fall 2016 semester, in violation of Section 504, at 34 C.F.R. § 104.44, and Title II, at 28 C.F.R. § 35.130.

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.

In reaching our compliance determination, OCR reviewed documents provided by the SUAM, as well as information obtained during OCR's interviews with SUAM staff. In addition, OCR interviewed the Complainant and attempted to obtain documents from XX---phrase redacted to end of sentence---XX. Based on our review and analysis of the information obtained during this investigation, OCR was unable to conclude by a preponderance of the evidence the SUAM failed to provide the Complainant with necessary academic adjustments in violation of Section 504 and Title II, as alleged. However, OCR identified compliance concerns regarding the SUAM's Section 504 and Title II grievance procedures, as described more fully below.

Legal Standard:

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 XX---phrase redacted---XX 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, to establish a violation of Section 504/Title II in this case, OCR must first determine that 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. 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 of whether a student has provided documentation sufficient to evidence the existence of a disability requiring an academic adjustment or auxiliary aid must be decided on a case-by-case basis using a standard of reasonableness.

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. However, academic requirements that a recipient can demonstrate are essential to instruction being pursued by students or directly related to a licensing requirement will not be regarded as discriminatory. Consequently, a recipient is not required to provide an academic adjustment that it can demonstrate would fundamentally alter or lower essential academic requirements.

The Section 504 regulation at 34 C.F.R. § 104.7 states, “A recipient that employs fifteen or more persons shall 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 this part.” Title II, at 28 C.F.R. § 35.107(b), provides that a public entity “that employs 50 or more persons shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by this part.”

Findings of Fact:

The evidence gathered by OCR indicates the Complainant was admitted to the SUAM’s XX---phrase redacted---XX, and was enrolled at the SUAM through the fall 2016 semester. Further, documents obtained by OCR indicate the Complainant registered with the SUAM’s Office of Disability Services (ODS) in XX--- phrase redacted to end of sentence---XX. On the ODS registration form, the Complainant’s disabilities are identified as XX--- phrase redacted to end of sentence---XX. Documentation submitted to the ODS by the Complainant indicated the Complainant’s physician (Physician) XX--- phrase redacted to end of sentence---XX. On an ODS’ Certification of Disability form dated XX---phrase redacted---XX, the Physician identified several functional limitations caused by the Complainant’s disabilities.¹ Based on the SUAM’s process for providing academic adjustments, the SUAM drafted letters to notify the Complainant’s XX---phrase redacted---XX professors that XX---phrase redacted---XX was registered with the ODS. On or around XX---phrase redacted---XX, the Complainant was approved to receive the following three academic accommodations: XX--- phrase redacted to end of sentence---XX.

On or around XX---phrase redacted---XX, ODS staff drafted a letter addressed to the Complainant’s XX---phrase redacted---XX professors stating the Complainant was registered with the ODS and was approved to receive the aforementioned accommodations. On or around XX---phrase redacted---XX, ODS staff updated the Complainant’s accommodation letter to include a mentoring class the Complainant added XX--- phrase redacted to end of sentence---XX. According to information provided by the SUAM, ODS staff provided accommodation letters to the Complainant providing XX---phrase redacted---XX the discretion to decide whether to distribute the letters to XX---phrase redacted---XX professors.

Records obtained by OCR indicate during the fall 2016 semester the Complainant was enrolled in the following classes: XX--- phrase redacted to end of sentence---XX. In its data requests,

¹ This information was illegible.

OCR asked the SUAM to provide correspondence between the Complainant and SUAM staff regarding XX---phrase redacted---XX accommodations. However, the SUAM did not provide OCR with any correspondence between the Complainant and XX---phrase redacted---XX professors regarding XX---phrase redacted---XX accommodations.

The Complainant informed OCR that XX---phrase redacted---XX filed a grievance with the SUAM regarding the alleged failure of XX---phrase redacted---XX professors to provide accommodations, but XX---phrase redacted---XX did not receive a response to the grievance. OCR reviewed the SUAM's ADA Discrimination Grievance Procedures (grievance procedures). According to the grievance procedures, SUAM students who believe they have been, "denied reasonable accommodations" may file a complaint with the SUAM's Americans with Disabilities Act (ADA) Coordinator. The procedures further list the ADA Coordinators contact information. Once a grievance is filed, the procedures indicate "[a]n investigation, as may be appropriate, shall follow the filing of the complaint. The investigation shall be conducted and, barring extenuating circumstance, concluded within 60 days of filing . . ." Further, the procedures state a written determination "as to the validity of the complaint and . . .the resolution" shall be issued by the ADA Coordinator.

Records obtained by OCR indicate that on XX---phrase redacted---XX the Complainant e-mailed the ADA Coordinator to say XX---phrase redacted---XX professor failed to provide XX---phrase redacted---XX with "reasonable accommodations." In XX---phrase redacted---XX grievance e-mail, the Complainant also stated that when XX---phrase redacted---XX complained to the Office of Disability Services XX---phrase redacted---XX was told "professors could not be forced to provide me with accommodations." On January 19, 2017, the ADA Coordinator e-mailed the Complainant confirming receipt of XX---phrase redacted---XX grievance and requesting a copy of the Complainant's accommodation request, the names of the professors who allegedly failed to provide accommodations, and the Complainant's contact information. The Complainant responded to the ADA Coordinator's e-mail on January 30, 2017, with the information requested. Documents provided to OCR indicate the ADA Coordinator responded to the Complainant's grievance by requesting the ODS Coordinator provide information about the Complainant's accommodation request. The ODS Coordinator provided several documents pertaining to the Complainant in response. Next, in early March 2017, the ADA Coordinator e-mailed the Complainant's XX---phrase redacted---XX professors requesting records and inquiring as to whether the professors provided the Complainant with accommodations in their classes. Most of the Complainant's professors responded to the request; however, the Biology Professor did not respond. The SUAM provided no documentation regarding the outcome of the ADA Coordinator's investigation of the Complainant's grievance despite OCR requesting said information.

In fall 2017, OCR interviewed SUAM staff regarding the issue under investigation. An interview with the SUAM's ODS Coordinator provided insight into the ODS's accommodation approval process, and what each of the Complainant's XX--- phrase redacted to end of sentence---XX accommodations entailed. With regard to the approval process, the ODS Coordinator stated that after a student's request for academic accommodations is approved, XX---phrase redacted---XX provides the student with a letter for each professor listed on the student's class schedule for that semester. With regard to the Complainant, the ODS Coordinator stated the Complainant picked

up XX---phrase redacted---XX accommodation letters on XX--- phrase redacted to end of sentence---XX. With regard to what the Complainant’s accommodations entailed, the ODS Coordinator stated the advisement accommodation is included to ensure the student remains in contact with an academic advisor who can suggest coursework that would align with any limitations caused by the student’s disability. With regard to the technology accommodation, the ODS Coordinator stated the accommodation was included to enable the Complainant to submit assignments electronically if XX---phrase redacted---XX was absent due to XX---phrase redacted---XX disability. Regarding the absence accommodation, the ODS Coordinator stated the accommodation provides the Complainant with leniency when XX---phrase redacted---XX is absent due to XX---phrase redacted---XX disability. According to the ODS Coordinator, to benefit from the accommodation, the Complainant had to notify XX---phrase redacted---XX professors and the ODS Coordinator of XX---phrase redacted---XX absence, and then the professors would give the Complainant the opportunity to make up or electronically submit any classwork or exams missed during XX---phrase redacted---XX absence. According to the ODS Coordinator, neither the Complainant nor XX---phrase redacted---XX professors contacted the ODS about any issues regarding Complainant’s accommodations.

OCR also interviewed one of the SUAM’s ADA Coordinators (ADA Coordinator). The ADA Coordinator stated that in January 2017, XX---phrase redacted---XX received a grievance from the Complainant indicating that the Biology Professor failed to provide XX---phrase redacted---XX with XX---phrase redacted---XX approved accommodations. Upon hearing this, the ADA Coordinator stated XX---phrase redacted---XX contacted the Biology Professor but noted XX---phrase redacted---XX did not respond to XX---phrase redacted---XX request for information. Further, the ADA Coordinator indicated XX---phrase redacted---XX was not aware of anyone at the SUAM taking any additional steps to address the Complainant’s grievance. OCR then asked the ADA Coordinator whether XX---phrase redacted---XX could determine whether the Complainant’s Biology Professor provided XX---phrase redacted---XX with accommodations based on XX---phrase redacted---XX investigation. The ADA Coordinator responded, “No.”

OCR also interviewed the Complainant’s XX---phrase redacted---XX professors. Regarding whether the professors received an accommodation letter from the Complainant, the Complainant’s English Professor (English Professor) and the Complainant’s Math Professor (Math Professor) stated they received the Complainant’s accommodation letter. With regard to implementation of the Complainant’s accommodations, the English Professor indicated XX---phrase redacted---XX granted the Complainant’s request to receive extra time to complete XX---phrase redacted---XX final exam. Further, the English Professor indicated that on the XX---phrase redacted---XX occasions the Complainant was absent, the English Professor allowed the Complainant to make up assignments XX---phrase redacted---XX missed. The Math Professor stated XX---phrase redacted---XX provided the Complainant with XX---phrase redacted---XX accommodations, and did not receive any complaints from the Complainant about the accommodations during the XX---phrase redacted---XX semester. The Complainant’s Government Professor (Government Professor) stated XX---phrase redacted---XX did not receive the Complainant’s accommodation letter, but nevertheless accommodated the Complainant’s request to makeup the final course exam by allowing the Complainant to complete a take-home exam.

During an OCR interview, the Biology Professor stated XX---phrase redacted---XX could not recall whether XX---phrase redacted---XX received the Complainant's accommodation letter, but doubted the Complainant ever asked XX---phrase redacted---XX to accommodate XX---phrase redacted to end of sentence---XX. Further, the Biology Professor stated the Complainant took all but one course exam in class at the scheduled exam time. The Biology Professor indicated that although the Complainant's attendance grade was low due to XX---phrase redacted---XX frequent absences, the Complainant only missed one exam during XX---phrase redacted---XX absences from class. The Biology Professor contends that the Complainant was not negatively affected by XX---phrase redacted---XX class policies which XX---phrase redacted---XX described as lenient for all students. Specifically, the Biology Professor stated XX---phrase redacted---XX allowed each student one opportunity to arrive late, and one opportunity to be absent without penalty. Further, the Biology Professor stated XX---phrase redacted---XX offered all students in XX---phrase redacted---XX class the opportunity to drop their lowest exam grade. The Biology Professor's fall 2016 syllabus corroborates XX---phrase redacted---XX statements about dropping each student's lowest test grade, and indicates makeup tests were allowed if there were extenuating circumstances including medical exigencies. However, the Biology Professor's syllabus did not state whether students would be allowed one free absence and late arrival.

Following interviews with SUAM staff, OCR contacted the Complainant to interview XX---phrase redacted---XX and offer XX---phrase redacted---XX the opportunity to provide OCR with evidence corroborating XX---phrase redacted---XX allegation. However, the Complainant did not respond XX---phrase redacted to end of sentence---XX.

Analysis and Conclusions:

With regard to step one of the aforementioned legal standard, based on a review of documentation provided by the SUAM, documentation provided by the Complainant, and all other information available to OCR, OCR has determined that the SUAM admitted the Complainant to the undergraduate program XX---phrase redacted---XX, and that XX---phrase redacted---XX was enrolled at the SUAM throughout the fall 2016 semester. The evidence also shows the Physician diagnosed XX---phrase redacted---XX and provided documentation regarding these diagnoses to the SUAM XX--- phrase redacted to end of sentence---XX. Accordingly, OCR finds that the Complainant is a qualified person with a disability.

With regard to step two of the aforementioned legal standard, based on a review of documentation provided by the SUAM, documentation provided by the Complainant, and all other information available to OCR, OCR has determined that the Complainant registered with the ODS in XX---phrase redacted---XX, and remained registered with that office throughout the relevant time period. Based on the aforementioned evidence, OCR has determined that the Complainant provided the SUAM with notice of XX---phrase redacted---XX belief that XX---phrase redacted---XX needed accommodations.

With regard to step three, based on a review of the evidence OCR has determined that ODS requires SUAM students seeking accommodations to submit documentation certifying that they have a disability. The evidence provided by the SUAM shows that XX---phrase redacted---XX,

the Physician completed the ODS' Certification of Disability form on which XX---phrase redacted---XX described the Complainant's diagnoses and how they cause several functional limitations. Consequently, OCR has determined the Complainant provided the SUAM with documentation sufficient to show that XX---phrase redacted---XX requested accommodations were necessary.

With regard to step four, based on a review of the evidence OCR has determined the professors to which the Complainant provided XX---phrase redacted---XX accommodation letter, or made an accommodation request, stated they provided the Complainant with accommodations. The Biology Professor was the only professor who indicated XX---phrase redacted---XX did not provide the Complainant with accommodations. The Biology Professor indicated XX---phrase redacted---XX was unsure whether the Complainant provided him with an accommodation letter, and doubted XX---phrase redacted---XX asked XX---phrase redacted---XX for accommodations. The documentary evidence obtained by OCR does not indicate whether the Complainant provided the Biology Professor with XX---phrase redacted---XX accommodation letter. OCR provided the Complainant the opportunity to provide evidence to corroborate the allegation that XX---phrase redacted---XX professors failed to provide XX---phrase redacted---XX with accommodations. However, the Complainant did not respond.

When there is a significant conflict in the evidence (i.e., between the complainant's assertions and the recipient's assertions) 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 specific issue investigated. For this complaint, based on a careful review of the totality of information available to OCR, OCR has determined that there is insufficient evidence to establish that SUAM professors failed to provide the Complainant with academic adjustments upon receiving notice of the accommodations during the fall 2016 semester.

Although OCR did not specifically open an issue in this investigation regarding the SUAM's grievance procedures, OCR identified compliance concerns regarding the SUAM's grievance procedures during the investigation. As stated previously, a recipient employing more than fifteen people, such as the SUAM, must adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints of discrimination under Section 504. Further, the SUAM is required under Title II to "adopt and publish" grievance procedures providing for prompt and equitable resolution of complaints alleging action prohibited by Title II.

In this case, OCR found that the SUAM had written grievance procedures in place that were consistent with Section 504 and Title II. However, in practice, the SUAM did not follow the grievance procedures and failed to provide the Complainant a process that incorporated appropriate due process or prompt and equitable resolution of XX---phrase redacted---XX complaint. Specifically, information from both the SUAM and the Complainant reflects that the SUAM failed to properly investigate or respond to the Complainant's ADA grievance regarding the Biology Professor's alleged failure to provide XX---phrase redacted---XX with accommodations which was filed in January 2017. Although the ADA Coordinator made an initial inquiry into the complaint, no steps were taken to get information from the Biology

Professor after XX---phrase redacted---XX failed to respond to the inquiry, and there is no evidence that the SUAM made a determination, formal or informal, regarding the Complainant's accommodation grievance. OCR determined that the failure to adequately respond to the Complainant's grievance establishes, by a preponderance of the evidence, a lack of compliance by the SUAM with Section 504 and Title II in that it demonstrates that the SUAM has not *adopted* appropriate grievance procedures.

Conclusion

Based on the aforementioned information, OCR finds that there is insufficient evidence to determine that the SUAM failed to provide the Complainant with academic adjustments. However, OCR found that the SUAM failed to adopt appropriate grievance procedures as required by Section 504 at 34 C.F.R. § 104.7(b) and Title II at 28 C.F.R. § 35.107. The SUAM committed to a written resolution agreement (Agreement) (copy enclosed) signed on June 26, 2018, which addresses the aforementioned compliance concerns. OCR has determined that this Agreement, upon full implementation, will satisfactorily resolve the compliance concerns. The provisions of the Agreement are aligned with the information obtained during the investigation and are consistent with applicable regulations.

Under the terms of the enclosed Agreement, the SUAM is required to provide training to all Disability Services, and Americans with Disabilities Act compliance staff, professors, and faculty regarding the SUAM's obligations under Section 504 and Title II. The training must include information about the SUAM's policies and procedures related to requesting and implementing accommodation requests, and investigating disability based discrimination grievances.

OCR will monitor the SUAM's progress in the implementation of the Agreement. If the SUAM fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R §§ 100.9, 100.10), or judicial proceedings to enforce the Agreement, OCR shall give the SUAM written notice of the alleged breach and a minimum of sixty (60) calendar days to cure the alleged breach.

This concludes OCR's investigation of this complaint and should not be interpreted to address the SUAM'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. A complainant may have a right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the recipient 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, it 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.

If you have any questions about this letter, you may contact Najwa-Monique Sharpe, Civil Rights Attorney, at (214) 661-9642, or by e-mail at najwa-monique.sharpe@ed.gov, or you may contact Lori Howard Bringas, Supervisory Attorney, at 214-661-9638 or by e-mail at lori.bringas@ed.gov.

Sincerely,

/s/

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