



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

1999 BRYAN STREET, SUITE 1620  
DALLAS, TEXAS 75201-6831

REGION VI  
LOUISIANA  
MISSISSIPPI  
TEXAS

August 27, 2019

**VIA MAIL**  
**VIA EMAIL (XXXX)**

Neal J. Smatresk, President  
University of North Texas  
1155 Union Circle #311277  
Denton, TX 76203

Re: OCR Complaint No. 06-17-2251

Dear President Smatresk:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, has completed its processing of the above-referenced complaint, which OCR received on July 11, 2017, and which the complainant filed against the University of North Texas (University), in Denton, Texas. The complainant alleged that the University discriminated on the basis of disability. The complainant also alleged retaliation.

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), as amended, 29 U.S.C. § 794, and its implementing regulations at 34 C.F.R. Part 104, which prohibit 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. §§ 12131 *et seq.*, 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 certain public entities. The Section 504 implementing regulation at 34 C.F.R. § 104.61 incorporates by reference the provision against retaliation under Title VI of the Civil Rights Act of 1964 and its implementing regulation at 34 C.F.R. Part 100. The Title II implementing regulation also has a provision prohibiting retaliation at 28 C.F.R. § 35.134. The University is a recipient of Federal financial assistance from the Department and is a covered public entity. Therefore, OCR has jurisdictional authority to process this complaint for resolution under Section 504 and Title II.

OCR investigated the following issues:

1. Whether the University 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 auxiliary aids from XXXX XXXX to XXXX

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

XXXX,<sup>1</sup> 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 University retaliated against the complainant by XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX from XXXX XXXX to XXXX XXXX, because the complainant complained about the University’s failure to XX—to end of phrase redacted—XX, in violation of Section 504 and Title II, at 34 C.F.R. § 104.61, and 28 C.F.R. § 35.134, respectively; and
3. Whether the University has failed to adopt grievance procedures that provide for the prompt and equitable resolution of complaints alleging disability discrimination, in violation of Section 504, at 34 C.F.R. § 104.7(b), and Title II, at 28 C.F.R. § 35.107(b).

During this investigation, OCR reviewed information that the complainant and the University submitted. OCR also interviewed the complainant. OCR provided the complainant the opportunity to rebut the University’s position.

I. Issues 1 and 2 (Alleged Failure to Provide Auxiliary Aids and Alleged Retaliation):

The complainant was enrolled in XXXX XXXX XXXX program in XXXX XXXX at the University during the relevant time period. The evidence that OCR has reviewed to date shows that the University deemed the complainant to be a qualified person with a disability who needed academic adjustments and auxiliary aids—including XXXX XXXX XXXX XXXX XXXX—during the time period in question.

The complainant alleged the following specific deficiencies in the University’s provision of approved auxiliary aids to her from XXXX XXXX to XXXX XXXX:

- In XXXX XXXX (XXXX XXXX XXXX XXXX) during XXXX XXXX, she received XXXX XXXX late.
- In XXXX XXXX (XXXX XXXX) during XXXX XXXX, she received a XXXX late and never received XXXX XXXX XXXX XXXX for the course.
- In XXXX XXXX (XXXX XXXX) during XXXX XXXX, she did not receive XXXX XXXX XXXX XXXX and received other XXXX XXXX late.
- In XXXX XXXX (XXXX XXXX) during XXXX XXXX, she received XXXX XXXX late.

OCR’s *Case Processing Manual* (CPM) section 108(h)(ii) provides that OCR will dismiss a complaint when the complainant has filed the same or similar allegations based on the same operative facts against the same recipient through a recipient’s internal grievance procedures, all allegations were investigated, and there was a comparable resolution process pursuant to legal standards that are acceptable to OCR. The evidence indicates that the complainant filed an internal grievance regarding her receipt of accommodations in XXXX XXXX during XXXX XXXX on XXXX XXXX, XXXX, which made allegations similar to the allegations in this OCR complaint.

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<sup>1</sup> OCR’s notification letter identified the relevant timeframe as the XXXX school year. During the course of the investigation, OCR expanded the scope of the investigation through the end of XXXX XXXX.

The documentation that OCR reviewed indicates that University’s investigation of the complainant’s allegations was prompt and equitable. The investigative report shows that the University interviewed relevant witnesses and the complainant and reviewed documentation regarding the complainant’s allegations. According to the investigative report, the University concluded that XX—to end of sentence redacted—XX. The University’s investigation took approximately XXXX XXXX XXXX XXXX, which OCR cannot conclude was untimely under the circumstances. The documentation indicates that the University notified both parties of the outcome of the investigation.

For these reasons, OCR finds that the University investigated the complainant’s internal complaint as to XXXX XXXX during XXXX XXXX—which made the same or similar allegations based on the same operative facts as her OCR complaint—and there was a comparable resolution process pursuant to legal standards that are acceptable to OCR. OCR therefore is dismissing the complainant’s allegation as to XXXX XXXX during XXXX XXXX pursuant to CPM section 108(h)(ii) and will take no further action regarding that portion of Issue 1. This dismissal does not apply to the complainant’s allegations regarding the other courses relevant to Issue 1: XXXX XXXX during XXXX XXXX, XXXX XXXX during XXXX XXXX, and XXXX XXXX during XXXX XXXX.

OCR reviewed contemporaneous documentation indicating that the complainant repeatedly raised concerns with the University regarding her XXXX XXXX XXXX XXXX during XXXX XXXX and XXXX XXXX. Additionally, OCR reviewed correspondence from XXXX personnel admitting that XX—to end of sentence redacted—XX.

As to the complainant’s retaliation allegation underlying Issue 2, the evidence that OCR has reviewed to date indicates that XX—to end of sentence redacted—XX. The evidence shows that XX—to end of sentence redacted—XX.

Prior to the completion of OCR’s investigation as to Issues 1 and 2, the University informed OCR that it was interested in resolving the complaint. Section 302 of OCR’s CPM provides that a complaint may be resolved at any time when, prior to the conclusion of an investigation, the recipient expresses an interest in resolving it. The provisions of the resulting resolution agreement will be aligned with the complaint allegations or the information obtained during the investigation and will be consistent with applicable regulations. OCR approved the University’s request to resolve the complaint as to Issues 1 and 2 prior to the conclusion of the investigation, except as to the allegations that OCR is dismissing pursuant to CPM section 108(h)(ii) as described above.

The University submitted the enclosed Resolution Agreement (Agreement) to resolve this complaint; the University’s representative signed the Agreement on August 26, 2019. OCR has determined the provisions of the Agreement are aligned with the complaint allegations and appropriately resolves them. Further, OCR accepts the Agreement as an assurance the University will fulfill its obligations under Section 504 and Title II with respect to this complaint. The dates for implementation and specific actions are detailed in the enclosed Agreement. OCR will actively monitor the University’s implementation of the Agreement. Please be advised that if the University fails to adhere to the actions outlined in the Agreement, OCR will immediately resume its compliance efforts.

II. Issue 3 (Alleged Failure to Adopt Appropriate Grievance Procedures):

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 it is more likely than not that unlawful discrimination occurred). 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. Based on OCR’s careful review and analysis of the information obtained, we have determined that there is insufficient evidence to support a finding of noncompliance as to Issue 3. The basis for this determination is set forth below.

*A. Legal Standard:*

The Section 504 implementing regulation, at 34 C.F.R. § 104.7, requires that a recipient that employs 15 or more persons adopt grievance procedures that incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints alleging disability discrimination. The Title II implementing regulation, at 28 C.F.R. § 35.107, states that a public entity that employs 50 or more persons must adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging disability discrimination.

*B. Findings of Fact:*

The complainant alleged that the University’s grievance process was insufficient because she never received notice of the outcome of the University investigation of her XXXX internal grievance.<sup>2</sup>

OCR reviewed the University’s relevant grievance procedures that were in place in XXXX (Former Grievance Procedures) and its current relevant grievance procedures (Current Grievance Procedures). The Former Grievance Procedures are entitled “16.006 Information and Procedural Guidelines for Pursuing and Resolving a Complaint of Discrimination, Including Sexual Harassment.” When, as here, the alleged offender is a XXXX XXXX XXXX, the Former Grievance Procedures require that “[t]he alleged victim and alleged offender (after receiving notification) are kept abreast of the stage of the investigation.” The Former Grievance Procedures also mandate preparation of “a written report setting out the findings of the investigation.” The Current Grievance Procedures—entitled “Resolution Procedures for Complaints of Discrimination, Harassment, or Retaliation Filed with the Office of Equal Opportunity”—state, “Upon completion of the investigation, the Complainant and Respondent will receive written notification of the Investigatory Report which includes the determination by the investigator as to whether the University Policy at issue was violated.”

OCR reviewed an email dated XXXX XXXX, XXXX, from the XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX to the complainant, attaching the closure letter regarding the internal grievance she filed on XXXX XXXX, XXXX. OCR also reviewed the closure letters and

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<sup>2</sup> The complainant also alleged that the University’s investigation a grievance that she filed in XXXX—which concluded on XXXX XXXX, XXXX—was not sufficient. However, that allegation is outside the scope of this investigation. OCR therefore looks only at the complainant’s XXXX grievance.

enclosed investigative report addressed to the complainant and the XXXX, which explained the outcome of the investigation.

*C. Analysis:*

The evidence shows that on XXXX XXXX, XXXX, the University notified the complainant and the XXXX of the outcome of her internal grievance. The grievance procedures in place at the time of the internal grievance (i.e., the Former Grievance Procedures) required the University to keep both parties apprised of the “stage of the investigation” and required creation of an investigative report. The Current Grievance Procedures state that both parties must receive notice of the outcome of the investigation.

Although the Former Grievance Procedures did not explicitly require parties to receive notice of the outcome of an investigation, they required the University to keep the parties informed about the investigation. Moreover, the evidence shows that—regardless of the requirements of the Former Grievance Procedures—the University in fact provided both the complainant and the XXXX with notice of the outcome of its investigation of the complainant’s grievance, and the Current Grievance Procedures remedy any deficiency from the Former Grievance Procedures on this point.

OCR cannot conclude that the University has failed to adopt appropriate grievance procedures as to providing notice of the outcome of the investigation. Accordingly, OCR finds that the evidence is not sufficient to substantiate that the allegations underlying Issue 3 of this investigation.

III. Conclusion:

In conclusion, based on the above findings of fact, and under a preponderance of evidence standard, OCR concludes that there is insufficient evidence to find that the University violated Section 504 or Title II as alleged with respect to Issue 3. OCR therefore will take no further action regarding Issue 3. OCR has approved the University’s request to resolve the complaint prior to the conclusion of the investigation as to Issues 1 and 2.

This determination 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. 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 a right to file a private suit in Federal court whether or not OCR finds a violation.

Please be advised that a recipient 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.

The complainant has a right to appeal OCR’s determination within 60 calendar days of the date indicated on this letter. In the appeal, the complainant must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so

may result in dismissal of the appeal. If the complainant appeals OCR’s determination, OCR will forward a copy of the appeal form or written statement to the recipient. The recipient has the option to submit to OCR a response to the appeal. The recipient must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

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 or concerns regarding this matter, you may contact the attorney investigator assigned to this case, Katherine Fearn, by telephone at (214) 661-9653 or by email at [katherine.fearn@ed.gov](mailto:katherine.fearn@ed.gov), or you may contact me at (214) 661-9600.

Sincerely,

/s/

Paul Coxe  
Supervisory Attorney/Team Leader  
Office for Civil Rights  
Dallas Office

Enclosure

cc: XXXX XXXX, XXXX, XXXX XXXX XXXX  
(XXXX)