



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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DALLAS, TX 75201-6810

REGION VI
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TEXAS

June 5, 2018

VIA MAIL
VIA EMAIL (XXXX)

F. King Alexander, President
Louisiana State University
Office of the President
3810 West Lakeshore Drive
Baton Rouge, LA 70808

Re: OCR Complaint No. 06-17-2326

Dear President Alexander:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, has completed its investigation of the above-referenced complaint, which OCR received on September 20, 2017, and which the complainant filed against Louisiana State University (University), in Baton Rouge, Louisiana. The complainant alleged that the University discriminated against her 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), 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 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 academic adjustments and/or auxiliary aids (i.e., XX—to end of parenthetical redacted—XX) for 2017-2018 school year, in violation of Section 504, at 34 C.F.R. § 104.44, and Title II, at 28 C.F.R. § 35.130; and

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

2. Whether the University discriminated against the complainant on the basis of disability by failing to take appropriate steps to ensure that communications with the complainant were as effective as communications with others during the 2017-2018 school year by failing to (1) furnish appropriate auxiliary aids and services (i.e., XXXX XXXX) where necessary to afford the complainant an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of the University, and (2) give primary consideration to the complainant's request for XXXX XXXX, in violation of Section 504, at 34 C.F.R. § 104.4, and Title II, at 28 C.F.R. § 35.160.

During this investigation, OCR reviewed information that the complainant and the University submitted. OCR also conducted interviews with relevant witnesses, including University personnel and the complainant. OCR provided the complainant the opportunity to rebut the University's position; however, the information provided did not alter OCR's determination.

I. Issue 1 (Alleged Failure to Provide Academic Adjustments and/or Auxiliary Aids):

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 1. The basis for this determination is set forth below.

A. *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, 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 University that the complainant believed she needed academic adjustments; (3) that the requested academic adjustments were necessary; and either (4) that the University 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.

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.

In addition, 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.

B. Findings of Fact:

The complainant alleged that the University discriminated against her based on her disabilities (XXXX and XXXX XXXX) when it denied her requested accommodations of XX—to end of phrase redacted—XX, prior to her attendance at the University for the XXXX XXXX semester. The complainant alleged that she provided appropriate documentation of her needs for those accommodations but that the University restricted her to a pre-set list of accommodations.

OCR reviewed the University’s Disability Services Handbook, which states that a student is eligible for accommodations if he or she “is qualified for the program[s],” “is a person with a disability,” “has identified himself/herself to the University through DS,” and “has presented appropriate documentation . . . and requires accommodation(s).”

The Handbook’s section for XXXX includes the following “documentation guidelines”:

- The documentation must be comprehensive and current (within three (3) years prior to the students [sic] request for accommodation(s).)
- Professionals conducting assessments, rendering diagnoses of specific disabilities, and making recommendations for appropriate accommodation(s) must be qualified to do so (e.g., XX—to end of parenthetical redacted—XX).
- The documentation must identify an unequivocal diagnosis of a specific disability.
- The documentation must discuss functional limitations caused by the disability in an academic environment or the environment in which the student is requesting accommodation(s).
- The documentation should recommend accommodation(s) to compensate for the identified functional limitations.
- The documentation should list medication, dosages, and existing (not possible) side effects.

The XXXX section of the Handbook states, “Accommodations are decided on a case-by-case basis and may include, but are not limited to, the following: XX—to end of sentence redacted—XX.”

The Handbook section for students who are XXXX XXXX XXXX XXXX XXXX includes the following “documentation guidelines”:

- Documentation of a XXXX XXXX is the basis for providing accommodations.
- The documentation for a XXXX XXXX is typically an XXXX evaluation. An XXXX must be included in the documentation. An XXXX evaluation will indicate the presence of a XXXX XXXX and its scope.

This section includes the same language about accommodations being decided on a case-by-case basis as the XXXX section and sets forth the following non-exhaustive list of accommodations: XX—to end of sentence redacted—XX.

OCR reviewed letters to the complainant dated XXXX XXXX, XXXX, informing the complainant of her admission to the University and XXXX XXXX XXXX for the XXXX XXXX semester.

OCR also reviewed documentation related to the complainant’s initial request for disability-related accommodations. The complainant’s request included a documentation request form (also known as a “Part I” form) dated XXXX XXXX, XXXX, and signed by a licensed clinical social worker (LCSW). The form has checked boxes indicating that the LCSW recommended the following accommodations: XX—to end of sentence redacted—XX. In her Request for Accommodations form (also known as a “Part II” form) dated XXXX XXXX, XXXX, the complainant checked the boxes for every diagnosis listed on the form, indicating that she had been diagnosed with the following disabilities: XX—to end of sentence redacted—XX. The complainant’s request forms were accompanied by additional supportive documentation regarding her XXXX and XXXX XXXX from Louisiana Rehabilitation Services (LRS), the complainant’s LCSW, the complainant’s medical doctor, and another college that the complainant attended.

OCR reviewed an email dated XXXX XXXX, XXXX, from the Assistant Director of Disability Services, who served as the complainant’s Disability Services advisor (Advisor). The email states, “Based on the documentation you submitted, you have been approved for XX—to end of sentence redacted—XX.”

Between XXXX XXXX, XXXX, and XXXX XXXX, the complainant and her parents continued to request preferred accommodations and submitted documentation, which the complainant contends supported her requests for XX—to end of sentence redacted—XX. The complainant eventually appealed the University’s final determination regarding her requests. The University responded to the complainant that she was approved for the accommodations for which she submitted appropriate supporting documentation and ultimately offered to administer and pay for testing, the results of which could substantiate the complainant’s preferred services that are at issue in this OCR complaint.

On XXXX XXXX, XXXX, the Associate Vice President and Dean of Students (AVP) emailed the complainant to summarize Disability Services' determinations regarding her accommodations. As to XX—to end of phrase redacted—XX, the AVP wrote,

DS has approved XXXX XXXX XXXX XXXX based on the information regarding your XXXX diagnosis provided by [your doctor]. In order to consider XXXX XXXX, LSU would require a full XXXX evaluation for XXXX and/or a XXXX XXXX. LSU has offered to pay for this evaluation at LSU's XXXX XXXX and the LSU XXXX XXXX XXXX XXXX for the XXXX.

Regarding the complainant's request for "XXXX XXXX XXXX XXXX," the AVP wrote, "Not approved. The XXXX you submitted does not support the need for XXXX. LSU has offered to pay for an XXXX by a licensed XXXX." Finally, as to XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX, the AVP wrote, "Not approved. There is insufficient documentation to support this."

The complainant emailed the AVP, the Advisor, the Director, and the Vice President for Student Affairs on XXXX XXXX, XXXX, referencing sending the Director her Section 504 plans and information about her ACT and GED accommodations on XXXX XXXX, XXXX. On XXXX XXXX, XXXX, the AVP emailed the complainant and stated that the testing for which the University offered to pay could begin "as soon as possible."

The complainant emailed the Vice President for Student Affairs on XXXX XXXX, XXXX, requesting reconsideration of Disability Services' decision to deny her "preferred accommodations" and require her to undergo additional testing. On XXXX XXXX, XXXX, the AVP emailed the complainant to inform her that the University had received her formal grievance, and the AVP would be conducting the investigation into her allegations that the University improperly denied her requested accommodations. The AVP shared her availability for an in-person meeting so that she could get the complainant's full statement. The complainant emailed the University's Executive Vice President and Provost on XXXX XXXX, XXXX, stating that she was withdrawing from the University due to the denial of her "preferred accommodations."

The AVP issued her investigative report on XXXX XXXX, XXXX. The report indicates that the AVP reviewed documentation, attempted to interview the complainant, and interviewed the Director, the Advisor, and the Associate Director of Disability Services (Associate Director). The AVP found that Disability Services' "determination that the documentation submitted to them by [the complainant] did not support some of the accommodations requested w[as] justified."

During the AVP's interview with OCR, she explained that she first became involved in this matter in her capacity as supervisor of Disability Services, after the complainant escalated her concerns on XXXX XXXX, XXXX. According to the AVP, the University treated the complainant's XXXX XXXX, XXXX email to the Vice President for Student Affairs as a formal grievance. The AVP stated that she investigated that grievance in her capacity as the

University's EEO representative and issued a formal report. According to the AVP, the investigation showed that Disability Services personnel appropriately concluded that they needed additional documentation and offered to provide further testing, but the complainant would not agree.

During interviews with OCR, the Advisor, the Associate Director, and the Director described the University's process for considering requests for accommodations. They explained that the University first asks students to submit documentation regarding their diagnosis, history, functional limitations, and requested accommodations. The University provides forms, including the Part I and Part II forms, to facilitate this information-gathering process. After students submit their documentation, Disability Services reviews the documentation to ensure that it is complete. If the documentation is complete, students meet with their advisor to discuss how their disability impacts them and what accommodations may be helpful. Disability Services then puts a plan for accommodations in place, with the understanding that students can come back to Disability Services if they have issues.

The Advisor stated that she reviewed the documentation that the complainant submitted and met with her in person to discuss her accommodations on XXXX XXXX, XXXX. According to the Advisor, the complainant did not raise concerns about her accommodations during the meeting, even though she was aware at that time that her accommodations did not include XX—to end of sentence redacted—XX.

The Advisor, the Associate Director, and the Director explained during their interviews that Disability Services denied the complainant's request for XXXX XXXX XXXX XXXX because the documentation she submitted was based on only self-reported information, which was not sufficient to substantiate the need for XXXX XXXX. The Director explained that the complainant checked off every condition on her request form but did not provide documentation regarding all of the conditions, which was one of the reasons that Disability Services requested a XXXX evaluation. The witnesses stated that a XXXX evaluation could have provided the necessary information to support the need for the accommodations of XXXX XXXX and XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX. They explained that the section of the Part I form for requesting accommodations includes only certain accommodations, such as XXXX XXXX XXXX XXXX, because those are the most often requested accommodations, but that list is not exclusive and includes a blank where individuals can list other requested accommodations.

The Advisor, the Associate Director, and the Director informed OCR that the University denied the complainant's request for XXXX XXXX because they could not determine based on her XXXX that she required that accommodation. They explained that the University offered to pay for an updated and more comprehensive XXXX, which would have been conducted with and without the complainant XXXX XXXX XXXX XXXX. According to the Director, the University could have completed both the XXXX and the XXXX evaluation before school started. The Associate Director and the Director further explained that they understood that the complainant and her parents were seeking XXXX XXXX to provide the complainant with XXXX—not to provide XXXX XXXX XXXX XXXX. They stated that Disability Services therefore decided to provide XXXX and to allow the complainant to XXXX XXXX in lieu of

XXXX XXXX.

C. Analysis:

To establish a violation of Section 504 and Title II 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 University that the complainant believed she needed academic adjustments; (3) that the requested academic adjustments were necessary; and either (4) that the University did not provide the academic adjustments; or (5) that the academic adjustments provided were not of adequate quality and effectiveness. OCR focuses on the third element of that *prima facie* case—whether the requested academic adjustments were necessary—as that element is the crux of the complainant’s disagreement with the University.

As noted above, OCR policy provides that postsecondary students with disabilities have the obligation to provide adequate documentation evidencing the existence of their disabilities and their need for academic adjustments or auxiliary aids. Whether a student has provided sufficient documentation must be decided on a case-by-case basis using a standard of reasonableness. Generally, the student is responsible for obtaining the necessary testing; institutions of postsecondary education are typically not required to conduct or pay for an evaluation to document a student’s disability and need for an academic adjustment. Although records of accommodations provided elsewhere may help identify services that the student has used in the past, they generally are not sufficient documentation to support the need for accommodations.

The evidence shows that the complainant initially informed Disability Services that she had XX—to end of sentence redacted—XX. However, the complainant provided documentation only regarding her XXXX and her XXXX XXXX. The only evaluation information that the complainant submitted regarding her XXXX was the LCSW’s summary of self-reported information. With respect to her XXXX XXXX, the complainant submitted an XXXX completed before she started XXXX XXXX XXXX, which did not indicate the XXXX XXXX, and letters from her provider based on that XXXX. The complainant also submitted information from LRS, from another college, and related to accommodations she received in high school. OCR has determined that the complainant was a qualified person with a disability, entitled to the protections of Section 504, and she provided adequate notice to the University of her request for academic adjustments.

The Disability Services Handbook states that the University decides which accommodations to provide on a case-by-case basis. The evidence shows that the Advisor met with the complainant in XXXX XXXX to review her documentation and discuss accommodations, and the Advisor informed the complainant at that time that the University would provide a set of individualized accommodations. Disability Services personnel continued to collaborate with the complainant and her parents with respect to the complainant’s accommodations (i.e., talking with them via phone, corresponding with them via email, and reviewing additional documentation that they submitted). None of the evidence indicates that Disability Services relied on a pre-set list of accommodations. Instead, the evidence shows that Disability Services engaged in an individualized, interactive process with the complainant when deciding which accommodations were necessary.

The Handbook requires documentation regarding XXXX to be “comprehensive.” With respect to documentation regarding XXXX XXXX, the Handbook requires “[d]ocumentation of a XXXX XXXX”—“typically an XXXX evaluation,” which “will indicate the presence of XXXX XXXX and its scope.” OCR concludes that these are reasonable requirements, which Disability Services had reason to conclude that the complainant had not met. The complainant indicated that she had numerous conditions for which she had not provided documentation, preventing Disability Services personnel from coming to a comprehensive understanding of her need for the requested accommodations. The evidence shows that Disability Services informed the complainant what documentation it required to substantiate a need for the requested accommodations, including a XXXX evaluation and an updated XXXX. Disability Services even arranged for the University to conduct the necessary testing at no cost prior to the start of school. The evidence indicates that the University required a XXXX evaluation and an updated XXXX to continue working interactively with the complainant to determine whether the services at issue here were necessary. However, the complainant elected not to undergo the testing and instead chose to withdraw from the University. Based on the weight of the evidence, OCR cannot conclude that University acted unreasonably in determining that the complainant had not submitted sufficient documentation.

As the evidence does not establish the third element of the *prima facie* case above, OCR need not continue with its analysis. Accordingly, OCR concludes that there is insufficient evidence to establish that the University failed to comply with Section 504 or Title II with respect to Issue 1.

II. Issue 2 (Alleged Failure to Provide Effective Communication):

Prior to the completion of OCR’s investigation as to Issue 2, the University informed OCR that it was interested in resolving the complaint as to that issue. Section 302 of OCR’s *Case Processing Manual* 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 Issue 2 prior to the conclusion of the investigation.

The University submitted the enclosed Resolution Agreement (Agreement) to resolve this complaint; the University’s representative signed the Agreement on June 4, 2018. 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.

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 1. OCR therefore will take no further action regarding Issue 1. OCR has approved the University's request to resolve the complaint prior to the conclusion of the investigation as to Issue 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.

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, or you may contact me at (214) 661-9600.

Sincerely,

/s/

Melissa Huling Malonson
Supervisory Attorney/Team Leader
Office for Civil Rights
Dallas Office

Enclosure

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