



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VII
KANSAS
MISSOURI
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July 13, 2017

XXXXXX XXXXXX, Counsel
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XXXXXX, XXXXXX XXXXXX

Re: Docket # 07152042

Dear Ms. XXXXXX:

On January 23, 2015, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint alleging retaliation and discrimination on the basis of disability by the University of Missouri-St. Louis (University), St. Louis, Missouri. This letter is to confirm that the University has voluntarily submitted a Resolution Agreement (Agreement) to resolve this complaint.

The Complainant alleged that the University:

1. discriminated against him on the basis of his disability by failing to provide all of the academic adjustments and/or auxiliary aids and services (accommodations) the University approved through its Disability Access Services (DAS) Office for his Fall 2014 courses, including a notetaker, which caused him to fail the courses;
2. retaliated against him, because he complained to University personnel about the University's failure to provide all of his approved accommodations, by reporting him to the campus police in or around August 2014 and by falsely accusing him of threatening a DAS worker;
3. discriminated against him on the basis of his disability by failing to provide a prompt and equitable resolution to the written grievance he filed with the University in or around January 2015 regarding the University's failure to provide him all of his approved accommodations;
4. retaliated against him, because he complained to University personnel about disability discrimination, by failing to resolve in a timely manner the written grievance he filed with the University in or around January 2015; 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.

5. harassed him on the basis of his disability by placing a hold on his student account during the 2014-15 school year that prohibited him from paying for or enrolling in classes, failing to promptly address the written grievance he filed with the University in or around January 2015, and repeatedly revoking offers it made him to resolve his written grievance.

OCR is responsible for enforcing:

- Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 United States Code (U.S.C.) § 794, and its implementing regulation, 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance (FFA).
- Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131, and its implementing regulation, 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities.
- Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d, and its implementing regulation, 34 C.F.R. Part 100. Title VI prohibits discrimination on the basis of race, color, or national origin by recipients of FFA. The Title VI regulation at 34 C.F.R. § 100.7(e) prohibits recipients of FFA from intimidating or retaliating against individuals who engage in an activity protected under Title VI, including complaining of discrimination or harassment or participating in an OCR investigation. The Title VI regulation prohibiting retaliation is incorporated, by reference, into the regulation implementing Section 504 at 34 C.F.R. § 104.61. The Title II regulation at 28 C.F.R. § 35.134(a) contains a similar retaliation prohibition.

As a recipient of FFA from the Department and a public entity, the University is subject to Section 504, Title II, and the regulations prohibiting retaliation. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

To protect individuals' privacy, OCR has not used the names of the Complainant, University employees, or other parties in this letter.

Legal Standards

The regulation implementing Section 504 at 34 C.F.R. § 104.43(a) provides that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any postsecondary education program of a recipient of FFA. The regulation implementing Title II at 28 C.F.R. § 35.130(a) similarly states that a qualified individual with a disability may not be excluded from participation in, or be denied the benefits of, the services, programs, or activities of a public entity. Under 28 C.F.R. § 35.171(3)(i), OCR processes Title II complaints according to its procedures for enforcing Section 504.

In order for a student to be protected under Section 504 as an individual with a disability, the student must have a physical or mental impairment that substantially limits one or more of the student's major life activities, have a record of such an impairment, or be regarded as having such an impairment. *See* 34 C.F.R. § 104.3(j)(1). Examples of major life activities include caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. Under the Section 504 regulation at 34 C.F.R. § 104.3(l)(3), with respect to postsecondary education services, a qualified individual with a disability is a person who meets the academic and technical standards requisite to admission or participation in the postsecondary education institution's program or activity.

At the postsecondary level, recipients of FFA must make academic adjustments, or modifications, to their academic requirements as necessary to ensure that the requirements do not discriminate on the basis of disability against qualified individuals with a disability. *See* 34 C.F.R. § 104.44(a). Academic requirements that the recipient can demonstrate are essential to the instruction being pursued by a student or to any directly related licensing requirement are not regarded as discriminatory. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted. *Id.* Academic adjustments may also include a reduced course load, extended time on tests, and the provision of auxiliary aids and services. Auxiliary aids and services may include, but are not limited to, notetakers, readers, recording devices, sign language interpreters, and voice recognition and other adaptive software or hardware for computers. *See* 34 C.F.R. § 104.44(d) and 28 C.F.R. § 35.104. Educational institutions are not necessarily required to provide every academic adjustment a student with a disability wants.

Under the requirements of Section 504, a student with a disability is obligated to notify his or her postsecondary institution of the nature of the student's disability and the need for a modification, adjustment, aid, or service. Once an institution receives such notice, it has an obligation to engage the student in an interactive process concerning the student's disability and related needs. As part of this process, the institution may request that the student provide documentation, such as medical, psychological, or educational assessments, of the student's impairment and functional limitation, and may set reasonable standards as to what type of documentation is required to establish that a student has a disability protected by Section 504. Institutions are not required to conduct or pay for an evaluation to document a student's disability and need for an academic adjustment. In addition, an educational institution may require its students to follow reasonable procedures established by the institution when requesting an academic adjustment, or accommodation, due to a disability.

The Title VI regulation at 34 C.F.R. § 100.7(e) prohibits recipients of FFA such as the University from intimidating or retaliating against individuals who engage in an activity protected under Title VI, including complaining of race discrimination or participating in an OCR investigation. The Section 504 regulation at 34 C.F.R. § 104.61 incorporates by reference the Title VI regulation prohibiting retaliation, and the Title II regulation at 28 C.F.R. § 35.134(a) contains a similar retaliation prohibition.

In order to establish that the University retaliated against the Complainant, OCR would need to

find the following: 1) the Complainant engaged in an activity protected under Section 504 and/or Title II, such as asserting his right to receive accommodations based on his disability or complaining to University officials about disability discrimination; 2) the University was aware of, or had knowledge of, the protected activity; 3) the University took adverse action against the Complainant; and 4) there is a causal connection between the adverse action and the Complainant's protected activity. OCR presumes a causal connection exists between an individual's protected activity and a recipient's adverse action when there is a close proximity in time between the protected activity and the adverse action. If OCR establishes all four of the elements listed above, a *prima facie* case of retaliation exists. OCR would then examine whether the University had a legitimate, nondiscriminatory reason for its adverse action against the Complainant, or if the reason articulated by the University was actually a pretext, or cover-up, for retaliation.

Preliminary Investigative Findings

Background Information

The Complainant is XXXXX XXXXX. He has XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX and XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX, and is able to XXXXX XXXXX XXXXX XXXXX. The Complainant started attending the University in August 2010, and is pursuing a Bachelor of Science degree. The Complainant first registered for services with the DAS Office during the Fall 2010 semester and was granted and provided accommodations during the 2010-11, 2011-12, 2012-13, and 2013-14 school years.

According to documentation submitted to OCR by the University, students with a disability who are new to the University and want the University to provide them accommodations must complete a DAS application, registration form, and Student's Responsibilities Form. They must also submit documentation of their disability that substantiates the need for accommodations and complete an intake interview with a DAS representative to discuss their classroom needs. The DAS then issues students a "DAS Faculty Notification Memo" outlining the approved accommodations they are eligible to receive. A separate Memo is issued for each applicable class. Returning students who have already completed the initial registration process are supposed to complete a new registration form and Student's Responsibilities Form each semester in order to "activate" their accommodations, and are supposed to meet with a DAS staff member to receive their DAS Faculty Notification Memo.

The DAS Faculty Notification Memo outlines both accommodations and "other considerations" a student with a disability is to receive. According to the DAS Student Handbook the University provided OCR:

"Accommodations" are those items that have been deemed necessary to provide equal access to the student's education based on documentation provided and assessment through the DAS office. These are often considered "non-negotiable" items that are required for a student to be able to benefit from the academic environment based on their needs, and will provide the student with equal access to

*the classroom/course materials. ***some exceptions may apply should the accommodation create an unreasonable situation as determined by the nature of given course*

*“Other Considerations” are those items that an instructor may take into consideration on the student’s behalf but does **NOT** [emphasis in original] have to allow in the course. These items do not limit a student’s ability to have equal access to the course or the information presented; however, these items may impact a student based on his/her given disability.*

The DAS Student Handbook indicates that “flexibility regarding deadlines” is always an “other consideration,” and states that an instructor is “under **NO** [emphasis in original] obligation to provide extensions to deadlines for any course requirements.” The Handbook further states that flexibility regarding deadlines should only be requested when an individual’s disability “significantly impedes the student’s capacity to readily complete the assignment by the given deadline due to hospitalization, severe illness, or a severe mental health concern.”

The DAS Student Handbook states that disability related absences may be designated as “other considerations” based on the nature of a student’s verified disability/medical condition. The Handbook says an absence is only disability related if it is “directly associated with [a] documented disability and occurs only in emergency situations (i.e. hospitalizations, severe illness/pain related to condition, mental anguish requiring attention, and/or impedes individuals [sic] ability to attend class).” According to the Handbook, an instructor is under no legal obligation to excuse a student’s disability related absence, and has discretion to decide whether or not to excuse the absence.

According to the DAS Student Handbook, students with disabilities who are issued a Faculty Notification Memo for a course are required to schedule a private meeting with the course instructor. During the meeting, a student is to provide a copy of the Faculty Notification Memo to the instructor and discuss the accommodations the student anticipates using for that course. The student is also supposed to discuss the “other considerations” listed in the Memo and how the instructor “would like the student to proceed when/or if these should occur.” The student is responsible for having the instructor sign the Faculty Notification Memo and submitting it to the DAS Office. Per the DAS Student Handbook, when students meet with an instructor to discuss a Faculty Notification Memo, they should not disclose their disability to the instructor but should provide enough information to assist the instructor in understanding the students’ needs. The Handbook also states that instructors should not identify a DAS registered student in front of others.

The University has a specific policy regarding notetaking as an accommodation, which is set out in the DAS Student Handbook. The policy, titled *Note taking Accommodation Policy* (Notetaking Policy), states that the University utilizes a volunteer notetaking system, and if the DAS Office approves a volunteer notetaker as an accommodation for a student, the student may determine for which, if any, courses to utilize the accommodation. Students who choose to use the volunteer notetaker accommodation are to work in conjunction with their course instructor to identify a volunteer notetaker within their class. According to the policy, it is the student’s

responsibility to ask the instructor for assistance in finding a notetaker unless the student prefers to independently seek out notetaking support from a student without the instructor's assistance. Once a volunteer is identified, the student receiving the accommodation and the notetaker may arrange for notes to be shared in various ways: the DAS Office will provide carbon copy paper that the student may give to the notetaker to use while taking notes; the notetaker may use the copy machine in the DAS Office to copy his or her notes; or the notetaker may email a copy of his or her notes to the student.

According to the Notetaking Policy, if a volunteer notetaker has not been designated after two weeks of solicitation, the student who is supposed to receive the accommodation should ask the course instructor to make additional attempts to identify a notetaker. The policy states that if no volunteer notetaker has been found after three weeks of solicitation, the student should contact the DAS Office for assistance. Under the Notetaking Policy, a volunteer notetaker's notes are supposed to be supplemental: the student receiving the notetaking accommodation must still take his or her own notes in the course, and the volunteer notetaker does not have to provide notes for days that the student with a disability is absent from class.

Under certain circumstances, the DAS Office will assign a paid student notetaker rather than requiring a student with a disability to use a volunteer notetaker (at no cost to the student with a disability). Paid notetakers are subject to availability, and it is the responsibility of students receiving the accommodation to maintain contact with their paid notetaker. According to the Notetaking Policy, paid notetakers will not remain in class/take notes on days when the student receiving the accommodation is absent from class. The Notetaking Policy also states that if a student approaches his or her paid notetaker in a way that is deemed "inappropriate, aggressive, intimidating," or otherwise unacceptable, the DAS Office reserves the right to stop assigning a paid notetaker to the student. If a student has a concern about a paid notetaker's notetaking, the student is supposed to approach the notetaker in a professional manner to address the concern. If the concern is not resolved, the student with a disability is supposed to schedule mediation with the DAS Office.

The University's *Testing Accommodation Policy*, which is set out in the DAS Student Handbook, states that the DAS Office grants adaptive testing accommodations for students who have a documented disability that may impede test/quiz taking. According to the policy, for students who will be testing outside of the classroom, the DAS Office will determine whether they will take tests/quizzes at the DAS Office or the Campus Testing Center. The policy says students must inform their instructor of their designated testing location, make a testing appointment with the designated testing location, and inform the testing site upon scheduling an appointment of the testing accommodation(s) the student needs.

Complainant's Fall 2014 Accommodations

The Complainant took two classes at the University during the Fall 2014 semester: Criminology XXXX and Math XXXX. The DAS Office determined that the Complainant was eligible to receive several accommodations for the classes, including a notetaker and "least distraction environment" for exams. The Complainant alleged that he failed both classes because he was

not provided all of the notes he was supposed to receive and was not allowed to take class exams in a quiet environment.

Based on information provided by the Complainant and documentation submitted by the University, it appears that the University provided a paid notetaker for the Complainant's math class from August through November 17, 2014, when the notetaker resigned, and did not have a paid notetaker available for the Complainant's criminology course. The Complainant told OCR he did not receive any notes for his math class after his paid notetaker resigned and never received notes for his criminology course, which the University disputed.

Police Involvement and Alleged Threats to DAS Worker During Fall 2014 Semester

According to the Complainant, DAS staff reported him to the campus police in September 2014, after he requested accommodations for his Fall 2014 courses and sought assistance from a math tutor provided by the University who was conducting a tutoring session with a group of students in the DAS Office. The Complainant said DAS staff claimed he was being a nuisance and interrupting the tutor's math lesson.

Based on information provided by the Complainant and documentation provided by the University, it appears that a University employee reported the Complainant to the campus police on September XXXXX, 2014—approximately one month after the Complainant requested accommodations for his Fall 2014 courses—for allegedly yelling at a DAS staff member. The Complainant denied yelling at the staff member. The campus police officer who responded to the call completed a “non-criminal disturbance informational report” concerning the incident and noted in the report that someone in the DAS Office told the officer the Complainant was naturally loud and was not creating a disturbance.

In December 2014, approximately a month and a half after the Complainant complained to the DAS accommodations coordinator about not having received notes for his criminology course, the coordinator complained to the assistant dean of students (assistant dean) that the Complainant had left her “aggressive” and “vaguely threatening” voicemail messages. The Complainant told OCR his voicemail messages were not threatening, but rather were about him not having notetakers for his Fall 2014 classes and wanting to know if he was going to have the same problem during the Spring 2015 semester.

Complainant's Internal Grievance

According to the University, during a meeting with the assistant dean on January XXXXX, 2015, the Complainant began to allege discrimination and requested that the University reimburse the cost of the Fall 2014 criminology and math classes he failed. In light of his allegation and request, the assistant dean provided the Complainant with information on how to file an internal grievance with the University and suggested he contact an equal opportunity specialist in the University's Office of Equal Opportunity and Diversity for guidance on the process.

Based on information provided by the Complainant and documentation provided by the University, it appears that the Complainant filed a formal grievance with the Office of Equal

Opportunity and Diversity on or around January XXXXX, 2015, alleging that: 1) he was denied a “special accommodation” for his disability, specifically a notetaker, from August 20 through December 16, 2014; 2) he was unfairly accused of making threats to DAS workers in August and December 2014; 3) he was harassed by DAS workers; 4) the University violated civil rights laws that protect the rights of disabled students; 5) he was unfairly discriminated against because of his gender; and 6) the University violated its mission statement with regard to its obligations towards students with disabilities. On July XXXXX, 2015, the vice provost for academic affairs issued a written determination dismissing the Complainant’s grievance as unsubstantiated after holding a hearing regarding the grievance. The Complainant engaged in multiple conversations with University administrators about his grievance and potential remedies between January XXXXX and July XXXXX, 2015.

According to the University, there was a delay between when the Complainant filed his grievance and when the University made a determination regarding the grievance because the University attempted to informally resolve the grievance prior to holding a grievance hearing. The Complainant told OCR he was confused by the University’s grievance process, and felt the delay and alleged revocation of resolution offers by University administrators were discriminatory and retaliatory.

The University told OCR that the hold placed on the Complainant’s student account during the 2014-15 school year, which prohibited the Complainant from enrolling in classes, was a financial hold for an unpaid balance from the University bookstore, specifically for an iPad mini the Complainant purchased during the Fall 2014 term. The Complainant’s tuition and course materials for the Fall 2014 semester were paid for by a third party, but the iPad was not.

Resolution

The parties initially attempted to resolve this complaint through OCR’s Early Complaint Resolution process but were unable to reach an agreement. In October 2016, the University expressed to OCR an interest in engaging in resolution negotiations pursuant to Section 302 of OCR’s *Case Processing Manual (CPM)*.¹

In March 2017, the Complainant and the University entered into a private settlement agreement to fully resolve all of the allegations in the Complainant’s OCR complaint. The Complainant executed the agreement on March XXXXX, 2017, and a University official executed the agreement on March XXXXX, 2017. Based on the settlement agreement reached by the parties, OCR considers the Complainant’s individual allegations resolved.

Prior to the completion of OCR’s investigation into this complaint, the University signed an Agreement (copy enclosed) on July 13, 2017, that, when fully implemented, will address general concerns identified by OCR related to the University’s process for providing accommodations to students with disabilities. The Agreement requires the University to: update its DAS website;

¹ The *Case Processing Manual* is available on OCR’s website at <http://www.ed.gov/about/offices/list/ocr/docs/ocrcpm.html>.

revise and republish its DAS Student Handbook, Official Faculty Notification Memo, and Notetaking Policy; and provide training to DAS staff and administrators. Please consult the Agreement for further details.

OCR considers this complaint resolved effective the date of this letter and will monitor the University's implementation of the Agreement. When OCR concludes that the University has fully implemented the terms of the Agreement, OCR will close the complaint. If the University fails to carry out the Agreement, OCR may resume investigating the complaint.

Recipients of Federal funds are prohibited from intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by Federal civil rights law. Complaints alleging such retaliation may be filed 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 that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released.

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.

OCR is committed to prompt and effective service. If you have any questions, please contact XXXXX XXXXX, Attorney, at (816) 268-XXXX (voice) or (877) 521-2172 (telecommunications device for the deaf), or by email at XXXXX.XXXXX@ed.gov.

Sincerely,

/s/ Kelli Douglas

Kelli Douglas
Supervisory Attorney

Enclosure