



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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May 31, 2018

Sent via email only to XXXXXXXXXXXXXXXXXXXXXXXXXX

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University of Nebraska
3835 Holdrege Street
Lincoln, Nebraska 68583-0745

Re: University of Nebraska Omaha
OCR Case Number: 07-18-2026

Dear XXX XXXXXXXXX:

On December 5, 2017, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint against the University of Nebraska Omaha (University), Omaha, Nebraska, alleging discrimination on the basis of disability. This letter is to confirm that the University has voluntarily submitted a Resolution Agreement (Agreement) to resolve the complaint.

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 Code of Federal Regulations (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.

Additional information about the civil rights statutes OCR enforces is available at <http://www.ed.gov/ocr>.

The University is a recipient of FFA from the Department and a public entity. Consequently, OCR has jurisdiction and investigated this complaint pursuant to Article III of OCR's *Case Processing Manual (CPM)*.¹

OCR investigated whether the University discriminated against the Complainant on the basis of disability by failing to provide academic adjustments and/or auxiliary aids (academic adjustments) while she attended the University in violation of the regulations implementing Section 504 at 34 C.F.R. § 104.44.

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.

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, note-takers, 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.

¹ The *Case Processing Manual* is available on OCR's website at <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.

Educational institutions are not necessarily required to provide every academic adjustment a student with a disability wants, including personal devices and services such as attendants, individually prescribed devices, or other services of a personal nature, such as tutoring. Similarly, OCR does not review the appropriateness of educational or pedagogical decisions, such as a chosen grading system. A University is not required to provide an academic adjustment that would lower or substantially modify essential requirements. *See* 34 C.F.R. § 104.44(a). While academic adjustments may include a reduced course load, extended time on tests, and the provision of auxiliary aids and services, a University is not required to change the substantive content of a test, or make adjustments that would fundamentally alter the nature of a service, program, or activity, or that would result in an undue financial or administrative burden. *See* 28 C.F.R. §§ 35.130, 35.164.

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.

Background Information

As part of its investigation, OCR reviewed documents submitted by the Complainant and the University, as well engaged in discussions with the University regarding its processes and procedures vis-à-vis its Accessibility Services Center, and the manner in which it seeks to ensure students receive approved academic adjustments during their courses. Specifically, OCR considered the Complainant's allegation that the University failed to provide her academic adjustments while attending the University at the beginning of the fall 2017 semester, and thereafter inconsistently provided her approved academic adjustments related to a note-taker, and the provision of lecture notes. The Complainant alleged and detailed a series of incidents in her Psychology 1020 class wherein she stated she was not adequately provided the lecture notes and/or note-taker notes. The Complainant alleged at various times during the semester that her instructor's PowerPoint slides were not provided prior to class; her instructor's personal notes were not provided prior to class; her note-taker's notes were not provided; and that the note-taker's notes were not of adequate quality.

Resolution

On May 21, 2018, the University expressed an interest in engaging in resolution negotiations pursuant to Section 302 of OCR's *CPM*.

On May 31, 2018, the University submitted a signed Agreement (copy enclosed) that, when fully implemented, will address the complaint allegation. Pursuant to the Agreement, the University will engage in a re-assessment of the Complainant's needs through an interactive process to ensure all appropriate academic adjustments are made available to the Complainant. The University will also offer the Complainant a forum to ensure any ongoing or future concerns regarding her academic adjustments are adequately heard by offering the Complainant the option to engage in regularly scheduled monthly meetings with the University's Assistant Vice Chancellor for Student Affairs, or other individual designated by the University, during the 2018-2019 academic year. The University will also commit to examining its process of notifying instructors of University approved academic adjustments for students in their courses. Finally, the University will offer the Complainant the opportunity to re-take Psychology 1020 at no additional cost, subject to the University's normal policies and procedures governing the repeating of courses. Please consult the Agreement for further details.

OCR considers the complaint allegation resolved effective the date of this letter and will monitor the University's implementation of the Agreement. When OCR concludes 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 its investigation.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The Complainant may have the right to file a private suit in Federal court whether or not OCR finds a violation. Please be advised that the University 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, we 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, please contact XXXXX XXXXX, Attorney, at (816) 268-XXXX (voice) or (877) 521-2172 (telecommunications device) or by email at XXXXX.XXXXX@ed.gov.

Sincerely,

/s/

Supervisory Attorney

Enclosure