



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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REGION VII  
ARKANSAS  
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October 19, 2023

*Sent via email only to [redacted content]*

[redacted content]  
Associate General Counsel  
University of Nebraska  
242 Varner Hall  
3835 Holdrege Street  
Lincoln, NE 68583-0745

Re: University of Nebraska - Omaha  
OCR Case Number: 07222169

Dear [redacted content]:

On September 15, 2022, the U.S. Department of Education, Office for Civil Rights (OCR), received a complaint against the University of Nebraska – Omaha (University), located in Omaha, Nebraska, alleging discrimination on the basis of disability. This letter is to acknowledge that the University has voluntarily entered into an agreement (Agreement) to resolve this complaint.

OCR investigated whether:

1. the University discriminated against the Complainant by failing to provide her the approved accommodations of a notetaker and audio textbooks in violation of Section 504 and its implementing regulation at 34 C.F.R. § 104.44; and
2. Mammel Hall is not accessible to students with disabilities with respect to the classroom spaces, the restroom door, the elevator, and the seating in the snack shop, in violation of Section 504 and its implementing regulation at 34 C.F.R. § 104.22.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination based on disability in programs and activities that receive federal financial assistance. 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 regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions.

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

[www.ed.gov](http://www.ed.gov)

Because the University receives federal financial assistance from the U.S. Department of Education and is a public education entity, it is subject to Section 504, Title II, and OCR's jurisdiction. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

## **Legal Standard**

The regulation implementing Section 504 at 34 C.F.R. §104.4(a) provides that no qualified person with a disability shall, on the basis on disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives federal financial assistance. In addition to a general obligation not to exclude or limit the participation of qualified individuals with a disability, the Section 504 implementing regulation at 34 C.F.R. § 104.44(a) requires a postsecondary institution 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.

Postsecondary institutions may establish reasonable requirements and procedures for students to provide documentation of their disability and to request academic adjustments and auxiliary aids and services. Students are responsible for obtaining disability documentation and for knowing and following the procedures established by the institution. Once the student has provided adequate notice and documentation of his/her disability and the need for modifications due to the disability, the institution must provide the student with appropriate academic adjustments and auxiliary aids and services that are necessary to afford the student an equal opportunity to participate in a school's program. However, the institution is not required to make adjustments or provide aids and services that would result in a fundamental alteration of the University's program or impose an undue burden. In determining what modifications are appropriate for a student with a disability, the institution should familiarize itself with the student's disability and documentation, explore potential modifications and exercise professional judgement. The question of whether the institution must make modifications to its academic requirements or provide auxiliary aids is determined on a case-by-case basis.

The program accessibility and architectural accessibility requirements of the Section 504 implementing regulation are found at 34 C.F.R. §§ 104.21 – 104.22. Comparable sections of the Title II implementing regulation are found at 28 C.F.R. §§ 35.149 – 35.150. Both 34 C.F.R. § 104.21 and 28 C.F.R. § 35.149 generally provide that no qualified individual with a disability shall, because a school's facilities are inaccessible to or unusable by disabled individuals, be:

- 1) excluded from participation in, or denied the benefits of services, programs, or activities; or
- 2) otherwise be subjected to discrimination by the school.

The regulations implementing Section 504 and Title II each contain two standards for determining whether a University's programs, activities, and services are accessible to individuals with disabilities. One standard applies to facilities existing at the time of the publication of the regulations and the other standard applies to facilities constructed or altered after the publication dates. The applicable standard depends on the date of construction and/or alteration of the facility.

Under the Section 504 regulation, existing facilities are those for which construction began prior to June 4, 1977; under the Title II regulation, existing facilities are those for which construction began prior to January 27, 1992. Facilities constructed or altered on or after these dates are considered newly constructed or altered facilities under Section 504 and Title II standards.

### **Preliminary Investigative Findings**

The Complainant advised OCR that she transferred into the University in the [redacted content]. She is a [redacted content] at the University, who is majoring in [redacted content], and is only [redacted content] credits short of graduation. The Complainant has [redacted content]. The Complainant told OCR that she requested accommodations upon entering the University in [redacted content] and received an Accommodations Letter.

OCR reviewed the Accommodations Letter, which provided a total of 22 accommodations, including the following:

- [redacted content]

The Complainant advised OCR that she agreed with the plan outlined in the Accommodations Letter and initially did not have difficulty accessing her accommodations. She also informed OCR that she experienced some obstacles in the provision of the accommodations. Issues included accessing E-Text for a required textbook (which she eventually received) in a [redacted content] class, having a note taker in a [redacted content] class, and generally receiving course materials ahead of time. The Complainant explained to OCR that an issue involving her [redacted content] credits has been resolved with the University and that she dropped a [redacted content] class and enrolled in another class that was a better fit for her.

The Complainant further advised OCR that she had planned to take a [redacted content] class in the Spring 2023 semester and had to remind the University that she required an accessible classroom. The class was scheduled to take place in Mammel Hall, and the Complainant advised OCR that she had encountered accessibility issues in Mammel Hall in the past and identified the following issues:

1. mobility within the classroom;
2. restroom door;
3. elevator blocked;
4. accessible table in snack shop;
5. fire evacuation for disabled individuals; and
6. access to electric outlets in common areas.

Shortly before classes started, the University moved the [redacted content] class to a classroom in another building that was accessible to the Complainant. The professor, however, did not have the course materials posted online, so she could not access the materials before classes started. The Complainant informed OCR on January 24, 2023, that she had received access to the course's online platform and materials.

With respect to her accessibility concerns, the Complainant advised OCR that accessible tables

were added to the snack shop in Mammel Hall, and she believed the blocked elevator door was also corrected. A University representative told OCR that a plant blocking access to the elevator door had been moved and provided a link to a University website containing the fire evacuation plan for all University buildings, including Mammel Hall. OCR reviewed the website link, and the fire evacuation plan included directions for persons with and without disabilities.

## **Analysis and Resolution**

Based on the evidence OCR has reviewed to date, OCR has concerns whether the University provided her accommodations in a timely manner and whether any accessibility issues identified by the Complainant remain outstanding. A University representative informed OCR that the University intended to continue working with the Student to provide her accommodations and was prepared to enter a Resolution Agreement confirming the same. Prior to the completion of OCR's investigation, the University agreed to resolve this complaint pursuant to a resolution agreement in accordance with Section 302 of OCR's *Case Processing Manual*.<sup>1</sup> OCR determined it would be appropriate to resolve this complaint in accordance with OCR's rapid resolution process.

On October 18, 2023, the University submitted a signed resolution agreement (Agreement) (copy attached) that, when fully implemented, will address the allegation in the complaint. The Agreement requires the University to implement the Accommodations Letters in a timely manner and consistent basis. The University will send a letter to the Complainant detailing who the contact person at the University will be for any assistance the Complainant may need in obtaining her academic adjustments or accommodations. Regarding accessibility issues, the University will ensure that the (1) elevator doors, (2) restroom doors, and (3) electrical outlets in the common area of Mammel Hall are accessible and comply with the requirements of Section 504 and Title II.

OCR considers the allegations of this complaint resolved and will monitor the University's implementation of the Agreement. When OCR determines the University has fully implemented the terms of the Agreement, OCR will close this complaint. If the University fails to carry out the Agreement, OCR may resume investigating the complaint. OCR will not close the monitoring of the Agreement until OCR determines that the University has demonstrated compliance with all the terms of the Agreement and is in compliance with Section 504, Title II, and their implementing regulations, which were at issue in this complaint.

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. Complainants may have the right to file a private suit in federal court regardless of whether 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 individual may file a complaint alleging such treatment.

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<sup>1</sup> The Case Processing Manual is available at <https://www2.ed.gov/about/offices/list/ocr/docs/ocrepm.pdf>.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If 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 questions concerning this letter, please contact [redacted content] or (877) 521-2172 (telecommunications device for the deaf), or by e-mail at [redacted content].

Sincerely,

[redacted content]  
Supervisory Attorney