



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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August 8, 2017

David W. Pershing, Ph.D.  
President  
University of Utah  
201 Presidents Circle, Room 203  
Salt Lake City, Utah 84112

Re: **University of Utah**  
OCR Case Number: 08-16-2023

Dear President Pershing:

We are writing to inform you of the resolution of the above-referenced complaint filed on October 28, 2015, against the University of Utah (University), alleging discrimination on the basis of disability. The Complainant alleged the University failed to provide her with a prompt and equitable resolution to her complaint of discrimination in violation of 34 C.F.R. § 104.7(b). Specifically, the Complainant alleged the University's Office of Equal Opportunity and Affirmative Action (OEO/AA) did not notify her of any outcome after she filed her complaint on October 13, 2013.

We initiated an investigation under the authority of Section 504 of the Rehabilitation Act of 1973 and its implementing regulation, which prohibit discrimination on the basis of disability in programs and activities funded by the U.S. Department of Education (Department); and Title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12131-65, and its implementing regulation at 28 C.F.R. pt. 35, prohibit discrimination on the basis of disability by public entities. The University is subject to this law and regulation because it is a recipient of Federal financial assistance from the Department.

We carefully considered information the Complainant provided in case # 08-13-2209 and in the instant case, evidence submitted by the University on November 13, 2013, and the University's responses to this complaint, the University's non-discrimination policy as posted on its website, and interviews with the past and current OEO/AA directors, and University counsel.

**Background**

The Complainant filed a complaint with our office on August 26, 2013 and we opened case number 08-13-2209 to determine if the University had failed to provide academic adjustments to the Complainant. In response to our request for information, the University provided information and statements it had gathered as a result of receiving the same complaint from the Complainant. The University also advised OCR in the same response that the Complainant had filed an internal grievance with the University and that an investigation of her grievance was ongoing. As a result, on December 10, 2013, we dismissed case number 08-13-2209 pursuant to

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

Section 110 of our *Case Processing Manual* (CPM), because OCR will close a complaint when the same complainant allegations have been filed by the complainant against the same recipient through a recipient's internal grievance procedures and OCR anticipates there will be a comparable resolution process under comparable standards, *i.e.*, all allegations will be investigated, appropriate legal standards will be applied, and any remedies secured will meet OCR's standards.

The University's response to our data request in case number 08-13-2209 shows the OEO/AA was in the process of investigating the Complainant's allegation of disability discrimination by the University's Physician's Assistant Program (UPAP). The complaint in this case (case number 08-16-2023) alleges that the University failed to provide a prompt and equitable response to her grievance since she was not given notice of the outcome of the grievance she filed with the University. The then Director of OEO/AA told us by email dated January 11, 2016, that the Complainant was advised of the results of the investigation, specifically that the University did not fail to provide the Complainant with adequate academic adjustments for her disability during her participation in the UPAP. The Complainant claims the then Director of OEO/AA told her there was "no reason for her dismissal, that unlawful discrimination was evident." She asked the Director to put that decision in writing and send it to her but never received it.

### Analysis

Section 504 at 34 C.F.R. § 104.7(b) provides:

A recipient that employs fifteen or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part..."

The regulation does not define "appropriate due process." OCR has determined that appropriate due process means that under Section 504 the procedures must include notice to the complainant of the outcome of the grievance investigation. OCR does not require, pursuant to Section 504 or Title II regulations, that the notice to the complainant of the outcome of the complaint also includes a copy of the investigative findings, or even that the notice be provided in writing. However, the Complainant's grievance was accepted under the University's Discrimination Complainant Process which provided that the OEO/AA "shall endeavor to complete its investigation as expeditiously as possible." It goes on to state, "At the conclusion of its investigation, the OEO/AA shall provide a summary of its initial findings of fact and conclusions to the complaining party, the responding party and others as appropriate, as well as notice of right to request a hearing. Both parties to the complaint will be afforded the opportunity to respond to the investigative summary and to request a hearing." The University policy in place at the time of the University's investigation did not require a written response to the Complainant.<sup>1</sup>

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<sup>1</sup> This policy was revised as of February 14, 2017 and now provides that a final written report of its findings shall be provided to the Complainant. We reviewed the current University policy and find that it is in compliance with the requirements of Section 504.

We requested that the University provide us with documentation showing that the OEO/AA provided the Complainant with a summary (written or oral) of its initial findings of fact and conclusions to the complaining party, as well as notice of right to request a hearing in response to her 2013 grievance. Earlier in the course of our investigation, the University could not provide us with such evidence, other than the OEO/AA director's assurance that she did speak with the Complainant and advised her that OEO/AA found the UPAP did not fail to provide her with adequate academic adjustments for her disability. The then Director of the University's OEO told us that she met with the Complainant more than once and orally provided the results of the investigation to her. The Complainant does corroborate that she met with a Director of OEO/AA to discuss the outcome of the investigation, but the Complainant's recollection of that meeting differs significantly from the University's position of what was discussed.

On July 12, 2017, the University provided OCR with a copy of a letter dated July 7, 2017 in which it fully explains its decision and the outcome of its investigation and affords the Complainant the opportunity to respond to the investigative summary and to request a hearing, consistent with the University's policy.

During the course of OCR's processing of this complaint, and before we began interviewing possible witnesses to determine whether Complainant was, or was not notified of the findings and conclusion of the investigation and told of her right to appeal, the University expressed an interest in resolving the Complainant's allegation. Pursuant to Section 302 of our *Case Processing Manual*, we determined that it was appropriate to enter into an agreement without completing a full investigation of the allegation.

On August 4, 2017, we received the University's signed Resolution Agreement (copy enclosed). Specifically, the Resolution Agreement resolves the remaining portion of the allegation that the University failed to provide the Complainant with a prompt and equitable resolution to her complaint of discrimination in violation of 34 C.F.R. § 104.7(b), by specifically requiring the University to prepare suitable training materials and provide this training to staff of the Office of Equal Opportunity/Affirmative Action on the Section 504 requirements at 34 C.F.R. § 104.7, and the University's grievance procedures.

When the Resolution Agreement is fully implemented, the allegation will be resolved consistent with the requirements of Section 504 and Title II and their implementing regulations. OCR will monitor implementation of the Resolution Agreement through periodic reports demonstrating the terms of the Resolution Agreement have been fulfilled. We will promptly provide written notice of any deficiencies with respect to the implementation of the terms of the Resolution Agreement and will promptly require actions to address such deficiencies. If the University fails to implement the Resolution Agreement, we will take appropriate action, which may include enforcement actions.

This concludes OCR's investigation of the complaint and 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. We are closing the investigation of this complaint effective the date of this letter.

Please note a complainant may have the right to file a private suit in federal court whether or not OCR finds a violation. The University is prohibited from intimidating or harassing anyone who files a complaint with our office or who takes part in an 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.

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 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, personal information, which, if released, could constitute an unwarranted invasion of privacy.

If you have any questions or concerns about our findings, you may call Michael Sentel, the attorney assigned to this complaint, with any questions at (303) 844-3333.

Sincerely,

Erica R. Austin  
Chief Regional Attorney

Attachment: Resolution Agreement

cc: Julie Thomas, Esquire  
Office of General Counsel

Sherrie Hayashi  
Director  
Office of Equal Opportunity and Affirmative Action