



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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January 10, 2017

President Tony Frank
Colorado State University
Office of the President
102 Administration Building, 0100 Campus Delivery
Fort Collins, CO 80523-0100

Re: Colorado State University
OCR Case Number: 08-16-2203

Dear President Frank:

We are writing to advise you of the resolution of the above-referenced complaint that was filed with our office against Colorado State University (University). The Complainant alleged that the University discriminated on the basis of disability. The issue that OCR accepted for investigation was whether the University failed to accommodate the Complainant's disability, including failing to provide him with accommodations that were effective, during the fall 2015 and spring 2016 semesters.

We are responsible for enforcing Section 504 of the Rehabilitation Act of 1973 and its implementing regulation at 34 Code of Federal Regulation Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the U.S. Department of Education; and Title II of the Americans with Disabilities Act of 1990 and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance from the Department, the University is subject to these laws and regulations.

During our investigation, we interviewed the Complainant and reviewed voluminous evidence provided by both the Complainant and the University. During the course of our investigation, the University indicated its desire to voluntarily enter into an agreement to resolve all of the Complainant's allegations pursuant to Section 302 of our *Case Processing Manual*. We reviewed this request and determined that it was appropriate to enter into an agreement without completing a full investigation. This letter details the status of our investigation prior to receiving the University's request to enter into an agreement to resolve the allegations in this case, and the reasons for our determinations that an agreement pursuant to Section 302 of our *Case Processing Manual* was appropriate in this case. We also determined the University's notice of non-discrimination does not identify a Section 504 or Title II Coordinator, although it does identify the office location of the OEO. This constitutes a technical violation of Section 504/Title II and the agreement addresses this issue.

I. Legal Standards

A. Academic Adjustments

The Section 504 regulations, at 34 C.F.R. §104.43(a), provide 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. The Title II regulations, at 28 C.F.R. §35.130(a), contain a similar prohibition applicable to public postsecondary educational institutions.

The Section 504 regulations, at 34 C.F.R. §104.44(a), require recipient colleges and universities to make modifications to their academic requirements that are necessary to ensure that such requirements do not discriminate, or have the effect of discriminating, against qualified individuals with disabilities. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific required courses, and adaptation of the manner in which courses are conducted. However, academic requirements that recipient colleges and universities can demonstrate are essential to the program of instruction being pursued or to any directly related licensing requirement will not be regarded as discriminatory.

Under the Title II regulations, at 28 C.F.R. §35.130(b)(1)(ii) and (iii), public colleges and universities may not afford a qualified individual with a disability opportunities that are not equal to those afforded others, and may not provide aids, benefits or services that are not effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others. Under 28 C.F.R. §35.130(b)(7), public colleges and universities must make reasonable modifications in policies, practices or procedures when necessary to avoid discrimination on the basis of disability, unless doing so would fundamentally alter the nature of the service, program or activity. Section 35.103(a) provides that the Title II regulations shall not be construed to permit a lesser standard than is established by the Section 504 regulations. Therefore, OCR interprets the Title II regulations to require public colleges and universities to provide necessary academic adjustments to the same extent as is required under the Section 504 regulations.

B. Rules

The Section 504 regulations, at 34 C.F.R. §104.43(a), provide 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. The Title II regulations, at 28 C.F.R. §35.130(a), contain a similar prohibition applicable to public postsecondary educational institutions.

The Section 504 regulations, at 34 C.F.R. §104.44(b), prohibit recipient colleges and universities from adopting rules that have the effect of limiting participation in college and university programs on the basis of disability.

The Title II regulations, at 28 C.F.R. §35.103(a), provide that the Title II regulations shall not be construed to permit a lesser standard than is established by the Section 504 regulations. Therefore, OCR interprets the Title II regulations to require public colleges and universities to establish rules that do not have the effect of limiting participation in college and university programs on the basis of disability to the same extent as is required under the Section 504 regulations.

C. Methods of Evaluation

The Section 504 regulations, at 34 C.F.R. §104.44(c), require recipient colleges and universities to provide such methods for evaluating the achievement of a student with a disability that impairs sensory, manual, or speaking skills as will best ensure that the results of the evaluation represent the student's academic achievement in the course rather than reflecting the student's impaired skills (except where such skills are the factors that the test purports to measure).

Under the Title II regulations, at 28 C.F.R. §35.130(b)(1)(iii), public colleges and universities may not provide qualified individuals with disabilities with aids, benefits, or services that are not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others. Under 28 C.F.R. §35.130(b)(7), public colleges and universities must make reasonable modifications in policies, practices or procedures when necessary to avoid discrimination on the basis of disability, unless doing so would fundamentally alter the nature of the service, program or activity. Section 35.103(a) provides that the Title II regulations shall not be construed to permit a lesser standard than is established by the Section 504 regulations. Therefore, OCR interprets the Title II regulations to require public colleges and universities to provide nondiscriminatory methods of evaluation to the same extent as is required under the Section 504 regulations.

D. Auxiliary Aids

The Section 504 regulations, at 34 C.F.R. §104.43(a), provide 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. The Title II regulations, at 28 C.F.R. §35.130(a), contains a similar prohibition applicable to public postsecondary educational institutions.

The Section 504 regulations, at 34 C.F.R. §104.44(d)(1), require recipient colleges and universities to take steps to ensure that no disabled student is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination because of the absence of educational auxiliary aids for students with impaired sensory, manual or speaking skills. Section 104.44(d)(2) provides that auxiliary aids may include taped texts, interpreters or other effective methods of making orally delivered materials available to students with hearing impairments, readers in libraries for students with visual impairments, classroom equipment adapted for use by students with manual impairments, and other similar services and actions. Recipient colleges and universities, however, need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

Under the Title II regulations, at 28 C.F.R. §35.130(b)(1)(ii) and (iii), public colleges and universities may not afford a qualified individual with a disability opportunities that are not equal to those afforded others, and may not provide aids, benefits or services that are not effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others. Under 28 C.F.R. §35.130(b)(7), public colleges and universities must make reasonable modifications in policies, practices or procedures when necessary to avoid discrimination on the basis of disability, unless doing so would fundamentally alter the nature of the service, program or activity. Under 28 C.F.R. §35.135, public colleges and universities are not required to provide disabled individuals with personal devices, individually prescribed devices, readers for personal use or study, or services of a personal nature. Section 35.103(a) provides that the Title II regulations shall not be construed to permit a lesser standard than is established by the Section 504 regulations. Therefore, OCR interprets the Title II regulations to require public colleges and universities to provide necessary auxiliary aids to the same extent as is required under the Section 504 regulations.

The Title II regulations, at 28 C.F.R. §35.160(a), require a public college or university to take appropriate steps to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others. The regulations at 28 C.F.R. §35.160(b)(1) further requires a public college or university to furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity. In determining what type of auxiliary aid and service is necessary, 28 C.F.R. §35.160(b)(2) requires that the college or university give primary consideration to the requests of the individual with disabilities. Communication is construed broadly to mean the transfer of information. In determining whether communication is as effective as that provided to non-disabled persons, OCR looks at the timeliness of the delivery, the accuracy of the communication, and whether the manner and medium used are appropriate to the significance of the message and the abilities of the disabled individual.

E. Interactive Process

Under the requirements of Section 504 and Title II, a student with a disability is obligated to notify the college or university of the nature of the disability and the need for a modification, adjustment, aid or service. Once a college or university 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 college or university may request that the student provide documentation, such as medical, psychological or educational assessments, of the impairment and functional limitation.

F. Notice of Non-discrimination

The Section 504 regulation at 34 C.F.R. §104.7 require recipient colleges and universities employing fifteen or more persons to notify participants, beneficiaries, applicants and employees that it does not discriminate on the basis of disability. The notification shall also include an identification of the responsible person coordinating its efforts to comply with this part. The

Title II regulation at 28 C.F.R. §35.107 contains the same requirement of public colleges and university employing 50 or more persons.

II. OCR's Investigation

The Complainant is currently a XXX student at the University. He is blind and a qualified individual with a disability. In Fall 2015, he began a XXX. The Complainant reported that he received a XXX degree in XXX at CSU in Spring 2015 and had no accessibility or accommodations problems achieving his XXX degree, but that he began to experience such problems upon starting his XXX degree. He also reported that before he joined the XXX program, the offices of Resources for Disabled Students (RDS) and Assistive Technology Resource Center (ATRC) and the Dean of the XXX Department all knew he was joining the program and the plan was to keep in place the accommodations he had XXX.

The Complainant made detailed allegations, with hundreds of supporting emails and other documents, relating, broadly, to inaccessible class materials (such as graphs), equipment, and tools; professors and other staff who refused or failed to provide accommodations to him; the provision and efficacy of assistants used as readers or describers; and timeliness of the provision of accommodations (such as non-disabled students receiving materials several weeks before he did, giving them more time to study them) and refusal to grant extensions when needed to account for this lack of timeliness. He also alleged that communication among the XXX Department, RDS, ATRC, and the Office of Equal Opportunity (OEO, to which he eventually complained) was not effective and led to some of the issues he experienced. The Complainant specified that he had experienced accessibility and accommodations issues in three specific classes. He complained of one class to the OEO and eventually reached a resolution that his grade in the class would be changed. Some of the Complainant's documentation showed that he was requesting extensions in part because of alleged inaccessibility and in part for other, non-disability-related reasons. The Complainant asserted that, as a result of the University's failure to accommodate him, his grades dropped and jeopardized his scholarship.

The University responded that it took an incredible amount of effort between the ATRC, RDS, the XXX Department, the Complainant's academic advisor, and the OEO to accommodate the Complainant, including but not limited to providing assistive technology and a dedicated work station for it; making "course content as accessible as possible"; making adjustments to assignments, tests, due dates, exam times; and providing student describers and alternative testing locations. The University asserted that it "went above and beyond its legal obligations in an effort to support [Complainant] in a demanding, visually intensive XXX program." The University also alleged some challenges, including related to communication, in working with Complainant. Like the Complainant, the University provided for OCR's review a voluminous evidentiary submission, including documents that overlap and align with Complainant's allegations, as well as internal emails that confirm that University staff were indeed working to accommodate Complainant (whether or not effectively).

Thus, before OCR could reach a compliance determination as to Complainant's allegations, OCR would need further factual investigation into the effectiveness or lack of effectiveness of the accommodations provided to Complainant, by for example, examining the work station and other

equipment that the University provided to Complainant; interviewing professors regarding Complainant's use of, and requests for, accommodations; reviewing individual tests and assignments to determine if they were indeed "highly visual" and assessing what types of accessibility issues such tests might have presented; and interviewing University faculty and staff, and Complainant for rebuttal, regarding the University's allegation of challenges in working with the Complainant.

Additionally, during the course of the investigation, OCR reviewed the University's policies and procedures relating to requested for accommodations and complaints of discrimination. OCR carefully reviewed these policies and procedures and has not identified any Section 504 or Title II compliance concerns in these policies and procedures related to this case. OCR also reviewed the University's notice of non-discrimination and found that it does not identify a Section 504 or Title II Coordinator, although it does identify the office location of the OEO. This constitutes a technical violation of the Section 504 regulation at 34 C.F.R. §104.7 and the Title II regulation at 28 C.F.R. §35.107, and the Agreement addresses this issue.

III. Conclusion

We thank the University for being willing to voluntarily address the issues raised by the Complainant. A copy of the signed Resolution Agreement is enclosed for your records. When the Agreement is fully implemented, the allegations will be resolved consistent with the requirements of Section 504 and Title II and their implementing regulations. OCR will monitor implementation of this Agreement through periodic reports demonstrating that the terms of the Agreement have been fulfilled. We will provide written notice of any deficiencies regarding implementation of the terms of the Agreement and will promptly require actions to address such deficiencies. If the University fails to implement the Agreement, we will take appropriate action, as described in the Agreement.

This concludes OCR's investigation of this 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. The case is now in the monitoring phase. The monitoring phase of this case will be completed when OCR determines that the University has fulfilled all terms of the Agreement. When the monitoring phase of this case is complete, OCR will close this case and will send a letter to the University, copied to the Complainant, stating that this case is closed.

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.

Individuals filing a complaint or participating in our resolution process are protected from retaliation by Federal law.

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.

Thank you for the courtesy and cooperation you and your staff, especially XXX, extended to us during the investigation of this case. If you have any questions, please contact XXX, Attorney, at XXX, or me at XXX.

Sincerely,

/s/

XXX
Supervisory General Attorney

Enclosure: Resolution Agreement

cc (w/enclosure): xxx, University Senior Associate Legal Counsel