



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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August 14, 2017

President Scott D. Pulsipher
Western Governors University
4001 S 700 E #700
Salt Lake City, UT 84107

Re: Western Governors University
OCR Case Number: 08-17-2133

Dear Mr. Pulsipher:

On March 3, 2017, we received a complaint alleging Western Governors University (University) discriminated on the basis of disability. Specifically, the Complainant alleges that the University discriminated on the basis of disability when it failed to provide her with an academic adjustment related to her disability.

We initiated an investigation under the authority of Section 504 and its implementing regulation, at 34 C.F.R. Part 104, which prohibits discrimination on the basis of disability, in programs or activities that receive Federal financial assistance from the Department. As a recipient of Federal financial assistance, the University is subject to this law and regulation.

During the investigation, we carefully reviewed documentation provided by the University and the Complainant, and interviews with University administrators.

The Section 504 implementing regulation at 34 C.F.R. Sec. 104.44(a) states that a recipient shall make 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, against a qualified student with a disability. Academic requirements that the recipient can demonstrate are essential to the instruction being pursued by such student or to any directly related licensing requirement will not be regarded as discriminatory within the meaning of this section. 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.

OCR finds that the University violated Section 504 as alleged. The reasons for our finding are below.

Findings of Fact and Analysis – Failure to Provide Approved Notes

The Complainant alleges that the University failed to provide her with an academic adjustment when it did not provide her with approved notes during her assessment. As part of her approved academic adjustment from the University, the Complainant is entitled to an approved single page

of notes prior to an assessment, so long as these notes are submitted two weeks ahead of time for faculty review and approval.

Prior to an assessment scheduled on February 28, 2017, the Complainant contacted a University administrator on February 24, 2017, to request a review of notes that she would like to use during the assessment. The Complainant's proposed notes exceeded her one page limit, contained additional information which required them to be redone, and were submitted only days prior to her scheduled assessment. A University administrator contacted the Complainant to let her know of the corrections that needed to be made to the notes. The Complainant subsequently resubmitted notes that same day which still contained mistakes, and then resubmitted the notes again on February 27, 2017, the day before the assessment. At that time, the University determined that the notes would need faculty review. On February 28, 2017, the University administrator informed the Complainant that she submitted an Incomplete Course request on the Complainant's behalf, which would give the Complainant an additional 7 days to take the assessment, during which time the University could review the Complainant's notes for approval. Unbeknownst to the University, the Complainant took the assessment that day as scheduled using prior approved notes but not the notes she submitted for approval. The University eventually provided the Complainant with approved notes after she had already taken the assessment.

The Complainant turned in her notes for approval only a few days before her scheduled assessment, instead of the two weeks as required by her approved academic adjustments. Despite getting the information at the last minute, the University attempted to work with the Complainant in order for her to have approved notes prior to her assessment and was willing to allow her an extension of time to take the assessment so that there was time to approve notes prior to the assessment. The Complainant's decision to take her assessment without these approved notes was her own choice. Accordingly, there is insufficient evidence that the University violated Section 504 as alleged and this allegation is closed effective the date of this letter.

Findings of Fact and Analysis – Failure to Provide Extended Time

The Complainant alleges that the University failed to provide her with an academic adjustment by not providing extended time during her assessment. As part of her approved academic adjustment from the University, the Complainant is entitled to extended time on her assessments.

The Complainant took an assessment on February 28, 2017. During the assessment, the University's third-party proctor service, Examity, Inc., failed to enter the extended exam time in the testing system at the start of the exam and did not enter the extended exam time after the start of the exam. The exam was consequently terminated at the end of the regular exam time and the Complainant did not receive the extended time she was entitled to per her University-approved academic adjustment. The proctor indicated that he could not extend the exam time owing to his failure to enter the proper time parameter at the start of the exam and advised the Complainant to contact the University.

The next day, the Complainant's mentor notified the University about this mistake and to discuss next steps. The Complainant subsequently continued the exam using two hours of extended exam time on March 6, 2017, during which time she was able to resume the exam from where she had left off and to review and revise her prior work as needed. The Complainant stated that the stress of the situation left her with a headache while taking the exam a second time. Ultimately, the Complainant was unsuccessful at achieving a passing score.

Accordingly, by failing to provide the Complainant with extended time on February 28, 2017, OCR finds the University in violation of Section 504 as alleged. In order to resolve this issue, the University has agreed to enter into an agreement to ensure compliance with Section 504.

Conclusion

We are pleased that the University entered into the enclosed Resolution Agreement to address the compliance determinations that OCR made during this investigation. This concludes our investigation of this complaint. OCR will monitor the University's implementation of the Resolution Agreement until it is determined to be fully implemented. OCR has notified the Complainant that the University has entered into this Agreement, and we provided the Complainant a copy of the Agreement. We will also keep the Complainant apprised of monitoring activities related to this case.

This letter addresses only the issues raised in this complaint and should not be interpreted as a determination of the University's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. The Student 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 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.

We thank the University for its cooperation in this matter. If you have any questions, please contact Mr. Jason Sinocruz at XXXX.

Sincerely,

/s/

Angela Martinez-Gonzalez
Supervisory General Attorney

Enclosure

cc: Mr. Bob Hunt, General Counsel – Western Governors University