



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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November 8, 2017

Bruce D. Benson, President
University of Colorado
1800 Grant Street, Suite 800
Denver, CO 80203

Re: University of Colorado - Denver
OCR Case Number: 08-17-2153

Dear President Benson:

We completed our investigation of this case and are notifying you of our determination. We received a complaint alleging University of Colorado - Denver (University) discriminated on the basis of disability. Specifically, the complainant alleged his ELEC 1520 course instructor discriminated when she failed to provide him his approved academic adjustment (hereafter referred to as "accommodation") of extra time for a quiz on February 6, 2017. He also alleged the instructor treated him different than his nondisabled classmates when she (1) required that he take a quiz/exam two days before his classmates; (2) denied his request for additional time on an assignment but then provided additional time to his classmates on later assignments; and (3) denied his request for solutions to practice problems in one instance but then later provided solutions to pointers practice problems to his classmates.

We found that the Complainant's ELEC 1520 course instructor failed to provide his testing accommodation on February 6, 2017, as alleged. We also determined that the Complainant was not afforded the same extended time to prepare for a quiz on February 29, 2017 that was provided the rest of his class. Upon being advised of these findings, the University voluntarily agreed to enter into a resolution agreement to resolve the matter. A copy of the signed agreement is enclosed with this letter. With respect to his remaining allegations, we found insufficient evidence to support a conclusion that the University discriminated in violation Section 504 and Title II as alleged. Our reasons for our conclusion are set forth in this letter.

We conducted our investigation under the authority of Section 504 of the Rehabilitation Act of 1973 and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department; 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.

In reaching a determination, OCR reviewed documentation provided by the complainant and the University, and interviewed the course instructor.

Background

The complainant, a student in the University's Electrical Engineering program, initially contacted the University's Disability Resources and Services Office (DRS) regarding academic adjustments (accommodations) during the spring 2016. The complainant requested accommodations providing for extra time for quizzes and exams (1.5 times); a quiet room for taking quizzes and exams; the opportunity to take breaks during class; and special furniture (table and chair without arms and does not roll). Following DRS interviews with the complainant, the DRS approved the complainant's request for accommodations on or about April 1, 2016. OCR notes that as part of the process to apply for and receive accommodations, the complainant signed and initialed a DRS Registration Agreement on March 10, 2016, indicating that he understood that he is responsible for "obtaining a Faculty Notification Letter, from the DRS staff, to notify instructors" of approved accommodations. The complainant's initials further acknowledge that he understood that he was responsible for providing DRS with a copy of his "course schedule each semester and request FNLs [Faculty Notification Letters] to avoid any time lapse in receiving accommodations."

On January 18, 2017, the complainant began his Embedded Electrical Systems Engineering I (ELEC 1520) course, which was scheduled for Monday and Wednesday evenings.

On February 5, 2017, the complainant made his first request of his instructor for accommodations. His email explained to the instructor that he has been approved accommodations and as such, was seeking "additional time and a separate location for exams and pop quizzes."

The next morning, February 6th, the instructor acknowledged receipt of the complainant's email and informed the complainant that she needed the "letter" from his disability coordinator for her records. The instructor then informed the complainant that she can provide him with "extra time for pop quizzes" according to that "stated in the letter." Shortly thereafter, at 3:50 p.m., the complainant's disability coordinator emailed the instructor and informed her that the complainant "has been approved for extra time (1.5x) on all exams and quizzes (including pop quizzes)." The complainant attended class that evening, during which time a quiz was given to the class.

Also on February 6, 2017, at 11:21 a.m., the complainant emailed the instructor and asked the instructor to provide the solutions to two problems he was working on. In a reply email, the instructor told the complainant she does "not provide solutions to practice problems. That has always been my policy." Though the instructor indicated she would not provide the solutions, she did tell the complainant that if he would like to go over specific problems during office hours, she could do that.

On February 27, 2017, at 5:53 a.m., the complainant emailed the instructor and asked whether it was possible to "push out the due date" for homework that was due the next day, February 28th. In a very brief email responding to the complainant's query, the instructor asked "Why is it, that you need an extension when you were provided 90% of the homework solution on Wednesday?" There is no record of any additional conversation regarding this particular homework after the instructor's email response.

During that same day, Monday the 27th of February, the complainant reported to the DRS center to check if an exam or pop quiz was available to be taken, just as he had been doing since being approved to take his exams and quizzes at the DRS after February 7, 2017. On this particular Monday, a quiz was available, as it had been sent to the DRS by the instructor on the day prior (Sunday the 26th of February). The complainant contended in his complaint that while taking the exam he discovered that some of the material had not yet been covered in class. Nonetheless, he completed the exam and then reported for class that evening. The remainder of the class took the same exam on Wednesday, March 1st.

On March 2, 2017, despite holding a “B” grade, the complainant withdrew from the course. After withdrawing from the course, the complainant was included in group emails from the instructor on several occasions through March 31st where she was informing the entire class that they have extra time to complete some assignments, and in one email, the instructor provides the class solutions to practice problems.

Allegation 1: Provision of Extended Time for a Quiz

The complainant alleged that he was not provided extra time (1.5 times) for a quiz given on February 6, 2017.

Legal Standard

Section 504 provides, at 34 C.F.R. §104.43, that no qualified individual with a disability shall be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any postsecondary education aid, benefits, or services. 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 regulation, at 34 C.F.R. §104.44(a), requires that a recipient make certain adjustments to academic requirements and practices that discriminate or have the effect of discriminating on the basis of disability. Under the Title II regulation, 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. Recipients may establish reasonable procedures for requesting and providing approved accommodations

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.

Analysis and Conclusion

The University first asserted that although the complainant had failed to follow the process for receiving a requested accommodation for a quiz or exam from his instructor, the instructor nonetheless offered the complainant extra time for his quiz but he declined the request.

The complainant did not dispute that the instructor offered him extra time for his quiz. However, the complainant asserted that despite the offer, "this did not happen because when the rest of the class was finished with the quiz, [instructor] began the lecture" so he "had to stop the quiz."

We requested the University clarify with the instructor whether she had begun the lecture and thus, made the complainant decide whether to continue the quiz or to turn it in so that he may receive the information provided during the lecture. The University stated on behalf of the instructor that the lecture started shortly after the quiz. The University acknowledged that because the lecture had started, the complainant "may not have felt the option of taking additional time for taking the quiz."

Based on the University's clarification, we are able to conclude that the complainant was not provided his approved accommodation of extra time during his quiz on February 6, 2017, in violation of 34 C.F.R. §104.44(a) and 28 C.F.R. §35.130(b)(7).

Allegation 2: Different Treatment Based on Disability

The complainant alleged that even though he had withdrawn from the course on March 2, 2017; the extra time given to students for assignments and the provision of a solution to a practice problem constitute instances when he was treated differently by the instructor based on his disability. The complaint further alleges he was treated differently when he was required to take a quiz on February 27, 2017 over material that had not yet been covered in class.

Legal Standard

Under the Section 504 regulations, at 34 C.F.R. §104.4(a) and (b), no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance. The Title II regulations, at 28 C.F.R. §35.130(a) and (b), create the same prohibition against disability-based discrimination by public entities. Under 34 C.F.R. §104.4(b)(1) and 28 C.F.R. §35.130(b)(1) a recipient public university may not, directly or through contractual, licensing, or other arrangements, on the basis of disability, (i) deny a qualified disabled individual the opportunity to participate in or benefit from an aid, benefit, or service; (ii) afford a qualified disabled individual an opportunity to participate in or benefit from an aid, benefit, or service that is not equal to that afforded others; (iii) provide a qualified disabled individual with an aid, benefit, or service that is 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; or (iv) provide different or separate aids, benefits, or services unless necessary to provide qualified disabled individuals with aids, benefits, or services that are as effective as those provided to others.

Analysis and Conclusion

To determine whether an individual has been discriminated against on the basis of disability under Section 504 and Title II, OCR looks at whether there is evidence that the individual was treated differently than non-disabled individuals under similar circumstances, and whether the treatment has resulted in the denial or limitation of services, benefits, or opportunities. If there is such evidence, OCR examines whether the University provided a nondiscriminatory reason for its actions and whether there is evidence that the stated reason is a pretext for discrimination. For OCR to find a violation, the preponderance of the evidence must establish that the University's actions were based on the individual's disability.

Regarding the complainant's allegations that his classmates received solutions to a practice problem and were provided extra time for assignments after the complainant withdrew; our analysis of the instructor's communications to the class about each found that when providing the class extra time for homework and the solution, the Complainant was included in the emails. Thus, we concluded that if the Complainant had continued to be enrolled in the course at the time of the emails, he too would have received the same benefit as the other students. Consequently, we determined the Complainant was not subjected to different treatment in the instances he provided as examples. We therefore end our different treatment analysis of these two allegations here.

The complainant also alleged in his complaint that he was treated different than his non-disabled classmates when he was tested on material on Monday, February 27, 2017 that had not been covered in class. The complainant raised an additional concern to OCR and to the University that while he took his quiz on Monday, the rest of the class got an additional two days to prepare to take the quiz by taking it on Wednesday, the 1st of March.

We interviewed the instructor who asserted that the quiz covered material that was included in a pre-study assignment that was due on Wednesday, February 22nd. According to the instructor, the assignment required students to read the textbook, review lecture notes before class, or watch the lecture videos. The material was then covered again during class on February 22nd. The instructor stated the quiz over the February 22nd material was scheduled for the evening class on Monday, February 27th, so she made the quiz over the material available for the Complainant to take in the DRS office by sending it to the DRS on Sunday evening, February 26th. Although the quiz was scheduled for the evening class on February 27th, the instructor stated that when class began there were questions regarding the already covered material so a majority of the class time was spent reviewing the related topics. Because the review took a majority of class time, the instructor chose instead to give the rest of the class the pop quiz on Wednesday.

On March 2, 2017, the Complainant emailed his disability coordinator and informed her that the instructor had given his classmates two extra days "to do better on the quiz." OCR notes that the

coordinator responded later that same day and requested to meet to discuss his frustration over the quiz before he elected to withdraw. However, the Complainant had already withdrawn from the course.

Based on this information, we found that the Complainant was not afforded the same extended time to prepare for a quiz on February 29, 2017 that was provided the rest of his class, in violation of 34 C.F.R. §104.4(b)(1)(ii) and 28 C.F.R. §35.130(b)(1)(ii). We also determined that the remedy agreed to by the University to resolve the compliance concern found with allegation 1 will also remedy this compliance concern.

Conclusion

OCR is closing the investigative phase of this case effective the date of this letter. The case is now in the monitoring phase. OCR will closely monitor the recipient's implementation of the enclosed resolution agreement (Agreement) to ensure that the commitments made are implemented timely and effectively and that the recipient's policies and practices are administered in a nondiscriminatory manner. When the Agreement is fully implemented, all of the compliance concerns found in this investigation will have been resolved consistent with the requirements of Section 504 and Title II, and their implementing regulations. If the University fails to implement the Agreement, OCR will take appropriate action, which may include enforcement actions, as described in the Agreement.

This concludes our investigation of this complaint. We are closing this complaint effective the date of this letter. This letter addresses only the issues discussed above and should not be interpreted as a determination of the University's compliance or noncompliance with Section 504, Title II or other Federal civil rights laws in any other regard. Please note that the complainant may have the right to file a private suit in federal court regardless of whether OCR finds a violation.

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

We thank you and your staff for your cooperation in the handling of this matter. Should you have any questions or concerns regarding this letter, please contact XXXX, Equal Opportunity Specialist, at XXXX or by email at XXXX. You also may contact me at XXXX.

Sincerely,

/s/

Thomas M. Rock
Supervisory General Attorney

cc: Mr. Chris Puckett
Associate University Counsel