



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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February 15, 2017

Dr. Janine Davidson, President  
Metropolitan State University  
Campus Box 01  
P.O. Box 173362  
Denver, CO 8017-3362

Re: Metropolitan State University  
OCR Case Numbers: 08-17-2268 and 08-17-2278

Dear President Davidson:

We are writing to advise you of the resolution of the above-referenced complaints that were filed with our office against Metropolitan State University of Denver. On June 26, 2017 and July 3, 2017, we received the above captioned complaints alleging that Metropolitan State University (the University) unlawfully discriminated and retaliated against the Complainant on the basis of disability status. Specifically, the Complainant alleged the University discriminated and retaliated against him by failing to provide appropriate accommodations in the Spring and Summer of 2017; by not providing an ADA compliant graduation application process; X – allegation redacted - X, and retaliated against him by X – allegation redacted - X.<sup>1</sup> We determined that we had the authority to investigate these allegations consistent with our Complainant procedures and applicable law.

OCR is responsible for enforcing:

- Section 504 of the Rehabilitation Act of 1973 and its implementation regulations 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;
- Title II of the Americans with Disabilities Act of 1990 (ADA) and its implementing regulations at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities; and
- Individuals asserting a right under Section 504 and Title II are protected from intimidation or retaliation by 34 C.F.R. section 104.61, which incorporated 34 C.F.R. section 100.7(e), and 28 C.F.R. section 35.134.

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<sup>1</sup> Per the Office for Civil Rights' *Case Processing Manual*, Section 110(a)(1), generally, where the complainant as in this case, filed an internal complaint (of retaliation), the Office for Civil Rights will not conduct its own investigation. Instead, OCR reviews the results of the University's determination and decides whether the University provided a comparable resolution process under comparable legal standards.

As a recipient of Federal financial assistance from the Department and a public entity, the University is subject to these laws and regulations. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

### *Background*

The Complainant was a student at Metropolitan State University. He was a student with multiple disabilities, including a mild to moderate TBI and post-traumatic stress disorder. The Complainant completed his final semester with the University in the summer of 2017 and graduated from the University at the close of that semester.

### *Allegation 1* Is the University's graduation application ADA compliant?

Are students with disabilities able to receive all the educational benefits of the electronic graduation application in an equally effective and equally integrated manner as other students? In other words, can students with disabilities, acquire the same information, engage in the same interactions, and enjoy the same services with the electronic graduation application?

Section 504 of the Rehabilitation Act, and the ADA require that students with disabilities receive all the educational benefits provided by the technology in an equally effective and equally integrated manner. Students with disabilities must be able to acquire the same information, engage in the same interactions, and enjoy the same services as students without disabilities. The Web Content Accessibility Guidelines (WCAG) 2.0 AA, require at a minimum that the web page be designed so it can be read by assistive technology in a logical order; provide alternative text for images; ensure the page can be navigated and used with only a keyboard; provide sufficient color contrast for text; and provide captions and audio descriptions for any video and presentations containing audio.

The Complainant alleged that the University's online graduation application is not ADA compliant. The Complainant stated that the portal does not work. He stated that he could not get through on the portal and then the information provided from the portal was not accurate. He had to work with Student Engagement & Wellness Office, and even after he went to the registrar in person to make sure he was in the right place to graduate, the online system was saying that he was wrong. While the Complainant went to the registrar's office and asked them in person if they would do it while he was standing there, he does not know who filed the graduation application for him. He did not ask for a paper graduation application. He went and spoke to a registrar supervisor directly and she confirmed then that his graduation application was filed and was correct.

The University explained that the graduation application is online for all students. Students are required to use the online portal. However, the University explained that students with disabilities may use the portal, or may gain assistance from the University's Access Center. If any student, for any reason cannot access the application portal for any reason, the registrar's office is able to file it for the student if requested.

Before completion of the investigation of this allegation, the University indicated its desire to enter into an agreement to resolve this allegation pursuant OCR's *Case Processing Manual*, section 302.

*Allegation 2*    Did the University fail to accommodate the Student in his classes in the spring and summer semesters 2017?

Section 504 provides, in pertinent part, that the University must make such modifications to its academic requirements as are necessary to ensure that the requirements do not discriminate on the basis of disability against a qualified student with a disability. It also must take such steps as are necessary to ensure that no student with a disability is subjected to discrimination because of the absence of educational auxiliary aids for students with impaired sensory, manual or speaking skills.

The Complainant was identified by the University as a student with disabilities. He had approved accommodations through the University's Access Center. According to the University's policy, the Complainant was to meet every semester with his counselor at the Access Center to obtain his letter of accommodations which he then provides to his professors.

Spring 2017

The Complainant alleges that during the Spring semester 2017, the process of obtaining accommodations was so demanding that he ended up dropping several of his classes when professors were not accommodating him. He was to negotiate with professors concerning some of his accommodations.

The University did provide us with a copy of the Complainant's accommodation letters for the 2016-2017 school year. The University also explained that in the Spring 2017 semester, the Complainant withdrew from Chemistry 4350. He was not refunded any money from this withdrawal.<sup>2</sup>

Summer 2017

The Complainant alleges that the University did not appropriately accommodate him, and that he had difficulty getting his accommodations set up, specifically related to attendance for his Summer 2017 classes. This difficulty was confirmed by the University in a meeting held with the EEO office and other providers for the University.

The University provided a copy of the Complainant's accommodation letter and acknowledged that there were some difficulties with teaching staff in the process of setting up some of the Complainant's accommodations.

The University did notify us that the Complainant graduated at the end of the summer semester 2017. This was confirmed by the Complainant.

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<sup>2</sup> The Complainant also complained about having to withdraw from English 1020 and Chemistry 4350 in the Fall semester, 2016 because of a lack of accommodations.

Before completion of the investigation of this allegation, the University indicated its desire to enter into an agreement to resolve this allegation pursuant OCR's *Case Processing Manual*, section 302.

*Allegation 3* X – three paragraphs redacted – X

Before completion of the investigation of this allegation, the University indicated its desire to enter into an agreement to resolve this allegation pursuant OCR's *Case Processing Manual*, section 302.

*Allegation 4* Did the University conduct an investigation of the Complainant's retaliation grievance that provided a comparable resolution with comparable legal standards?

When analyzing a complaint allegation where the Complainant filed an internal grievance with the University, OCR will not conduct its own investigation; instead, OCR will review the results of the University's determination and decide whether the University provided a comparable resolution process under comparable legal standards.

The Complainant filed a retaliation complaint with the University involving the June 29, 2017 incident with the xxxxxxxxxxxx. The University completed an internal investigation. However, based on the documentation provided by the University, it is unclear if the University used an appropriate retaliation standard in its investigation, analysis and findings.

Before completion of the investigation of this allegation, the University indicated its desire to enter into an agreement to resolve this allegation pursuant OCR's *Case Processing Manual*, section 302.

### Conclusion

We thank the University for being willing to voluntarily address the allegations in this case. The University's decision to enter into this agreement is not an admission of liability or wrongdoing, nor shall it be construed as such. 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 these complaints 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 and counsel extended to us during the investigation of this case. If you have any questions, please contact xxxxxxxxxx, Attorney Advisor, at xxxxxxxxxx or by email at xxxxxxxxxxxxxxxx, or me at xxxxxxxxxxxxxx or xxxxxxxxxxxx.

Sincerely,

/s/

Thomas M. Rock  
Supervisory General Attorney

Enclosure: Resolution Agreement

cc: David Fine, In-house Counsel  
Nicholas Stancil, Assistant In-house Counsel