



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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REGION VIII

ARIZONA  
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WYOMING

June 19, 2020

Mr. Brian Mueller  
President  
Grand Canyon University  
3300 W. Camelback Rd.  
Phoenix, AZ 85017

*By email only to XX*

Re: Grand Canyon University  
OCR Complaint No. 08-20-2110

Dear President Mueller:

On February 6, 2020, the United States Department of Education (Department), Office for Civil Rights (OCR) received a complaint alleging the Grand Canyon University (University) discriminated against a student (Complainant) on the basis of disability. Specifically, the Complainant alleged that the University failed to implement her accommodations<sup>1</sup>, failed to engage in an interactive process, and retaliated against her.

Because OCR has jurisdiction and the complaint was filed timely, OCR initiated an investigation of this complaint pursuant to 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. Additionally, individuals filing a complaint, participating in an investigation, or asserting a right under the statute cited are protected from retaliation, intimidation, or coercion by recipients of Department funds. As a recipient of Federal financial assistance from the Department, 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>.

### **Investigation Summary**

OCR notified the University and the Complainant on March 30, 2020, that OCR opened the allegations for investigation. OCR's investigation focused on obtaining the evidence necessary to determine whether the University complied with the legal standards stated below, or whether the University engaged in discrimination as alleged. Specifically, the investigation consisted of

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<sup>1</sup> For purposes of this letter, the terms *academic adjustment* and *accommodations* are used interchangeably.

requesting and reviewing records and information from the Complainant and the University, including the:

- University's Policy Handbook,
- Complainant's disability services file, including all requests for academic adjustments, the University's determination regarding the requests, and the subsequent notice provided to the Complainant's professors;
- Communications between the Complainant and University, as well as internal University communications;
- Complainant's transcript; and,
- Complainant's tuition/billing statement for the 2019-20 school year.

OCR applies a preponderance of the evidence standard to determine whether evidence is sufficient to support a particular conclusion. Specifically, OCR examines the evidence in support of and against a particular conclusion to determine whether the greater weight of the evidence supports or is insufficient to support the conclusion.

## **Legal Standard**

### *Academic Adjustments*

The regulation implementing Section 504 at 34 C.F.R. § 104.44(a) requires a postsecondary education recipient institution to make academic adjustments, or modifications, to its academic requirements as necessary to ensure that the requirements do not discriminate or have the effect of discriminating on the basis of disability against qualified individuals with disabilities. The appropriate academic adjustment must be determined based on the student's disability and individual needs. Recipient universities must work with the student in an interactive process to identify appropriate academic adjustments.

Students in institutions of postsecondary education are responsible for notifying institution staff of their disability should they need academic adjustments. Institutions may establish reasonable procedures for requesting academic adjustments; students are responsible for knowing these procedures and following them. Once a student has identified him- or herself as an individual with a disability, requested an academic adjustment, and provided appropriate documentation upon request, institution staff should discuss with the student what academic adjustments are appropriate in light of the student's individual needs and the nature of the institution's program. If a student has requested a specific academic adjustment, the school may offer that academic adjustment, or it may offer an effective alternative.

In determining what modifications are appropriate for a student with a disability, the recipient should familiarize itself with the student's disability and documentation, explore potential modifications, and exercise professional judgment. The question of whether a recipient has to make modifications to its academic requirements or provide auxiliary aids is determined on a case-by-case basis. OCR generally does not substitute its judgment for that of qualified educators and professionals regarding modifications. Instead, OCR reviews relevant factual evidence to

determine whether a recipient acted in a reasonable manner and whether it took appropriate steps consistent with Section 504 in making decisions regarding a student's eligibility for academic adjustments. Section 504 envisions a meaningful and informed process with respect to the provision of modifications, e.g., through an interactive and collaborative process between the recipient and the student. If a recipient denies a request for a modification, it should clearly communicate the reasons for its decision to the student so that the student has a reasonable opportunity to respond and provide additional documentation that would address the recipient's objections.

If the academic adjustments provided are not meeting the student's needs, it is the student's responsibility to notify the institution as soon as possible. It may be too late to correct the problem if the student waits until the course or activity is completed. The student and the institution should work together to resolve the problem.

### *Retaliation*

Section 504, at 34 C.F.R. § 104.61, incorporates the Title VI prohibition on retaliation. Title VI, at 34 C.F.R. § 100.7(e), prohibits a recipient or other person from intimidating, threatening, coercing, or discriminating against any individual because he or she made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under the regulation.

A recipient engages in unlawful retaliation when it takes an adverse action against an individual either in response to the exercise of a protected activity or to deter or prevent protected activity in the future. To find a prima facie case of retaliation, each of the following three elements must be established:

- a) The individual or someone on behalf of the individual engaged in a protected activity or the recipient believed the individual or someone on behalf of the individual might engage in a protected activity in the future;
- b) An individual experienced an adverse action caused by the recipient; and
- c) There is some evidence of a causal connection between the protected activity and the adverse action.

A protected activity is any action taken to further a right guaranteed by the statutes and regulations enforced by OCR or to express opposition to any practice made unlawful by the statutes and regulations enforced by OCR. An act is an adverse action if it is likely to dissuade a reasonable person in the individual's position from making or supporting an allegation of discrimination or from otherwise exercising a right under the statutes or regulations enforced by OCR. Petty slights, minor annoyances, and lack of good manners are not normally adverse actions.

In determining whether the recipient took the adverse action because an individual engaged in a protected activity or for the purpose of interfering with a protected activity, OCR considers whether there is some evidence of a causal connection between the adverse action and the

protected activity. The evidence may include changes in the treatment of the individual after protected activity occurred, the proximity in time between protected activity and adverse action, the recipient's treatment of the individual compared to similarly-situated individuals, or the recipient's deviation from established policies or practices.

If all of the elements of a prima facie case of retaliation are established, then OCR considers whether the recipient has presented a facially legitimate, non-retaliatory reason for taking the adverse action. If so, then OCR considers whether the reason for the adverse action is genuine or a pretext for retaliation, or whether the recipient had multiple motives for taking the adverse action.

## **Background**

The Complainant is a student with a disability and enrolled as a graduate student in the University's online Master's degree program in May 20XX. She requested academic adjustments through the University's Student Disability Services Office (SDS) briefly after beginning her courses and received approval for the following in June 20XX:

- extended time for completing tests; and,
- extended time on individual assignments (two weeks maximum from the original due date).

In the Fall 2019 term, the Complainant enrolled and began in the XX (Course). The Course commenced on September 26, 2019, and ended on November 20, 2019, though the end date was extended until December 4, 2019, as a result of the Complainant's approved academic adjustments. On September 26, 2019, the SDS sent the Complainant an email confirming her academic adjustments were in place for the Course. The email included the following explanation:

“The student is granted the maximum allowed extended time of 2 weeks from the original due date to complete and submit individual assignments. The student can use as much or as little of that time as needed, so long as they stay within the extended time.”

The email further explained that the due dates for the Course had been updated in the online platform to reflect the extended time provided.

On October 31, 2019, the Complainant messaged the Course professor (Professor) and requested an additional day beyond the extended two-week timeframe to submit an assignment. The Professor suggested the Complainant would need to provide documentation to support her need for an additional extension. The Complainant explained in subsequent messages that she would acquire a doctor's note and that occasionally she needs time beyond that provided by the accommodations. On November 3-4, 2019, the Complainant notified the SDS by email that she had moved XX and was having difficulty acquiring the doctor's note the Professor now required in order to provide the extension without penalty. The SDS replied on November 4, 2019, and stated that the Complainant was receiving the “maximum time frame that the University” is

allowed to provide and that anything beyond the two-week time frame would need to be addressed by the Professor at his discretion. She was then directed to contact the Professor to discuss the situation. In response, the Complainant replied to the SDS and stated that the two-week timeframe was not sufficient for every assignment and reiterated her difficulty in obtaining a note due to her recent move. The SDS replied that the Complainant should inform the Professor of her current situation and the impact it had on her ability to obtain a note.

The Complainant and Professor continued to exchange messages regarding the request for an extension via the Course's online platform throughout November 2019. The Complainant explained at various times that she had moved XX, which impacted her ability to obtain a note from her doctor, and that her XX. The Professor continued to request additional documentation to approve the extension. The Complainant and Professor exchanged messages into December 2019.

Because the Complainant had not submitted all of the Course requirements by the standard end date, November 20, 2019, she was issued an incomplete. The incomplete provided an extended timeframe for submission through December 4, 2019.

On December 25, 2019, the Complainant emailed the SDS and provided a note from her doctor. The note stated that the Complainant had experienced "[r]ecent personal and professional changes [which] have impacted" her disability. The Complainant explained in her email to the SDS that she did not request an extension based on her XX, rather the request extended from the experiences in her life which were impacting her disability. By email on the same date, the University stated that the SDS is able to approve a two-week extension for students receiving accommodations, though "anything past the 2 weeks is at the instructors discretion."

On January 6, 2020, the Complainant emailed the Professor inquiring about the grade she received in the Course, as the incomplete had changed to the grade of "F" as a result of ungraded work. She subsequently emailed the SDS regarding this concern. The Complainant submitted the same email to the SDS 49 times over the course of six minutes. As a result, the SDS asked the Complainant to stop emailing, informed her that a grade appeal was the only path forward to dispute the Course outcome, and stated that any additional emails would result in a code of conduct referral. The Complainant continued requesting information from the SDS and was subsequently referred for a code of conduct violation. The referral resulted in the issuance of a non-disciplinary letter of warning by the University which addressed the Complainant's conduct; however, no further or lasting action resulted from the referral.

In February 2020, the Complainant enrolled in the Course again with a different instructor. The University provided a scholarship to the Complainant to cover the cost of the Course. Ultimately, the Complainant achieved a grade of "A-" in the Course.

The University disputed that it failed to implement the Complainant's academic adjustments, engage in the interactive process with the Complainant, and that it retaliated against her. The University further disputed that it implemented a blanket policy with regard to time extensions.

The University proffered an explanation regarding the experience with the Complainant during the Fall 2019 Course and contended that individualized determinations were made on a case-by-case basis. On May 27, 2020, before OCR had the opportunity to fully investigate the University's explanations and determine whether the University's actions were discriminatory and/or retaliatory, the University notified OCR that it was interested in resolving these allegations.

### **Analysis**

Pursuant to Section 302 of OCR's *Case Processing Manual* (CPM), allegations under investigation may be resolved at any time when, prior to issuing a final determination under CPM Section 303, the recipient expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified issues that can be addressed through a resolution agreement. The provisions of the resolution agreement must be tied to the allegations and the evidence obtained during the investigation, and will be consistent with applicable regulations. Based on the allegations and the evidence provided, OCR determined that this allegation may be appropriately resolved through an agreement under Section 302 of the CPM. On June 19, 2020, OCR received the University's signed resolution agreement (Agreement) (enclosed). Accordingly, this allegation is closed as of the date of this letter and OCR will monitor the Agreement to ensure compliance.

### **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 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, the allegations will have been resolved consistent with the requirements of Section 504, and its 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 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 complainants may have the right to file a private suit in federal court whether or not OCR finds a violation.

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, it will seek to protect, to the extent provided by law, personal information, which if released, could constitute an unwarranted invasion of privacy.

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

In addition, the Department has developed guidance to support recipients, as well as the students, families, staff, and community served therein, through the unprecedented challenges faced by COVID-19. For more information, see the Department's [COVID-19 \("Coronavirus"\) Information and Resources for Schools and School Personnel](#). If the University is in need of assistance from the Department or OCR as a result of COVID-19, please don't hesitate to reach out.

If you have any questions, please contact XX, the Attorney assigned to this complaint, at XX or by email at XX. You also may contact me at XX or by email at XX.

Sincerely,

/s/

Michael D. Todd  
Supervisory Attorney

Enclosure – Resolution Agreement

cc: Ms. Frankie Shinn-Eckberg, Esq.  
Academic Affairs Staff Counsel  
*By email only to XX*