



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VIII

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April 7, 2022

President Brian Mueller
Grand Canyon University
2600 W. Camelback Rd.
Phoenix, AZ 85017

Via email only to brian.mueller@gcu.edu

Re: OCR Complaint No. 08-22-2007
Grand Canyon University

Dear President Mueller:

On October 12, 2021, the United States Department of Education (Department), Office for Civil Rights (OCR) received a complaint against Grand Canyon University (the University). The Complainant alleges that the University discriminated against her on the basis of disability. Specifically, the Complainant alleges that the University did not respond appropriately when the Complainant, who is a student with a visual impairment, requested specific software to access her textbooks.

Because OCR has jurisdiction and the complaint was filed timely, OCR initiated an investigation pursuant to Section 504 of the Rehabilitation Act of 1973, and its implementing regulations, which prohibit discrimination based on disability in any program or activity operated by recipients of Federal financial assistance from the Department. As a recipient of Federal financial assistance from the Department, the University is subject to this law and regulation. Additional information about the laws OCR enforces is available on OCR's website at <http://www.ed.gov/ocr>.

Investigation Summary

OCR notified the University and the Complainant on December 15, 2021, that OCR opened the allegation for investigation. OCR's investigation focused on obtaining the evidence necessary to determine whether the University complied with the legal standard stated below, or whether the University engaged in discrimination as alleged. Specifically, the investigation consisted of requesting and reviewing records and information from the Complainant and the University, interviewing the Complainant, and interviewing a University staff member and administrator.

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

The regulation implementing Section 504, at 34 C.F.R. § 104.4(a), states that 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 regulation implementing Section 504, at 34 C.F.R. § 104.3(j)(1), defines a person with a disability, in relevant part, as any person who has a physical or mental impairment which substantially limits one or more major life activities.

Further, when evaluating whether a recipient of Federal financial aid has failed in its duty to provide academic adjustments, auxiliary services or related aids and services to a person with a disability under 34 C.F.R. §104.44, OCR analyzes whether the Complainant is a qualified person with a disability; whether the Complainant followed the recipient's process for requesting academic adjustments, auxiliary services, or related aids and services; and, if there was a delay or denial, why there was a delay or denial in responding to the Complainant's request.

Finally, Section 504 regulations require a recipient institution such as the University to engage the student with disabilities in an interactive process concerning the student's disability and related needs once the student notified the University of the nature of the student's disability and the need for a modification, adjustment, aid, or service.

Background

The Complainant is an online graduate student at the University, pursuing a master's degree in marriage and family counseling. She is a student with a visual impairment. She began the master's program in March 2021 and to date, has elected to take each eight-week course in the program one at a time. Upon enrolling in the master's program, the Complainant sought and was approved for accommodations from the University's Student Disability Services Office (SDS).

When the Complainant filed her complaint with OCR, she was enrolled in her fourth class of the program. She told OCR that when a new class begins, she has to unlock the electronic textbooks in her online classroom with her school username and password to get them (online students use all electronic textbooks instead of printed books). She has had difficulty getting the electronic textbooks to unlock consistently and to work in Adobe so that the textbooks work with JAWS, the screen reader program she uses. The Complainant contacted her primary contact at SDS (SDS staff) about the problems she was having with accessing electronic textbooks. The Complainant stated that SDS staff told her, after SDS staff referred her to the University's technology help desk to troubleshoot the problem, that the University could provide the electronic textbooks in Kurzweil 3000 software to assist her with access. Kurzweil 3000, as described by the University, is a program the University provides at no cost to its students, alumni, faculty, and staff to assist with tasks and organization, such as dictation, narration, outlining, highlighting, and storage of academic files and articles.

The Complainant was eager to try Kurzweil 3000, but after trying it, she found she was unable to use it because she does not use a mouse. SDS staff told her to contact Kurzweil technical support for assistance. When the Complainant called a representative at Kurzweil technical support, she was told that Kurzweil 3000 is suitable for people who can see well enough to use a mouse. The Kurzweil representative sent an email to the Complainant explaining the reason that Kurzweil 3000 did not work well for her, so that the Complainant could use that information to explain to SDS the reason she was having difficulty accessing her textbooks through Kurzweil 3000. The Kurzweil email stated that the Kurzweil 1000 version of the software would be more suitable. The last sentence of the Kurzweil email also stated that: “[a]nother option would be to provide [the Complainant] her content (book, etc.) in a medium in which she can read with JAWS, the screen reader solution she is using.”

In emails provided by the Complainant to OCR, the Complainant forwarded the Kurzweil representative’s email to SDS staff and requested Kurzweil 1000 instead; however, SDS staff emailed the Complainant informing her that the University does not provide Kurzweil 1000. The Complainant responded by calling and emailing SDS staff, requesting to speak to SDS staff’s supervisor, but the Complainant never received a call or email from the supervisor to discuss accessing her textbooks and the concerns with Kurzweil 3000. The Complainant also told OCR that she has not used Kurzweil 1000, but based on the conversation she had with the Kurzweil representative, she believed it might help with her access to the textbooks. Further, the Complainant told OCR she was unable to describe to SDS staff how she was having difficulty using Kurzweil 3000 or discuss Kurzweil 1000 as an option because SDS staff was difficult to reach by telephone and would only return her calls with email responses.

Since starting the master’s program, the Complainant has maintained As and Bs in her classes. Even so, she said she has been anxious at the start of each new term because she does not know until she opens the new online classroom on the first day of class whether the link to the electronic textbook will be accessible. Because she has discussion questions due within days of starting a new course, she said she worries each new term whether she will have prompt access to her electronic textbooks to complete the discussion questions in time. She also told OCR she has recently accessed her electronic textbooks on her own via an online library unrelated to the University, instead of through her online classrooms, to ensure her access.

The University provided a written response to OCR’s notification letter, as well as documentation that included the Complainant’s request for academic adjustments, email communications regarding SDS approval of the academic adjustments, email communications regarding the Complainant’s request for assistance accessing her electronic textbooks and request for Kurzweil 1000, and the Complainant’s grades at the University.

The University’s written response stated that the Complainant’s initial request for accommodations asked for the following: extended time for tests and documents to be accessible by her screen reader. In the written response, the University stated the Complainant’s accommodations were approved on March 10, 2021, to include extended time for completing

tests and extended time on individual assignments. In addition, the University also stated that it provided the Complainant with information on how to access Kurzweil 3000.

The University also explained in its written response that SDS can utilize Kurzweil 3000 to upload students' electronic textbooks directly through the application so that students can use the PDF version of the full electronic textbook in Kurzweil 3000, or alternatively, in conjunction with their own preferred assistive technology. The University stated that Kurzweil 1000, while similar in its features to Kurzweil 3000, is more widely used to scan printed materials into digital format rather than directly upload textbooks already in digital or electronic format (such as the electronic textbooks in use by the University). Therefore, the University stated its position on Kurzweil 1000 is that it is for printed hard copy materials, which are not in use in the Complainant's online program at the University because it only uses electronic textbooks.

In addition to reviewing the University's position statement and documentation, OCR interviewed SDS staff and the director of SDS. SDS staff told OCR that much of her communication with the Complainant occurred at the start of each of the Complainant's eight-week classes to confirm her academic adjustments of extended time on assignments and on tests. SDS staff stated she recalled the Complainant reaching out to her about not being able to access her electronic textbooks, and she told the Complainant she could reach out to the Kurzweil support team, or she could use Adobe to access the electronic textbook, as well. She stated that she never spoke with the Complainant by phone but communicated only by email.

During OCR's interviews, OCR asked the director and SDS staff whether they took actions to see if Kurzweil 3000 would work for the Complainant. OCR was told that SDS did not specifically take actions to see if Kurzweil 3000 would work for the Complainant, but that SDS could deliver electronic textbooks in several other ways if Kurzweil 3000 is not working for a student. The director also told OCR that, with regard to the last sentence of the Kurzweil email about providing the Complainant her textbooks in a medium that works with JAWS, giving the Complainant the textbook in another medium is exactly what SDS already does (because SDS can provide the textbooks in Adobe, Kurzweil 3000, or in PDF). The information from the University's documentation and interviews did not indicate that SDS staff had explained to the Complainant that these were all options SDS could routinely provide. OCR also noted that the University provided no email documentation showing that SDS staff forwarded to the director the Complainant's email requesting to speak to SDS staff's supervisor about her concerns.

Further, the director also told OCR that when she reviewed the Kurzweil email the Complainant had forwarded to SDS staff, she contacted the University's own Kurzweil representative to discuss it. She said that she learned that because Kurzweil 1000 is typically used for scanning printed hard copy textbooks into digital format, SDS does not need that type of function because it already provides textbooks in that format. She said, for example, that if the University gave the Complainant Kurzweil 1000, the University would have to mail the Complainant a version of the textbook (such as on a USB drive) and then wait for it to arrive to the Complainant in the mail so that the Complainant could upload the textbook from the USB drive on to Kurzweil 1000. The director said that delayed process would negate the University already providing

textbooks in electronic format. The director stated that the University Kurzweil representative told her Kurzweil 1000 would in effect be redundant to what the University already provides.

Finally, the director stated that if the Complainant was having difficulty accessing her electronic textbooks via Kurzweil 3000, the Complainant could request that SDS send her the electronic textbooks in PDF format instead. OCR later asked the Complainant whether SDS had provided her electronic textbooks in PDF format by email so that she could access them with JAWS. The Complainant told OCR she recalled it occurring once when she was not able to access the textbook at all at the start of a new course, and she was able to access the electronic textbook SDS sent in PDF format to use with JAWS. When asked, the Complainant stated she did not know she could routinely ask SDS to provide her the PDF format of her electronic textbooks.

Analysis

The Complainant in this case is a qualified person with a disability. Further, the Complainant and the University agree that the Complainant contacted SDS and provided required documentation to SDS to request academic adjustments prior to beginning her online program at the University. OCR notes that the University timely responded to the Complainant's request for academic adjustments related to extended time on tests and on individual assignments. The Complainant began her coursework and proceeded with following up regularly with SDS to ensure her academic adjustments were approved and communicated to instructors at the beginning of each course. She proceeded in this manner from March 2021 until early August 2021, when she began to experience problems accessing her electronic textbooks.

The evidence obtained to date shows that the Complainant had difficulty accessing her electronic textbooks on several occasions; she contacted SDS both by email and by voice mail message for help; and she had inconsistent results when attempting to speak with someone at SDS. The Complainant attempted to use Kurzweil 3000 software, at the direction of SDS, but she was not able to use it to access her electronic textbooks. When she communicated with SDS and eventually asked to speak to a supervisor, she never received a return call or any further communication from the SDS staff nor from the supervisor (the director). OCR notes concern that while SDS can send the Complainant electronic textbooks in PDF format, which the Complainant told OCR she thinks would provide her with access to her textbooks with JAWS, SDS did not clearly communicate this option to the Complainant. The Complainant told OCR she was not aware of this option.

Pursuant to Section 302 of the 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 allegation and the evidence obtained during the investigation and will be consistent with applicable regulations.

Based on the allegation and the evidence provided that the Complainant had inconsistent access to her electronic textbooks and SDS did not clearly communicate options to the Complainant to

provide access, OCR determined that this allegation may be appropriately resolved through an agreement under Section 302 of the CPM. On April 4, 2022, 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 University's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively and that the University's policies and practices are administered in a nondiscriminatory manner. When the Agreement is fully implemented, the allegation 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 complainant 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.

If you have any questions, please contact XXX, the OCR attorney assigned to this complaint, at 303-844-XXX or XXX@ed.gov.

Sincerely,

XXX
Supervisory Attorney

Enclosure – Resolution Agreement

cc: Academic Affairs Staff Counsel (via email to XXX@gcu.edu)