



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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November 9, 2022

Mr. Brian Mueller  
President  
Grand Canyon University  
3300 W. Camelback Road  
Phoenix, Arizona 85017

*By email only to xxx@gcu.edu*

Re: OCR Complaint No. 08-22-2059  
Grand Canyon University

Dear Mr. Mueller:

This letter advises you of the resolution of this complaint, filed against Grand Canyon University (the University), on December 6, 2021. The complaint alleged that the University discriminated on the basis of disability by failing to provide adequate gluten-free and allergen safe dining and housing options to a student who has XXX and is XXX.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance. Because the University receives Federal financial assistance from the Department, OCR has jurisdiction over it pursuant to Section 504.

Before OCR completed its investigation, the University expressed a desire to voluntarily resolve this complaint. During the investigation, OCR reviewed documents provided by the Complainant and the University and interviewed the Complainant and University employees. The University entered into a voluntary resolution agreement which, when implemented, will resolve OCR's concerns about the University's processes for considering disability accommodation requests in housing.

*Factual Background*

After reviewing the information obtained from the Complainant and the University, OCR learned the following:

- At the time of the complaint, and for the 20XX-XX academic year, the Complainant was enrolled as a XXX student at the University. The Complainant has been diagnosed as having XXX and XXX. As a result, she must adhere to a gluten-free and nut-free diet.
- The Complainant provided documentation regarding her diagnosis of XXX, along with a request for accommodations to the University's Student Disability Services (SDS) Office on May 27, 2020. She requested several academic adjustments which were not at issue in this complaint, and also requested to have a dorm with a kitchenette to allow her to cook and not

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experience cross-contamination with gluten.

- After communicating with the Complainant regarding her dietary needs, an SDS staff member approved the Complainant for a housing assignment with a kitchen, which also had a reduced meal plan requirement.
- The Complainant applied for housing and was assigned to a four-room unit in an on-campus apartment building. The apartment included four private bedrooms, two shared bathrooms, and a kitchen shared by all four roommates. In an interview with OCR, the Complainant explained that when she requested housing with a kitchen as an accommodation, she assumed the University would assign roommates who would be able to work with her allergies. However, the University asserts that it is legally constrained from matching students or segregating students based on disability.
- On August 29, 2020, the Complainant emailed SDS to inform them she had withdrawn from student housing. Her email stated that she canceled it because she was only going to have classes on campus two days per week, but that her communications with her potential roommates about her food-related needs contributed to her decision. The Complainant had received communication from one of her assigned roommates that led her to believe the roommates would be unwilling to avoid using her allergens in their shared kitchen. Although the Complainant requested assistance from SDS in navigating these issues, she was not satisfied with the level of assistance they offered.
- SDS staff members explained to OCR that if the Complainant had not withdrawn from student housing, she could have received assistance from the housing office including:
  - assistance with developing a roommate agreement;
  - the opportunity to change roommates; and
  - the opportunity to request a refrigerator and microwave in her private bedroom.
- The Complainant did not continue to pursue on-campus housing for the 2020-21 academic year. In an email on July 17, 2021, the Complainant contacted SDS regarding the possibility of living on campus for the 2021-22 academic year. She indicated she would need a gluten-free and nut-free living condition.
- An SDS staff member responded and reiterated that the Complainant’s accommodations “cannot override the others students’ right to their living spaces,” and that “we cannot ask your roommates not to have or cook certain foods in the apartment they share with you.” The staff member also indicated that the University “cannot guarantee an allergen free living environment,” and if the Complainant “had concerns with being able to share a space with other students who may cook or eat things that you are allergic to, you may need to explore housing off campus as it is not required for you to live on campus.” The SDS staff member also advised the Complainant of how she could submit a grievance.
- The University provided documentation showing that the deadline to apply for housing for the Fall 2021 semester was April 9, 2021, more than three months before the Complainant emailed SDS.
- The Complainant filed a formal grievance with the University on November 12, 2021. The grievance alleged discrimination in housing and food services based on the Complainant’s XXX and XXX. The Disability Discrimination and Accommodation Review Board (Board) considered the grievance and issue a notice of the outcome on December 17, 2021. The Board concluded that SDS “granted accommodations that appropriately met your medical needs for housing as outlined in your submitted documentation. No evidence was found to substantiate claims of denial of accommodations or any discrimination based on disability.”

The letter reiterated the University’s position that restrictions placed on other students who share the same space are not considered reasonable. Board members interviewed by OCR described applying a “reasonableness” or “reasonable accommodation” standard.

- The Complainant emailed SDS again on December 27, 2021, again requesting accommodations to live on campus. An SDS staff member responded, and although the response did not directly address the requested accommodation, the staff member indicated that housing was already very full, and the Complainant could be placed on a waitlist. The deadline to apply for housing for Spring 2022 was November 1, 2021.

### *Legal Standards and Analysis*

The Section 504 regulation, at 34 C.F.R. § 104.43(a), provides that a qualified person with a disability may not be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in any postsecondary aids, benefits, or services, including housing, on the basis of disability.

At 34 C.F.R. § 104.45, the regulation states that a recipient that provides housing to non-disabled students “shall provide comparable, convenient, and accessible housing” to students with disabilities, at the same cost as to others. Further, such housing “shall be available in sufficient quantity and variety” so that students with disabilities have a choice of living accommodations

When reviewing an allegation regarding housing accommodations, OCR considers whether the University provided a student with a disability with “comparable, convenient, and accessible housing” as compared to what is provided to non-disabled students. Typically, OCR expects a student and a recipient to work together in a good faith, interactive process to determine how a student with a disability can have equal access to a program.

The evidence obtained to date indicates that for the 2020-21 academic year, the Complainant voluntarily withdrew from housing without fully continuing the interactive process. For the 2021-22 academic year, the Complainant’s requests for housing were made after the relevant deadlines for requesting housing had passed, and the Complainant did not submit an application for housing.

However, OCR noted concerns with regard to the University’s approach to housing accommodations, including the need to make individualized determinations that do not rely on blanket decisions through an interactive process, the need to consider modifications or accommodations for a student with a disability that may be perceived as more favorable than housing options that are available to other students, and the need for decisionmakers to rely on appropriate regulatory standards in considering requests for modifications or accommodations rather than general concepts of reasonableness.

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 potential 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.

On August 7, 2022, the University expressed an interest in resolving the complaint allegation pursuant to CPM Section 302. Based on the allegation and the evidence provided, OCR determined that the allegations could be appropriately resolved through an agreement under Section 302 of the CPM. On November 7, 2022, OCR received the University's signed resolution agreement (Agreement), a copy of which is enclosed with this correspondence. Accordingly, this complaint investigation is closed as of the date of this letter, and OCR will monitor the agreement to ensure compliance. We will copy the Complainant on our monitoring letters.

This letter sets forth OCR's determination in an individual case and should not be relied upon, cited, or construed as a formal statement of OCR policy. 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.

Please be advised that the University must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act (FOIA), it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released.

OCR will monitor the implementation of the agreement and will close the monitoring of the agreement when OCR determines that the University is in compliance with the terms of the agreement and the statute and regulations at issue in this case.

If you have any questions, you may contact XXX XXX, the attorney assigned to this case, at xxx@ed.gov or (303) 844-XXXX.

Sincerely,

Sandra J. Roesti  
Supervisory Attorney

cc: XXX XXX (via email)  
XXX XXX (via email)