



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

50 BEALE ST., SUITE 7200
SAN FRANCISCO, CA 94105

REGION IX
CALIFORNIA

April 11, 2014

John J. LoSchiavo, S.J.
Chancellor
University of San Francisco
2130 Fulton Street
San Francisco, CA 94117-1080

(In reply, please refer to # 09-13-2382.)

Dear Chancellor LoSchiavo:

The U.S. Department of Education, Office for Civil Rights (OCR), has concluded its investigation of the above-referenced complaint against the University of San Francisco (University). The complainant¹ (Student) alleged that the University discriminated against him based on disability (blindness). The specific allegations investigated by OCR were whether:

1. The Student's fall 2013 Computer Science instructor harassed him based on disability; and
2. The University failed to provide the Student with approved academic adjustments and auxiliary aids and services (collectively, accommodations) during his enrollment in a Computer Science course during the fall 2013 semester, or engage him in the interactive process when he indicated that his accommodations were not working.²

OCR opened this complaint for investigation under the authority of Section 504 of the Rehabilitation Act of 1973 and its implementing regulation. Section 504 prohibits discrimination on the basis of disability in programs and activities operated by recipients of Federal financial assistance. The University receives Department funds and is subject to the requirements of Section 504.

Under Section 302 of OCR's Complaint Processing Manual, a complaint may be resolved at any time when, before the conclusion of an investigation, a university expresses an interest in resolving the complaint. Prior to the completion of OCR's investigation, the University informed OCR it was amenable to taking steps to ensure the Student has equal educational opportunity in the University's program. OCR and the University entered into an agreement to

¹ OCR informed the University of the complainant's identify in our letter notifying the University of the complaint. We are withholding it here to protect his privacy.

² In our letter notifying the University of the complaint, OCR stated the allegation more narrowly as failure to provide note-taking services

resolve the complaint in April 2014. Accordingly, OCR did not complete its investigation of the complaint or reach conclusions regarding the University's compliance with Section 504.

The applicable legal standards, the facts OCR gathered during its preliminary investigation, and the disposition of the allegations are summarized below.

Legal Standard: Allegation One. The regulations implementing Section 504, at 34 C.F.R. §104.4(a) and (b), prohibit discrimination based on disability by recipients of Federal financial assistance. Universities are responsible under Section 504 for providing students with a nondiscriminatory educational environment. Harassment of a student based on disability can result in the denial or limitation of the student's ability to participate in or receive education benefits, services, or opportunities.

Universities provide program benefits, services, and opportunities to students through the responsibilities given to employees. If an employee who is acting, or reasonably appears to be acting, in the context of carrying out these responsibilities engages in disability-based harassment that is sufficiently serious to deny or limit a student's ability to participate in or benefit from the program, the university is responsible for the discriminatory conduct whether or not it has notice.

Under Section 504 and its regulations, if a student is harassed based on disability by an employee, the university is responsible for determining what occurred and responding appropriately. OCR evaluates the appropriateness of the responsive action by assessing whether it was prompt, thorough and effective. What constitutes a reasonable response to harassment will differ depending upon circumstances. However, in all cases the response must be tailored to stop the harassment, eliminate the hostile environment if one has been created, and address the problems experienced by the student who was harassed. The university must also take steps to prevent the harassment from recurring, including disciplining the harasser where appropriate.

Legal Standard: Allegation Two. The Section 504 regulations, at 34 C.F.R. §104.43(a), provide that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any postsecondary education program of a recipient. At 34 C.F.R. §104.44(a), the regulations require recipient universities to make modifications to their academic requirements that are necessary to ensure that such requirements do not discriminate, or have the effect of discriminating, against qualified individuals with disabilities. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific required courses, and adaptation of the manner in which courses are conducted. However, academic requirements that recipient universities can demonstrate are essential to the program of instruction being pursued or to any directly related licensing requirement will not be regarded as discriminatory.

At C.F.R. §104.44(d)(1), the regulations require recipient universities to take steps to ensure that no disabled student is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination because of the absence of educational auxiliary aids for students with impaired sensory, manual or speaking skills. Section 104.44(d)(2) provides that auxiliary aids may include taped texts, interpreters or other effective methods of making orally delivered materials available to students with hearing impairments, readers in libraries for students with visual impairments, classroom equipment adapted for use by students with manual impairments, and other similar services and actions. Recipient colleges and universities, however, need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

Under the requirements of Section 504, a student with a disability is obligated to notify the university of the nature of the disability and the need for a modification, adjustment, aid or service. Once a university receives such notice it has an obligation to engage the student in an interactive process concerning the student's disability and related needs. As part of this process, the university may request that the student provide documentation, such as medical, psychological or educational assessments, of the impairment and functional limitation.

OCR's preliminary investigation showed the following:

- The Student has been blind since age 29. He has a master's degree and several bachelor's degrees. He enrolled in the University in fall 2013 with the goal of obtaining a bachelor's degree in Computer Science. He is the University's first blind Computer Science major.
- Accommodations approved for the Student by the University's Student Disability Services Office (SDS) included, among others: testing accommodations including triple time, private room, reader, scribe or typist, and use of computer and screen reading software; note taking services; and a scribe.
- The Student's only fall 2013 course was Computer Science 110 (CS 110). It was taught by Instructor One, XXX XXXXXXXX XX X XXXXXXXX XXXXX. The semester began on August 20, 2013.
- The Student alleged that his testing accommodations in CS 110 were not effective. The evidence indicated Instructor One wanted the Student to begin his tests in SDS and finish them in her classroom with his classmates so he could benefit from any oral information she provided during the test. The Student found this arrangement disruptive because he had to transport his materials between locations, resettle his service dog, and restart his laptop mid-quiz. Also, because he began the test in SDS, he did not have the benefit of the oral information provided by Instructor One during the first half of the test.

- The evidence -- including an audio recording of an interaction between the Student and Instructor One,³ email correspondence, and the Student's descriptions -- indicates the Student suggested in early September that he begin tests in class at the same time as his classmates, and then stay after class to complete them; Instructor One rejected this option because she did not want to change her practice of reviewing test answers with students before they left class. The Student also suggested that he take the entire exam in SDS; however, Instructor One told him he could not receive the information she provided to other students unless he was physically in the classroom.
- In the conversation captured on the audio recording, Instructor One spoke to the Student in a loud voice and repeatedly interrupted and talked over him. She asked him questions related to his accommodations to which she demanded yes or no answers that she would not allow him to explain. She suggested she was angry that the Student told SDS that his testing arrangements were problematic. She seemed to imply he cheated on a quiz. The Student described behavior of Instructor One on other occasions that he characterized as hostile, including questioning the amount of extra time SDS approved for his testing, suggesting he was not qualified for the Computer Science program, and making it difficult for him to meet with her outside of class.
- When the Student told SDS staff about his difficulties with Instructor One in late September, they immediately arranged for his transfer to a different section of CS 110. The Student said he had a better experience with the new instructor; however, by the time he transferred the course was well underway, and he had a difficult time catching up.
- The Student alleged other problems with his accommodations. He said the University did not provide a note-taker until September 19, 2013 or a reader until September 26. He said the individual assigned as his Reader did not understand Computer Science and therefore did not know what she should or should not read;⁴ he likened this to having a reader in a French class who did not speak French.
- The Student also said that another individual assigned by the University to work with him after he transferred to the new CS 110 class viewed himself as a tutor" while the complainant felt he needed a "lab assistant." The Student wanted the individual to, for example, describe what was happening visually on his screen when his screen-reading software could not, while the individual thought his job was to teach the Student material. The Student's approved accommodations do not mention this person or the function he was to perform.

³ The Student had permission to record class pursuant to an approved accommodation. The interaction occurred during a class meeting.

⁴ Although the Student's approved accommodations indicate only that he was to have a reader as a test-taking accommodation, both the Student and the University seemed to agree that the reader would provide more general classroom services.

- The Student did not complete CS 110, and wanted to retake it the next semester. However, because Instructor One was the only person teaching the course, he asked to take it through independent study. Although initially receptive to this idea, the University ultimately determined that independent study was a pedagogically unsound forum for the course. The Student did not enroll in a course for the spring 2014 semester.

As noted above, under OCR's procedures, a complaint may be resolved at any time when, before the conclusion of an investigation, a university expresses an interest in resolving the complaint. Prior to the completion of OCR's investigation, the University entered into the attached agreement to resolve the allegations in the complaint. The agreement requires the University to, in sum: arrange for an individual to work with the Student to help identify and evaluate potential accommodations that will be effective for him in the Computer Science program; assign an SDS employee to be the Student's primary contact and help ensure he receives effective accommodations; engage the Student in an interactive process to determine the accommodations necessary to ensure the Student has equal educational opportunity; arrange for an outside expert to provide in-service to University staff on accommodating blind and vision-impaired students; provide guidance to the instructor of any course in which the Student enrolls regarding his disability and accommodations; provide training to Instructor One, should she teach at the University again; refund fees paid by the Student related to his fall 2013 enrollment; remove the Withdrawal from the Student's transcript from the fall 2013 semester; and issue a guidance memorandum to University faculty regarding their obligations to provide SDS-approved accommodations.

Because the University voluntarily resolved this complaint, OCR did not complete its investigation or reach conclusions as to whether the University failed to comply with Section 504. OCR will monitor the University's implementation of the agreement. OCR is closing this complaint as of the date of this letter, and notifying the University complainant simultaneously. 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 whether or not OCR finds a violation.

OCR routinely notifies universities that they are prohibited from harassing, coercing, intimidating, or discriminating against any individual for filing a complaint with OCR or participating in the complaint resolution process.

Under the Freedom of Information Act, it may be necessary to release this document and related 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 that, if released could reasonably be expected to constitute an unwarranted invasion of privacy.

Thank you for your cooperation in resolving this case. If you have any questions about this letter, please contact Suzanne Taylor, OCR attorney, at 415-486-5561.

Sincerely,

/s/

Anamaria Loya
Team Leader

Enclosure

cc: Donna Davis, Campus Counsel