



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION IX
CALIFORNIA

December 17, 2015

Nicholas B. Dirks
Chancellor
University of California, Berkeley
200 California Hall
Berkeley, California 94720-1520

(In reply, please refer to case no. 09-14-2251.)

Dear Chancellor Dirks:

On April 3, 2015, the U.S. Department of Education, Office for Civil Rights (OCR) issued a letter finding the University of California, Berkeley (University) in violation of Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation, as well as Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulation, with respect to the above-referenced complaint. The complaint alleged that the University discriminated against the complainant on the basis of disability, and OCR found that the University failed to provide her with an approved accommodation (notetaker services) during the Fall of 2013 and during the Spring of 2014.

OCR is responsible for enforcing Section 504, which prohibits discrimination on the basis of disability in any education program or activity operated by a recipient of Federal financial assistance. OCR is also responsible for enforcing Title II, which prohibits discrimination against individuals with disabilities who use the services of certain public entities. The University is a recipient of Federal financial assistance from the Department of Education, and is a public education system, and is therefore subject to the requirements of Section 504 and Title II and their implementing regulations. OCR therefore has jurisdiction over this complaint.

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. The Title II regulations, at 28 C.F.R. §35.130(a), contain a similar prohibition applicable to public postsecondary educational institutions.

The Section 504 regulations, at 34 C.F.R. §104.44(d)(1), require recipient colleges and 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. Under the Title II regulations, at 28 C.F.R. §35.130(b)(1)(ii) and (iii), public colleges and

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

universities may not afford a qualified individual with a disability opportunities that are not equal to those afforded others, and may not provide aids, benefits or services that are not effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others. Under 28 C.F.R. §35.130(b)(7), public colleges and universities must make reasonable modifications in policies, practices or procedures when necessary to avoid discrimination on the basis of disability, unless doing so would fundamentally alter the nature of the service, program or activity.

The Title II implementing regulations, at 28 C.F.R. § 35.160, require public entities to take appropriate steps to ensure that communications with participants with disabilities are as effective as communications with others. The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual; the nature, length, and complexity of the communication involved, and the context in which the communication is taking place. The Title II implementing regulations, at 28 C.F.R. §35.160(b)(2), further require that, in determining what type of auxiliary aid and service is necessary, the college or university must give primary consideration to the requests of the individual with disabilities. It must honor the request unless it can demonstrate that another equally effective means of communication exists or that use of the means chosen by the individual results in a fundamental alteration in the program.

OCR's April 3, 2015, letter finding the University to be in violation of Section 504 and Title II and their implementing regulations with respect to the allegation at issue in this complaint is incorporated by reference into this letter. As explained in the letter of findings, OCR's investigation revealed that the University failed to effectively provide the complainant with notetaking services that had been determined by the University to be "needed" and "appropriate" for the student. OCR concluded that the University failed to provide notetaking services to the Student in two classes (Social Welfare 250M in Fall 2013 and Public Policy 190 in Spring 2014) and did not promptly engage in an interactive process to identify an effective interim or permanent alternative. OCR further concluded that the University did not have an established method for promptly securing notetaker services for disabled students who need them, in the event that a classmate does not volunteer to take these notes.

On December 15, 2015, OCR received a signed copy of the enclosed Agreement to resolve (Agreement) from the University. Under the Agreement, the University has agreed to take the following actions:

- Implement procedures that will ensure the timely provision of class notes to students with disabilities for whom class notes have been determined to be an appropriate accommodation;

- Ensure that the revised University procedures for procuring class notes are emailed to staff involved in the development and implementation of academic aids and services for students with disabilities;
- Update online and printed informational materials describing notetaking services;
- Provide data to OCR for a one year period that will allow OCR to track the implementation of the revised procedures for providing class notes to students with disabilities;
- Retain a professional transcription service to transcribe into text all of the audio-recordings made by the complainant during Fall 2013 Social Work 250M and Spring 2014 Public Policy 190 classes;
- Permit the complainant one year from the date of this agreement to complete Social Work 250M and Public Policy 190;
- For the complainant, waive, for a period of one year from the date of this agreement, the library fee normally imposed on students not currently enrolled at the University;
- Allow the complainant to resume the rate of repayment on her debt to the University as set out in a letter dated October 8, 2014; and
- Upon request of the complainant, issue Letters of Accommodation (and provide accommodations listed therein) for up to one year from the date of this agreement, with respect to the two courses subject to this agreement.

This Agreement is designed, when fully implemented, to resolve this complaint and remedy the University's Section 504 and Title II violations, by providing the complainant and other students with disabilities academic accommodations for which they have been approved. OCR will monitor implementation of the Agreement until the University has fulfilled its terms and is in compliance with Section 504 and Title II and their implementing regulations at issue in this case.

OCR is notifying the complainant of this resolution by concurrent letter. Please be advised that the University may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, a complaint may be filed alleging such treatment.

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 the law, personal information which, if released, could reasonably be expected to constitute an unwarranted invasion of privacy. The complainant may file a private suit in federal court, whether or not OCR finds a violation.

OCR would like to thank the University, and especially Associate Counsel Sarah Hawthorne, for their cooperation during this investigation. If you have any questions regarding this letter, please contact Mr. Jim Wood at (415) 486-5555.

Sincerely,

/s/

James M. Wood
Team Leader

Cc: Sarah Hawthorne, Associate Campus Counsel (by email only)
Na'ilah Nasir, Vice Chancellor, Equity and Inclusion

Enclosure