



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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

REGION IX  
CALIFORNIA

June 30, 2015

Penelope E. Bryan  
Dean and Vice President  
Whittier Law School  
3333 Harbor Boulevard  
Costa Mesa, California 92626

(In reply, please refer to case no. 09-14-2407.)

Dear Dean Bryan:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against Whittier Law School (the Law School). OCR investigated whether the Law School discriminated against the Student on the basis of disability.<sup>1</sup> Specifically, OCR investigated whether the Law School:

1. provided the Student with additional time on tests necessary to ensure that he could participate in the education program in a nondiscriminatory manner in the spring of 2014;
2. retaliated against the Student after he requested additional time to complete tests by grading the Student more harshly, and unfairly calculating his year-end grades; and,
3. did not have published grievance procedures providing for the prompt and equitable resolution of complaints of discrimination in grading.

OCR investigated this allegation under the authority of Section 504 of the Rehabilitation Act of 1973 (Section 504), and its implementing regulations. Section 504 prohibits discrimination on the basis of disability in programs and activities operated by recipients of Federal financial assistance from the United States Department of Education. The Law School receives Department funds and is subject to the requirements of Section 504 and its implementing regulations.

OCR gathered evidence through a review of documents and information provided by the Student and the Law School, as well as interviews with the Student and Law School employees. OCR determined that there was sufficient evidence to support a conclusion of noncompliance with Section 504 with respect to issue one above. However, with respect to issues two and three, OCR

---

<sup>1</sup> OCR's October 2, 2014, letter to the Law School provided the identity of the Student. OCR is withholding the Student's identity from this letter to protect the Student's privacy.

found insufficient evidence to support a conclusion of noncompliance with Section 504. OCR informed the Law School of its findings, and without admitting any violation of the law, the Law School agreed to enter into a Resolution Agreement (attached), to address OCR's finding of noncompliance. The applicable legal standards, relevant facts gathered during our investigation, and reasons for our determination are summarized below.

### Background

The Student attended the Law School as a first year law student during the 2013-2014 school year. During the fall 2013 semester, the Student requested accommodations for a disability. The Law School granted the Student temporary accommodations near the end of the fall 2013 semester. During the spring 2014 semester, the Student provided additional documentation of his disability, and the School granted him accommodations during the spring 2014 semester. The Student was academically disqualified from the Law School at the end of the 2013-2014 school year.

*Issue 1: Whether the Law School provided the Student with additional time on tests necessary to ensure that he could participate in the education program in a nondiscriminatory manner in the spring of 2014.*

### Legal Standard

The Section 504 regulations, at 34 C.F.R. § 104.3(j)(1)(i), define an individual with a disability as one who has a mental or physical impairment that substantially limits one or more major life activities. Under the Section 504 regulations, at 34 C.F.R. § 104.3(l)(3), with respect to postsecondary education services, a qualified individual with a disability is one who meets the academic and technical standards requisite to admission or participation in the recipient's education program or activity. 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 Section 504 regulations, at 34 C.F.R. § 104.44(a), require recipient colleges and 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 colleges and 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.

Under the requirements of Section 504, a student with a disability is obligated to notify the recipient of the nature of the disability and the need for a modification, adjustment, aid or service. Once a school 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 school may request that the student provide documentation, such as medical, psychological or educational assessments, of the impairment and functional limitation.

## Factual Findings

### *Accommodation Procedure*

According to the Law School's description of its process to determine accommodations for students, "when all completed forms are returned" with the required medical documentation, "it is reviewed to determine if it is a qualifying disability. For physical disabilities, accommodations are given based on what is recommended by the physician or based on what the student feels is needed. For all other disabilities, the decisions are made based on the opinions of an outside consultant who is considered an expert in [the] field, who reviews all documentation." Once the Law School's outside expert makes a recommendation, the Law School "puts into place the appropriate accommodations and the student is notified by e-mail and U.S. mail."

The Law School's 2013 "Policy for Students and Applicants with Disabilities" states that students must submit "[p]etitions for exam accommodation requests related to disabilities . . . no later than six weeks prior to the first day of the start of the examination period" "because of the time needed for processing and approval of these requests."<sup>2</sup> The policy further states that "[p]etitions received after the six week deadline, will not be considered for exam accommodations for the current exam period," including "[a]ny petition received before the deadline, but with incomplete documentation."<sup>3</sup>

### *Student's Request*

The Student initially contacted the Law School to request disability accommodations on or about October 28, 2013. On or about November 8, and 15, 2013, the Student submitted documentation of a visual impairment that resulted from a serious automobile accident. The Student requested extra time on exams and other accommodations. The Law School initially determined that the Student's documentation was insufficient, and that he had submitted additional medical documentation too late to receive accommodations for the fall semester exams, which started on or about December 2, 2013. However, on November 22, 2013, an attorney sent a letter on the Student's behalf, reiterating his request for accommodations, and alleging that the delay was partly the due to miscommunication caused by the Law School. In response, the Law School offered to provide the Student with interim accommodations on his fall 2013 exams, while he obtained additional documentation of his disability. The temporary accommodations included a semi-private room and time and one half on exams.

During the spring 2014 semester, the Student obtained a psychoeducational evaluation conducted by a clinical psychologist to determine whether he had a learning disability, attention deficit disorder, or any other psychological concern impacting his academic and occupational abilities. In relevant part, the evaluation found that the Student exhibited a slow reading rate and processing speed. The Student's evaluation, dated March 25, 2014, recommended double time on exams, access to large print materials, and a semi-private room for exams, as well as

---

<sup>2</sup> "Policy for Students and Applicants with Disabilities," Revised Summer 2013, page 5. Available at [https://www.law.whittier.edu/resources/lawlibrary/Policy\\_for\\_Students\\_and\\_Applicants\\_with\\_Disabilities.pdf](https://www.law.whittier.edu/resources/lawlibrary/Policy_for_Students_and_Applicants_with_Disabilities.pdf).

<sup>3</sup> Id.

permission to record lectures. The Student submitted his request for accommodations to the Law School on March 31, 2014.

After receiving the Student's request for accommodations and the recommendation from his evaluating psychologist that the Student receive double time on exams, the Law School submitted his documentation to an outside clinical psychologist for review, pursuant to the Law School's normal process. On April 16, 2014, the outside consultant acknowledged that the Student appeared to have visual scanning deficits and possible attentional deficits related to traumatic brain injury, recommended that the Student receive time and one quarter on exams rather than double time, and agreed with the other accommodation recommendations of a semi-private room for exams, enlarged print materials, and access to recordings of lectures. On April 17, 2014, the Law School sent a letter to the Student stating that he would receive accommodations of time and one-half on exams, rather than the double time recommended in his evaluation, or the time and one quarter that he actually received.<sup>4</sup> However, the letter's representation that the Student would receive time and one-half was a mistake, because the Law School had determined that it would only provide the Student time and one quarter on his exams.

The same day, the Law School sent the Student an email stating he would receive an accommodation of time and one quarter on his final exams. Neither the April 17, 2014, email or letter, explained why the Student would not receive double time as his psychologist recommended, that the Law School used an outside clinical psychologist to make this determination, or the basis for this decision. The April 17, 2014, letter and email also explained the Student's other approved accommodations. The letter and email did not explain any process for the Student to appeal the accommodations the Law School offered.

On April 23, 2014, the Law School's registrar's office sent the Student a series of emails about taking his accommodated exams, which including the length of time for each of his exams in Criminal Law, Real Property, Torts, and Contracts. According to these emails, the time allotted for the Student's upcoming exams – scheduled to start in just five days on April 28, 2014 – was time and one quarter. These emails also did not provide an explanation as to why the Student would receive time and one quarter on his exams.

The Student received time and one quarter on his spring 2014 exams. However, he did not do well enough to remain enrolled at the Law School and was declared academically ineligible based on his final spring 2014 grades.<sup>5</sup>

In 2014, the Student took the California First-Year Law Students' Examination, administered by the California Committee of Bar Examiners. The Student requested accommodations, and therefore requested that the Law School complete verification paperwork regarding his disability and accommodations, under penalty of perjury. According to the verification completed by the Law School on August 4, 2014, the Student was accommodated for a visual impairment and learning disability. The form that the Law School completed stated that the Student received

---

<sup>4</sup> The Student denied ever receiving the letter, but acknowledged receiving an email on the same date, which stated that he would receive time and one quarter on his exams, as well as other accommodations.

<sup>5</sup> The Law School's 2013-2014 Policy Manual required students to maintain a cumulative grade point average of 2.5 or above at the end of the second semester, and each subsequent semester, to remain in good academic standing.

time and one half, rather than time and one quarter, as his accommodation. The Student asked about this discrepancy, and the Law School's Americans with Disabilities Act (ADA) Coordinator who oversees the accommodations process for students with disabilities explained that she was aware that he only received time and one quarter, but she wrote time and one half on the form to help him, "since we do not really give" time and one quarter, and "we always do time and one half."

### Analysis

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. Whether a recipient has to make modifications to its academic requirements or provide auxiliary aids is generally determined on a case-by-case basis. Section 504 envisions a meaningful and informed process with respect to provision of accommodations, e.g., through an interactive and collaborative process between the school and the Student. If a school decides to deny a request for an accommodation, it should clearly communicate the reason for its decision to the student, so that the student has a reasonable opportunity to respond and provide additional documentation that would address the school's objections.

Here, the Law School's psychologist acknowledged the Student appeared to have visual scanning deficits and possible attentional deficits related to traumatic brain injury, yet the Law School rejected the recommendation of double time on exams from the Student's psychoeducational evaluation. The Law School only gave the Student time and one quarter on his spring exams, despite acknowledging that it "always gives" time and a half and "never" gives time and one quarter. The Law School represented to the California Bar Association, that it gave the Student time and one half on his exams. In rejecting the recommendation that the Student receive double time on his exams, the Law School did not explain the specific reasons for this decision to the Student – either verbally or in writing. The School did not offer to engage in an interactive process with the Student to resolve the difference in testing time, despite its obligation under Section 504 to interact with the Student to arrive at a final decision, rather than imposing its decision on the Student unilaterally. Therefore, the Student did not have information to appeal the decision, or even discuss it in a meaningful way with the Law School. The school's failure to provide the specific reasons for denying double time on exams also denied the Student the opportunity to obtain additional medical documentation, if needed, that might have supported his psychologist's recommendation for double time. The interactive process is important so that the recipient school and the Student can identify reasonable accommodations, as required by Section 504. The Law School's failure to meaningfully engage in this process, when it did not inform the Student of the basis for denying him the recommended double time on his exams, did not satisfy the requirements under Section 504 and its implementing regulations at 34 C.F.R. §§ 104.43(a), 104.44(a), and 104.44(d).

In addition, the Law School's requirement that all requests for exam accommodations be provided at least six weeks prior to the first day of the exam period is unreasonable, and does not meet the requirements of Section 504 at 34 C.F.R. §§ 104.43 and 104.44. Such a rule cannot be justified by administrative convenience. And, although the Law School may require a

reasonable amount of time to engage in the interactive process with a student to determine appropriate accommodations, what is reasonable will vary, and such an extensive amount of time will likely be excessive in all but the most complex situations. For students with an impairment of their sensory, manual, or speaking skills, this policy also conflicts with Section 504 at 34 C.F.R. at § 104.44(c), which requires that the Law School “provide such methods for evaluating the achievement of [such] students . . . as will best ensure that the results of the evaluation represents the student's achievement in the course, rather than reflecting the student's” impairment.

*Issue 2: Whether the Law School retaliated against the Student after he requested additional time to complete tests by grading the Student more harshly, and unfairly calculating his year-end grades.*

### Legal Standard

The Section 504 regulations, at 34 C.F.R. § 104.61, incorporate 34 C.F.R. § 100.7(e) of the regulations implementing Title VI of the Civil Rights Act of 1964 and prohibit recipient schools from intimidating, coercing, or retaliating against individuals because they engage in activities protected by Section 504. When OCR investigates an allegation of retaliation, it examines whether the alleged victim engaged in a protected activity and was subsequently subjected to adverse action by the school under circumstances that suggest a connection between the protected activity and the adverse action. If a preliminary connection is found, OCR asks whether the school can provide a nondiscriminatory reason for the adverse action. OCR then determines whether the reason provided is merely a pretext and whether the preponderance of the evidence establishes that the adverse action was in fact retaliation.

### Factual Findings

Beginning in the fall of 2013, the Student advocated for disability based accommodations. His efforts included obtaining an attorney to send a letter on his behalf to the Law School in November 2013. This led the Law School to change its initial position denying him accommodations in the fall, to granting him temporary accommodations for his fall 2013 exams. The Student alleged to OCR that his torts and property professors retaliated against him by grading him more harshly than other students, because of his efforts to obtain disability accommodations.

OCR found that the Law School has a blind grading system, including for the torts and property classes about which the Student complained. The professors for these two courses receive all exams, including exams from students with disabilities, at the same time, and grade the exams without knowing the name of the student who wrote the exam. Exams are tracked and matched to students based on an exam number. The Student told OCR that he reported to some of his professors, including his property professor, that he had previously been injured in a car accident. However, both professors denied knowing the Student was receiving accommodations for a disability, or that he had been in a dispute with the Law School about his requested accommodations. The other Law School staff who were aware that the Student was receiving accommodations and that there was a dispute over whether the Student should receive such

accommodations during the fall of 2013, denied ever providing this information to any of the Student's professors, or of influencing the grading process. None of the written documentation provided by the Law School to OCR, suggested that the Student's professors were aware that he received disability accommodations or that there had been a dispute about the accommodations between the Student and the Law School.

In addition, one reason the Student believed he was graded more harshly than his peers, is because he believed that his first and second semester torts grades were not properly combined to arrive at his final grades. Specifically, the Student received a grade of 2.8 the first semester, and 2.2 on his second semester final. He believed these should have been calculated to result in a grade of 2.5. However, the Law School has a grading curve, which the School calls "normalizing," and which requires classes to have a distribution of grades, both high and low. The Student's class did not have the appropriate distribution of grades, so the Student's grade of 2.5 was "normalized" and lowered by .3, resulting in a final grade for the Student of 2.2. Several other students' grades were similarly "normalized," and lowered. The students selected to have their grades lowered in this manner were selected anonymously by the professor based on the quality of the final exam using the student's exam number, but without knowledge of any student's identity. According to the Law School's policy, students' first semester grades are not normalized (a practice which can mislead students since their final grade will be normalized), but their second semester grade is normalized. Therefore, when the Student's first and second semester grades were averaged and normalized, he received a grade that was lower than he expected, but nonetheless was consistent with the Law School's policies and practices. According to the Law School, this grade was the product of the School's anonymous grading and grade normalization, and OCR found no evidence to suggest otherwise.

With regard to the grades for the student's real property class, the fall semester final exam was worth 35% of the course final grade, and the spring semester final exam was worth 65% of the Student's final grade. Based on his scores and the weight of each test, the Student received a final grade of 2.0 in the course.

For all of his courses, the Student's Grade Point Average (GPA) at the end of his first year at the Law School was 2.3, rather than the 2.5 GPA that he needed to remain at the Law School in good standing.

### Analysis

As explained above, in determining whether a recipient has engaged in unlawful retaliation, OCR examines whether the Student was subjected to adverse treatment after engaging in protected activity, under circumstances that suggest a connection between the protected activity and adverse action. If such a connection is found, OCR determines whether the school had a nondiscriminatory reason for the adverse action, or whether any such reason provided is merely a pretext.

Here, the Student engaged in protected activity when he requested disability based accommodations, and advocated for such accommodations, including by obtaining the assistance of an attorney to send a letter to the Law School on his behalf. Subsequent to these efforts, the Student received low grades on his exams, and eventually the Law School declared him

academically ineligible to continue. However, OCR's investigation did not show, by a preponderance of the evidence, that the Student was subjected to harsh or more stringent grading in retaliation for his protected activity. Indeed, OCR did not find evidence that the Student's professors were aware of his advocacy or his status as a disabled student receiving accommodations from the Law School. In addition, even if the Student's professors were aware of his protected activity, the Law School uses an anonymous grading system, which would have prevented the Student's professors from grading his exams more stringently due to his protected activity. The Law School also provided non-discriminatory reasons for the Student's final grades, based on the grade normalization process for the Student's torts course, and the weight of each exam in the Student's real property course. Therefore, OCR determined that there was insufficient evidence to support a finding that the Law School retaliated against the Student by grading him more harshly in his torts or real property courses.

*Issue 3: Whether the Law School has published grievance procedures providing for the prompt and equitable resolution of complaints of discrimination in grading.*

#### Legal Standard

The Section 504 regulations, at 34 C.F.R. § 104.7(b), require a recipient employing 15 or more persons to adopt grievance procedures that incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints alleging disability discrimination.

OCR examines a number of factors in evaluating whether a recipient/public entity's grievance procedures are prompt and equitable, including whether the procedures provide for the following: notice of the procedure to students, and employees, including where to file complaints; application of the procedure to complaints alleging discrimination by employees, other students, or third parties; adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence; designated and reasonably prompt timeframes for major stages of the complaint process; notice to the parties of the outcome of the complaint; and an assurance that steps will be taken to prevent recurrence of any discrimination and to correct its effects.

#### Factual Findings

Under the heading "Grievances," the Law School's policies state that "Students who request accommodations from faculty or staff members and who believe that such accommodations have been impermissibly denied or who believe that they have been discriminated against on the basis of their disability should bring this matter to the attention of the Assistant Dean for Student Relations. If the Assistant Dean is unable to resolve the matter informally, or if the student is dissatisfied with the resolution, the student may petition the Academic Standards Committee. Appeals from decisions of the Academic Standards Committee may be brought as provided in the Rules and Regulations of the Law School." The Law School's written materials incorporate Whittier College's grievance procedures. These materials are available online. In addition, on October 21, 2013, as required by its policies, the Law School sent an email to all students, staff, and faculty regarding the Law School's nondiscrimination policy and grievance procedures,

which included a link to the grievance procedure for complaints of disability and other discrimination.

After the Student was deemed academically ineligible at the end of the spring 2014 semester, he emailed the Assistant Dean for Student and Alumni Relations on June 4, 2014. He wrote that “[t]his past semester I had several health issues” and he asked to meet to “discuss other possible options” regarding his grades. In further written communications and in a meeting with Law School employees, the Student explained that he wanted to challenge his grades. However, in his written communications, the Student never explained that he believed he was discriminated against based on disability, he did not allege that he was not provided appropriate disability accommodations, and he did not explain what he meant by his reference to “health issues” in his June 4, 2014, email. The Law School staff also told OCR that the Student did not allege disability discrimination or a failure to accommodate him when they met with him regarding his concerns about his grades and his desire to challenge his grades.

### Analysis

OCR’s investigation showed that the Law School has a published grievance procedure in place to address complaints of disability discrimination. The grievance procedure is found in Whittier College’s materials, which are available online and incorporated by reference in the Law School’s policies and online publications. The Law School also informed students of its grievance procedure via email at the beginning of the fall 2013 semester. The Student informed Law School staff of his desire to challenge his grades, but did not allege disability discrimination as the basis for his grade appeal, and did not file a grievance. OCR determined that the Law School has a published grievance procedure as required by Section 504, and the Student did not sufficiently allege disability discrimination with the Law School to trigger the Law School’s duty to investigate his grades consistent with its procedure. Therefore, by a preponderance of the evidence, OCR found insufficient evidence to support a finding of noncompliance with respect to the Law School’s grievance procedure.

### Conclusion

For the reasons explained above, OCR determined that there is insufficient evidence to support a conclusion of noncompliance with Section 504 with respect to issues two and three. However, with regard to issue one, OCR determined that there was sufficient evidence to support a finding of noncompliance with regard to the student’s accommodation for testing, as well as the Law School’s policies and procedures regarding engaging in an interactive process to determine reasonable accommodations for students with disabilities. As mentioned above, after OCR notified the Law School of its conclusion, without admitting to any violation of law, the Law School entered into a signed agreement (Agreement) that, when fully implemented, will resolve the issues in this complaint.

Pursuant to the Agreement, the Law School will: (1) offer the Student the option to retake his exams this summer (2015); (2) allow the Student to re-enroll in the School and will not charge him tuition for the 2015-2016 school year if the Student is readmitted based on his exam scores and resulting cumulative grade point average; (3) allow the Student to petition for readmission if

the Student's exam scores do not qualify him for readmission but do qualify him to petition for readmission, and if readmitted the Law School will not charge him tuition for the 2015-2016 school year; (4) engage in an interactive process with the Student to determine his accommodations going forward, if he is readmitted; (5) revise its policies and procedures to ensure that it provides an interactive process to determine reasonable accommodations for students with disabilities, including when there is a dispute; and, (6) eliminate the requirement that exam accommodation requests must be made at least six weeks prior to the first day of the exam period. The signed Agreement is enclosed with this letter. OCR will monitor the Law School's implementation of the Agreement.

This concludes OCR's investigation of the complaint and should not be interpreted to address the Law School's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. OCR will notify the Student concurrently.

Please be advised that Law School 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, the Student may file another complaint alleging such treatment.

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.

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 Student may have the right to file a private suit in federal court whether or not OCR finds a violation.

OCR would like to thank the Law School for your cooperation and specifically, we would like to thank counsel for the Law School, Paula Tripp Victor, and the Assistant Dean for Student and Alumni Relations, Nidhi Vogt, for your assistance in resolving this case. If you have any questions, please contact OCR attorney Brian Lambert at (415) 486-5524 or [Brian.Lambert@ed.gov](mailto:Brian.Lambert@ed.gov).

Sincerely,

/s/

Zachary Pelchat  
Team Leader

cc: Paula Tripp Victor, Counsel for Whittier Law School,  
Anderson, McPharlin & Connors LLP (email)  
Nidhi Parikh Vogt, Assistant Dean for Student and Alumni Relations,  
Whittier Law School (email)