



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION IX
CALIFORNIA

October 6, 2015

Dr. Ann McElaney-Johnson
President
Mount Saint Mary's University
Chalon Campus
12001 Chalon Road
Los Angeles, California 90049

(In reply, please refer to OCR case no. 09-15-2288)

Dear Dr. Ann McElaney-Johnson:

On April 27, 2015, the U.S. Department of Education, Office for Civil Rights (OCR), notified you of a complaint filed against Mount Saint Mary's University (University). The complaint alleged that the University discriminated against a student¹ (Complainant) on the basis of disability. Specifically, the Complainant alleged that during the fall semester 2014, the University failed to provide her with excused absences for chronic illness and the instructor's notes necessary to ensure that she could participate in the education program in a nondiscriminatory manner. Further, the Complainant alleged that the University refused her request for a refund of tuition when she was unable to complete the classes due to disability discrimination.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulations with respect to certain recipients of Federal funds. The University is a recipient of federal funds and a postsecondary education institution, and therefore is subject to Section 504 and the regulations.

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 recipient expresses an interest in resolving the complaint. Prior to the completion of OCR's investigation, the University informed OCR it would voluntarily take steps to address the allegations raised in the complaint. The University entered into an agreement to resolve the complaint on September 1, 2015. 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.

¹ OCR notified the University of the Complainant's identity at the beginning of this investigation. We are withholding her name here in order to protect her privacy.

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

Legal Standards

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 of federal funds.

Recipient colleges and universities are required by the regulations, at 34 C.F.R. §104.44(d)(1), 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 auxiliary aids for students with impaired sensory, manual, or speaking skills. In addition, recipient colleges and universities are required to make modifications to their academic requirements when 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.

Relevant Facts

The Complainant was accepted for fall 2014 admission to the University. She has a disability which impacts her motor skills and ability to sit for extended periods of time, and often causes fatigue and brain fog. The Complainant began working with the Director of Learning Services, the office which provides disability support services at the campus, in spring 2014 – about four months before classes started -- in an effort to have academic modifications and services in place to accommodate her disability.

By the time classes started in approximately late August 2014, the University had worked with the Complainant to make multiple accommodations, including: arranging a class schedule where all of the Complainant's courses would be on the same floor of the same building nearest designated accessible parking; purchasing a specially designed chair for classes (chair chosen in consultation with the Complainant); testing accommodations including breaks, additional time, quiet location, and taking tests on a computer; and classroom accommodations including tape recording lectures and/or using a Smart Pen, extra time on in-class writing and computer assignments, flexibility in absences for disability-related reasons, and the option of using a notetaker when possible and obtaining a copy of the professors' notes.

The University prepared letters of accommodation for the Complainant to provide to each professor, as is its standard practice, but in this case also took the initiative to personally notify the professors of the Complainant's accommodations. The Director communicated to the Complainant instructions for meeting with the professors and providing them with her letter of accommodations, how to pick up notes from the Learning Center, and how to make testing

arrangements. The University successfully located notetakers for three of the Complainant's classes by September 9, 2014. However, the Complainant had difficulty remembering what she was supposed to do. The Director explained to the Complainant on several occasions that she should visit each of her professors to discuss the implementation of her accommodations, and also that if there were a problem with any of her accommodations, including testing and classroom accommodations, that she should contact the Director immediately so that the Director could intervene with the professor.

According to the Complainant, two of her three different professors were willing to learn about her disability and to accommodate it. The third professor (Professor Z) she perceived as dismissive of her disability and resistant to implementing her approved accommodations. For the first quiz in one of Professor Z's classes, the Complainant spoke with Professor Z the day before the quiz and explained that she was supposed to have more time because of her disability. However, he reportedly told her that he thought she should have enough time, and that if she did not, she should not answer all of the questions so he would know that it was insufficient. The Complainant therefore took the test without accommodations. In addition, when the Complainant asked about obtaining Professor Z's notes for classes she had missed, he reportedly told her that his notes were "cryptic" and that everyone takes notes differently, and did not provide them to her.

On September 14, 2014, the Complainant emailed the Director and expressed her difficulty with Professor Z, particularly with the test, notes, and his perceived unwillingness to understand her disability. The Complainant stated she was dropping both of Professor Z's classes. The Director responded the same evening, and again explained that the Complainant should contact her so the Director could instruct the professor that it was not optional and to ensure she would get the approved accommodations. In a letter dated October 6, 2014, the Complainant notified the University that she was withdrawing from classes because of the stress of not having her disability accommodated. She also requested a tuition refund. The last day she had attended classes was September 17th. The records provided by the University upon OCR's request showed that the Complainant's refund request was granted. The Complainant has not returned to the University and does not intend to do so.

Resolution

As noted above, under OCR's procedures, a complaint may be resolved at any time when, before the conclusion of an investigation, a recipient 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. In the agreement, the University agreed to: (1) develop a memorandum directed to all University instructors, lecturers, and professors (including adjunct teaching staff members) which explains the application of Section 504 to post-secondary education, how a student requests accommodations and the process, that failure to provide student accommodations may result in reprimand, and an explanation of what to do if the teaching professional believes that an approved accommodation would constitute a fundamental alteration of the class objectives; and (2) develop a policy for providing notetakers, including

alternative methods of providing a student access in the event a notetaker is not promptly engaged. Both of the documents will be reviewed and approved by OCR before being distributed. Because the School 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. This concludes OCR's investigation of the complaint and should not be interpreted to address the University's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. OCR is closing this complaint as of the date of this letter, and notifying the 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. 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, the complainant may file another complaint 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, we will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Thank you for your cooperation in resolving this case. If you have any questions about this letter, please contact Laura Welp, OCR attorney, at (415) 486-5577.

Sincerely,

/s/

Anamaria Loya
Team Leader

Enclosure

cc: Jennifer Sarkozy Branch, Esq.
Andrews Lagasse Branch & Bell LLP