



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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SAN FRANCISCO, CA 94102

REGION IX  
CALIFORNIA

September 18, 2017

**VIA ELECTRONIC EMAIL**

Mr. Jeffrey D. Armstrong  
President  
California Polytechnic State University  
1 Grand Avenue  
San Luis Obispo, California 93407

(In reply, please refer to case no. 09-15-2439.)

Dear President Armstrong:

The U.S. Department of Education, Office for Civil Rights (OCR), has reached a resolution of the above-referenced complaint against California Polytechnic State University, San Luis Obispo (University). Specifically, OCR investigated whether the University denied the Complainant's request for two retroactive withdrawals because of her disability.<sup>1</sup>

OCR is responsible for enforcing 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. Section 504 prohibits discrimination on the basis of disability in programs and activities operated by recipients of federal financial assistance. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 et seq., and its implementing regulation, at 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities. As a recipient of federal financial assistance and as a public education system, the University is subject to Section 504, Title II, and their implementing regulations.

As described herein, prior to the completion of OCR's investigation, the University agreed to enter into a resolution agreement with OCR which will address and resolve concerns identified by OCR regarding the allegation raised in this complaint. To investigate this complaint, OCR interviewed the Complainant and reviewed documents and other information provided by the Complainant and the University. The applicable legal standards and the facts gathered by OCR to date are summarized below.

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<sup>1</sup> OCR previously provided the University with the identity of the Complainant. We are withholding the name from this letter to protect her privacy.

*Issue: Whether in February 2015, the University denied the Complainant's request for a retroactive withdrawal because of her disability.*

Legal Standards

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

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.

Under the Title II regulations, at 28 C.F.R. § 35.130(b)(1)(ii) and (iii), public colleges and 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 as 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. Section 35.103(a) provides that the Title II regulations shall not be construed to permit a lesser standard than is established by the Section 504 regulations. Therefore, OCR interprets the Title II regulations to require public colleges and universities to provide necessary academic adjustments to the same extent as is required under the Section 504 regulations.

Facts Gathered to Date

The Complainant attended the California Polytechnic State University, San Luis Obispo (University) during the 2012-2013 and 2013-2014 academic years. The Complainant was a National Collegiate Athletics Association (NCAA) student athlete. The University provided academic support for its freshmen athletes through the Academic Coordinator program. This program required the Complainant to meet weekly with an Academic Coordinator, a graduate student. The Academic Coordinator reported to the Complainant's Academic Advisor.

The Complainant states that during the 2013-2014 winter quarter of her sophomore year, she was given a medical diagnosis by a University therapist. The Complainant states she requested and was provided by the University a medical withdrawal for 2013-2014 winter quarter because of her medical condition. She was not registered as a disabled student with the University's Disabled Resource Center (DRC) at that time.

During 2013-2014 spring quarter (Spring 2014 quarter), the Complainant was given another medical diagnosis regarding a medical condition (disability) and was not able to complete the Spring 2014 quarter due to her disability. The Complainant did not provide notice to the University prior to leaving the University and was placed on academic probation after the Spring 2014 quarter.

The Complainant states that she enrolled in summer courses during the 2013-2014 summer quarter (Summer 2014 quarter) because her coach (Coach) advised her to do so in order to maintain her NCAA eligibility. The Complainant states she was not able to complete any of the Summer 2014 Quarter courses because of her disability and she did not provide notice to the University prior to returning home that summer.

The University has DRC policies and procedures on how students with disabilities may obtain accommodations and services from the University. The DRC policies state that "students must take the initiative to contact the DRC and request academic accommodations."<sup>2</sup> The DRC policies further state that the students who contact the DRC will be assigned an Access Specialist who "will determine, based upon the documentation submitted, whether the student's impairment meets California statutory definition of disability." Further the policy states, that "[i]f the impairment rises to the level of disability the Access Specialist will notify the student of eligibility and will provide information regarding how to request necessary reasonable academic accommodations."

The DRC and the Complainant provided information about the communications between the DRC and Complainant. The information showed the following:

- On July XX, 2014, after the Complainant did not complete the Spring 2014 Quarter, and was placed on academic probation, the Complainant contacted the DRC to request services. She explained that she had not completed the request to retroactively withdraw from the Spring 2014 Quarter due to her disability.
- On July XX, 2014, the DRC contacted the Complainant to provide her information on how to navigate the University with a serious psychological illness and encouraged the Complainant to make an in-take appointment so the DRC could determine what accommodations she may have needed. The DRC records provided to OCR do not show that the Complainant provided the DRC any documentation about her disability. The Complainant, however, states that when she was initially contacted by the DRC, she provided documentation of

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<sup>2</sup> <https://drc.calpoly.edu/content/eligibility>.

her disability, including letters from her doctors. According to the Complainant, the DRC indicated it would contact her with an appointment date to meet with a counselor. The Complainant states that she did not receive an appointment from the DRC during the Summer 2014 Quarter, and she contacted them again after the Summer 2014 Quarter was over.

The University has a Retroactive Withdrawal Policy (Withdrawal Policy). It is available on the University's website<sup>3</sup> and states that “[a] student may petition to have all grades retroactively changed to the administrative grade of W if he/she can demonstrate and document that there were serious and compelling reasons for circumstances that resulted in the unofficial withdrawal from the quarter in question.”

The University's Office of the Registrar (Registrar) also has internal guidance regarding withdrawals from the University. The internal guidance states that reasons for retroactive withdrawal include extended illness of a student and that documentation from a physician must be supplied to verify the illness.

The University's Withdrawal Policy and internal guidance do not discuss the number of times a student may request a withdrawal or other factors that may be considered when reviewing a request for a withdrawal. In addition, the University's Withdrawal Policy and internal guidance do not discuss what information to consider when a student requests a retroactive withdrawal due to a disability.

On September XX, 2014, the Complainant filed with the University a Petition for Retroactive Withdrawal (Petition) for both the Spring 2014 and Summer 2014 Quarters. The Petition was submitted to the University's Retroactive Withdrawal Committee (RWC). The Complainant included with the Petition a statement conveying the extent of her disability and provided supporting medical documentation. The Complainant's Academic Advisor also provided a memorandum dated January XX, 2015 (Advisor Memo) to the RWC.

The Advisor Memo discussed the Complainant's communication about her mental health issues with the Academic Advisor, Coordinator, and the Coach. The Academic Advisor did not indicate whether she herself, the Academic Coordinator, the Coach or anyone else advised the Complainant to seek accommodations through the DRC.

On March XX, 2015, the University's Registrar provided the Complainant two letters summarizing the RWC's decisions regarding her Petition. The first letter approved the Complainant's request for a retroactive withdrawal for Spring Quarter 2014. The letter included a statement that “[r]etroactive withdrawal will be considered only once throughout a student's enrollment at [the University].” The second letter denied the request for withdrawal for the Summer Quarter 2014 and included a statement that “the [Retroactive Withdrawal Committee] realizes that you have suffered significant stress because of a number of personal issues.”

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<sup>3</sup> <http://catalog.calpoly.edu/academicstandardsandpolicies/grading/#withdrawalsrenewal>.

In a memorandum dated September XX, 2015, the University Registrar informed the University's Director of Equal Opportunity of the RWC's reasons for denying the Complainant's request for a retroactive withdrawal for Summer Quarter 2014. Specifically, the memorandum states that the University "approves requests for more than one quarter of retroactive withdrawals under extremely rare and extenuating circumstances that are completely outside the control of the student's control."

### Analysis & Conclusions of Law

To determine whether the University is in compliance with Section 504 and Title II with regard to the issue in this case, OCR reviewed whether the Complainant is a qualified individual with a disability, whether she sought academic adjustments or modifications by providing appropriate notice to the University, and if so, whether the University engaged with the Complainant in an interactive process to determine what modifications were needed. Under Section 504 and Title II, a qualified individual with a disability is one who meets the academic and technical standards requisite to admission or participation in the college or university's education program or activity. Here, the Complainant was admitted to attend and enrolled at the University and completed her freshman year and part of her sophomore year at the University. She was subsequently diagnosed with a disability in her sophomore year. As such, OCR finds that she is a qualified student with a disability.

OCR then examined whether the University has a process for students with disabilities to seek modifications and/or academic adjustments and if so, whether the Complainant sought out modifications or academic adjustments by following that process. The University's process is to provide the student necessary reasonable academic accommodations upon the student's request where the student is assisted by the University's DRC to make this request. Specifically, the DRC Access Specialist assists the student by providing the student information regarding how to request the necessary reasonable academic accommodations. Prior to providing this information to the student, the DRC Access Specialist will review the student's disability documentation as provided by the student. The DRC Access Specialist will provide this review after the student has taken the initiative to contact the DRC to request academic accommodations. The Complainant, however, states that on or about July 2014, she provided the DRC documentation of her disability, including letters from her doctors. In the records provided by the University, OCR did not find any evidence that DRC had received any records from the Complainant about her disability. Thus, there is a dispute as to whether the Complainant followed the appropriate process to register with DRC and begin the interactive process with the University.

Nevertheless, on September XX, 2014, the University subsequently became aware of the Complainant's disability when she filed the Petition and included documentation of her disability. OCR is concerned that while the University has a practice of prohibiting the provision of consecutive retroactive withdrawals, the practice is not expressly written. OCR's investigation to date raised a concern that the University may have

implemented such a practice, without taking under consideration a student with a disability's request for accommodations and without engaging in an interactive process with a student with a disability. Further, OCR is concerned that while the Complainant's Academic Advisor, Academic Coordinator, and Coach were aware of the Complainant's disability, there appeared to be little information provided to the Complainant about how to access and receive additional support through the DRC. While OCR notes that at the post-secondary level, it is the student who must initiate the interactive process with the DRC in order to receive auxiliary aids and services, due to the nature of the University's athletics program – where student athletes are provided additional academic and other forms of support as needed – the athletics administrators, academic support staff, and coaches should be aware of the resources available through the DRC, so that as responsible employees of the University they can provide basic information to help student athletes with disabilities access such services.

To make a determination regarding this issue, OCR would need to conduct further interviews, including interviewing the Complainant's Academic Advisor, the Complainant's Academic Coordinator, the Complainant's Coach, the Director of the Disability Resource Center, and members of the Retroactive Withdrawal Committee and review documentation to determine whether the Complainant made a request for modifications and whether the University failed to engage in the interactive process regarding that request.

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. Here, prior to the conclusion of the investigation, the University expressed an interest in voluntarily resolving the allegation raised in this complaint on May 31, 2017. OCR determined that such a resolution was appropriate.

Through the Resolution Agreement, the University agreed to the following: (i) provide the Complainant a retroactive withdrawal for the summer 2014 term, and (ii) meet with the Complainant to discuss her return to the University and if the Complainant decides to return, the University will refer the Complainant to the University Disability Resource Center; (iii) draft a guidance memorandum for the University's Retroactive Withdrawal Committee regarding accommodating students with disabilities; and iv) provide Section 504>Title II training to the University's athletics department, including all coaches, academic advisors and other relevant administrators and staff about the University's obligation under Section 504 to students with disabilities and what resources are available on campus to those students.

Based on the commitments made in the Resolution Agreement, OCR is closing the investigation of this complaint as of the date of this letter. OCR will monitor the University's implementation of the Resolution Agreement through completion. The Complainant is being notified by concurrent letter. The Complainant may file a private suit in Federal court whether or not OCR finds a violation.

This concludes OCR's investigative process 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. 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.

Please be advised that the University may not harass, coerce, intimidate, retaliate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the individual may file a complaint with OCR 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.

OCR appreciates the courtesy and cooperation extended by you and your staff during the complaint resolution process. If you have any questions, please contact civil rights attorney Genevie Gallegos at (415) 486-5593.

Sincerely,

/s/

Kana Yang  
Acting Team Leader

Enclosure

cc: Brian Gnandt  
Director of the Office of Equal Opportunity  
and Title IX Coordinator  
(by e-mail only)