



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

REGION IX
CALIFORNIA

50 UNITED NATIONS PLAZA
MAIL BOX 1200; ROOM 1545
SAN FRANCISCO, CA 94102

July 14, 2017

Mr. Ralph J. Hexter
Interim Chancellor
University of California, Davis
One Shields Avenue
Davis, California 95616

(In reply, please refer to case no. 09-17-2139.)

Dear Interim Chancellor Hexter:

On December 27, 2016, the U.S. Department of Education, Office for Civil Rights (OCR), received a complaint against the University of California, Davis (University). The complaint alleged that the University failed to provide the Student¹ with her approved academic adjustments in one of her courses (Course) during the Fall semester of 2016 that were necessary to ensure her participation in the education program in a nondiscriminatory manner.

OCR began its investigation of this complaint under the authority of Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, and the implementing regulations. Section 504 prohibits discrimination on the basis of disability in programs and activities operated by recipients of Federal financial assistance. Title II prohibits discrimination on the basis of disability by public educational entities. The University receives Department funds, is a public education system, and is subject to the requirements of Section 504, Title II, and the implementing 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 that it was amenable to resolving the complaint in this manner. OCR and the University entered into the attached agreement to resolve the complaint. Accordingly, OCR did not complete its investigation of the complaint or reach conclusions regarding the University's compliance with Section 504 and Title II.

¹ OCR previously provided the University with the Student's name, as well as the name and course number of the course in question. We are withholding that information from this letter for privacy reasons.

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

Legal Standards

Under the Section 504 regulations, at 34 C.F.R. §104.4(a) and (b), no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance. The Title II regulations, at 28 C.F.R. §35.130(a) and (b), create the same prohibition against disability-based discrimination by public entities.

OCR's preliminary investigation showed the following:

The Student enrolled at the University in 2013. The University's Student Disability Center (SDC) approved her for a variety of auxiliary aids in February 2014. In February 2016, the Student provided the University with a letter from her physician that explained that she used a service dog for her disability and included a description of the task that the service dog performed.

The Student alleged to OCR that she was discriminated against due to her disability when the University failed to provide her with all of the auxiliary aids to which she was entitled in the Course. In particular, she alleged the following:

- When she entered class on the first day of the Course with her service dog, the instructor (Instructor) yelled at her and told her to leave the room;
- The Instructor asked for documentation of the service dog's training;
- The Instructor complained regularly in class about being forced to allow a service dog in the Course;
- The Instructor touched or pet her service dog even though she asked him not to;
- The Instructor downloaded a letter from the SDC that described the auxiliary aids for which the Student had been approved but refused to check a box on the form indicating that he had received, read and understood her accommodations;
- She did not receive the auxiliary aids to which she was entitled in her final exam in the Course, which resulted in her leaving the exam early due to pain and physical discomfort; and
- The Instructor treated her with disrespect throughout the semester due to the presence of her service dog.

OCR reviewed information provided by the Student and the University. In its data response, the University acknowledged that the Instructor's tone in his communications was not "ideal" and that he had sought documentation from the Student regarding her authorization to have a service dog when none was required. Nonetheless, the University asserted that it had provided the Student with the auxiliary aids to which she was entitled in the Course.

Resolution and Conclusion

In June 2017, OCR contacted the University to discuss the complaint, and the University indicated its interest in voluntary 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, signed July 12, 2017, to resolve the complaint. The agreement requires the University to 1) meet with the Instructor to review the University's service animal policy and other topics; 2) send an e-mail to all faculty in the College of XXXXXXXXXXX XXXXXXXX to remind them of their responsibilities toward students with disabilities and reference the University's service animal policy; 3) post the University's service animal policy in the main department office of each of the five departments in the College of XXXXXXXXXXX XXXXXXXX for the remainder of the year; 4) conduct an investigation of the Student's experience in the Course and 5) take any necessary actions pursuant to any adverse findings in the investigation. Since the University agreed to voluntarily resolve the complaint, OCR did not complete its investigation or reach conclusions regarding the University's compliance with Section 504 and Title II with respect to this complaint. 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 the investigation of this complaint as of the date of this letter, and notifying the complainant concurrently.

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 in federal court whether or not OCR finds a violation.

OCR routinely advises recipients of Federal funds and public education entities that Federal regulations prohibit intimidation, harassment or retaliation against those filing complaints with OCR and those participating in the complaint resolution process. Complainants and participants who feel that such actions have occurred may file a separate complaint with OCR.

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.

OCR thanks you and your staff, particularly Wendi Delmendo, for your cooperation in resolving this complaint. If you have any questions, please contact Shilpa Ram, Civil Rights Attorney, at shilpa.ram@ed.gov.

Sincerely,

/s/

Zachary Pelchat
Team Leader

cc: Wendi Delmendo, Chief Compliance Officer