



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

April 27, 2018

Andrew K. Benton
President
Pepperdine University
24255 Pacific Coast Highway
Malibu, California 90263

(In reply, please refer to case no. 09-18-2071.)

Dear President Benton:

On November 16, 2017, the U.S. Department of Education, Office for Civil Rights (OCR), received a complaint against Pepperdine University (University) which alleged discrimination based on disability. Specifically, the Student¹ alleged that during the 2017-2018 school year, the University failed to provide the Student with her approved academic adjustments necessary to ensure that she could participate in her education program in a nondiscriminatory manner. During the course of the investigation, the Student also alleged that she had been harassed based on disability by her peers and her professor during one of her spring 2018 courses, and that the University failed to respond appropriately and effectively to notice of the harassment.

OCR began its investigation of this complaint under the authority of Section 504 of the Rehabilitation Act of 1973 and the implementing regulations. Section 504 prohibits discrimination on the basis of disability in programs and activities operated by recipients of Federal financial assistance. The University receives Department funds and is subject to the requirements of Section 504 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 Resolution Agreement (agreement) to resolve the complaint.

¹ OCR notified the University of the Student's identity when the investigation began. We are withholding the Student's name from this letter for privacy reasons.

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

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.

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.

Recipients are responsible under Section 504 and the regulations for providing students with a nondiscriminatory educational environment. Harassment of a student based on disability can result in the denial or limitation of the student's ability to participate in or receive education benefits, services, or opportunities. Under Section 504 and the regulations, once a recipient has notice of possible disability-based harassment between students, it is responsible for determining what occurred and responding appropriately. The recipient is not responsible for the actions of a harassing student, but rather for its own discrimination in failing to respond adequately. A recipient may violate Section 504 and the regulations if: (1) the harassing conduct is sufficiently serious to deny or limit the student's ability to participate in or benefit from the educational program; (2) the recipient knew or reasonably should have known about the harassment; and (3) the recipient fails to take appropriate responsive action. These steps are the recipient's responsibility whether or not the student who was harassed makes a complaint or otherwise asks the recipient to take action.

OCR's preliminary investigation showed the following:

The Student first enrolled at the University in January 2002, withdrew from the University after the fall 2005 term, applied for readmission to the University in 2017 to finish her degree, and was accepted for reenrollment for the fall 2017 semester. She was approved for auxiliary aids by the Office of Student Accessibility (OSA) in August 2017. The Student alleged to OCR that she was not provided the auxiliary aids to which she was entitled in two of the courses in which she was enrolled in the fall 2017 semester. In particular, she alleged that she had been denied class notes by a volunteer notetaker in two of her courses.

The Student also alleged to OCR that she was harassed based on her disability by her peers and by the professor of a course in which she was enrolled in the spring 2018 semester. She further alleged that the University did not respond adequately to notice of the harassment and placed the responsibility on her to resolve her concerns.

OCR reviewed information provided by the Student and the University. In its data response, the University acknowledged that it had been unsuccessful in its attempts to obtain a volunteer notetaker for the Student for her fall 2017 courses and had asked the Student's professors to share their class notes instead. The complainant alleged to the University in an e-mail dated December X, 2017 that she had not received any class notes. The University asserted to OCR that class notes would have been of limited utility in the Student's courses, and that it had established suitable alternative accommodations for the Student. The complainant told OCR that she believed that the University's alleged failure to provide her with auxiliary aids had adversely affected her performance in both courses. With respect to the Student's allegations of disability harassment, the University told OCR that the Student had been in communication with University staff about her concerns, and that University staff had initiated a response to her.

Resolution and Conclusion

In March 2018, 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 April 26, 2018, to resolve the complaint. The agreement requires the University to (1) engage in the interactive process with the Student to determine whether the auxiliary aids and services for which she is approved enable her to participate in her courses at the University as a qualified individual with a disability; (2) offer the Student the opportunity to complete any outstanding coursework for one of her fall 2017 courses, assisted by her professor's class notes, and earn a passing grade; (3) revise its notetaker policies and notify staff both of those revisions and of the University's process for reviewing and approving requests for auxiliary aids for students with disabilities; (4) hold a meeting with the Student and staff to discuss the Student's allegations of disability harassment; and (5) arrange training on post-traumatic stress disorder for all OSA staff. 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 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 wishes to thank you and your staff for your cooperation in resolving this complaint. If you have any questions, please contact the case resolution team.

Sincerely,

/s/

Zachary Pelchat
Team Leader

cc: Thomas Knudsen, Senior Counsel