



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

May 23, 2019

VIA ELECTRONIC MAIL

Leslie E. Wong
President
San Francisco State University
Office of the President
1600 Holloway Avenue
San Francisco, CA 94132
president@sfsu.edu

(In reply, please refer to case no. 09-19-2108.)

Dear President Wong:

On December 17, 2018, the U.S. Department of Education, Office for Civil Rights (OCR), received a complaint against San Francisco State University (University) alleging disability discrimination. Specifically, OCR investigated whether the Complainant is not provided with equal access to the University program and shuttle bus services because the bus operators regularly fail to lower the busses such that the Complainant is able enter and exit them.¹

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 since 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 (ADA) 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 because 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.

Under Section 302 of OCR's Complaint Processing Manual (CPM), a complaint may be resolved at any time when, before the point when a Regional Office makes a final

¹ OCR previously provided the University with the Complainant's identity. We are withholding her name from this letter to protect her privacy.

determination under CPM Section 303, a recipient expresses an interest in resolving the complaint allegations and OCR determines that it is appropriate to resolve them. Prior to the completion of OCR's investigation, the University informed OCR it was amenable to resolving the allegations in this manner, and OCR determined that it was appropriate to resolve them. As such, OCR and the University entered into the attached agreement (Resolution Agreement) to resolve the issues identified by OCR. Accordingly, OCR did not complete its investigation of the complaint or reach conclusions regarding the University's compliance with Section 504 and Title II.

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

Legal Standard

Section 504 and Title II prohibit people, since disability, from being excluded from participation in, being denied the benefits of, or otherwise being subjected to discrimination by recipients of federal financial assistance or by public entities. 34 C.F.R. § 104.4 and 28 C.F.R. § 35.130. People with disabilities must have equal access to the programs, services, or activities unless doing so would fundamentally alter the nature of the programs, services, or activities, or would impose an undue burden. 28 C.F.R. § 35.164. Both Section 504 and Title II prohibit affording individuals with disabilities an opportunity to participate in or benefit from aids, benefits, and services that are unequal to the opportunities afforded others. 34 C.F.R. § 104.4(b)(1)(ii); 28 C.F.R. § 35.130(b)(1)(ii). Recipient transportation must be accessible to persons with disabilities so that they can access a recipient's programs and activities.

Similarly, individuals with disabilities must be provided with aids, benefits, or services that provide an equal opportunity to achieve the same result or the same level of achievement as others. 34 C.F.R. § 104.4(b)(2); 28 C.F.R. § 35.130(b)(1)(iii). An individual with a disability, or a class of individuals with disabilities, may be provided with a different or separate aid, benefit, or service only if doing so is necessary to ensure that the aid, benefit, or service is as effective as that provided to others. 34 C.F.R. § 104.4(b)(1)(iv); 28 C.F.R. § 35.130(b)(1)(iv).

Factual Findings and Analysis

On September X, 2018, the Complainant, who has a mobility impairment with accommodations, complained to the Director of the Disabilities Programs and Resource Center (DPRC) that University shuttle bus drivers were not lowering the busses or pulling up to the curb. (She previously complained about these issues in October 2017, but the problems persisted.) According to the Complainant, after her September 2018 complaint, a disabled placard was placed at the University's shuttle bus stop and inside the bus. The

DPRC Director also informed the Complainant that the shuttle bus drivers would be trained for disabled students' accessibility, but these steps did not resolve the issues for the Complainant.

Based on a review of the documentation provided by the University and its preliminary investigation, OCR identified concerns that accessibility issues involving the shuttle bus persisted despite some prior initial attempts at resolution after the Complainant informed the DPRC of the issues. However, on March 27, 2019, the University indicated that it was interested in resolving the complaint allegations prior to the conclusion of an investigation. As noted above, pursuant to Section 302 of OCR's CPM, allegations under investigation may be resolved at any time when, prior to the point when the Regional Office issues a final determination under CPM Section 303, the recipient expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified issues that can be addressed through a resolution agreement. Based on the University's expressed interest in resolving this matter prior to the completion of OCR's investigation, and OCR determining that it was appropriate to do so to resolve the issues it identified, the University voluntarily entered into the enclosed Resolution Agreement on May 22, 2019, in accordance with Section 302 of OCR's CPM.

Based on the commitments made in the enclosed Resolution Agreement, OCR is closing the investigation of this complaint as of the date of this letter and notifying the Complainant concurrently. When fully intended, the Resolution Agreement is intended to address the complaint allegations. OCR will monitor the implementation of the Resolution Agreement until the University is in compliance with the terms of the Resolution Agreement. Upon completion of the obligations under the Resolution Agreement, OCR will close the case.

Conclusion

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. The Complainant may have the right to file a private suit in federal court whether OCR finds a violation.

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 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, OCR will seek to protect, to the extent provided by the law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions about this letter, please contact OCR Attorney Michael Chang at (415) 486-XXXX or Michael.Chang@ed.gov.

Sincerely,

/s/

Naghmeh Ordikhani
Team Leader

CC: Christina M. Sabee, Dean of Equity Initiatives