



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION IX
CALIFORNIA

May 18, 2020
SENT VIA ELECTRONIC MAIL

Henry T. Yang
Chancellor
University of California, Santa Barbara
XXXX@ucsb.edu

(In reply, please refer to case no. 09-20-2001.)

Dear Chancellor Yang:

This letter is to inform you that the U.S. Department of Education (the Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the University of California Santa Barbara (University). OCR investigated whether the Student was denied a table and chair configured for her, based on disability, in each classroom necessary to ensure that she can participate in the education program in a nondiscriminatory manner.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, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability under any program or activity receiving 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. §§ 12131-12134, and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. The University is a public entity that receives funds from the Department and is therefore subject to Section 504, Title II, and their implementing regulations.

To investigate this complaint, OCR gathered evidence by reviewing documents provided by the University and the Complainant, and interviews with University staff and the Complainant. Below is a summary of the facts and OCR's resolution of this matter.

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

FINDINGS OF FACT

The Student began at the University in fall of 2018. She reported to the Dean of Students that she could not fit in regular classroom furniture because of her size. The Dean requested that action be taken to provide the Student with alternative furniture. On October XX, 2018, the University provided the Student with alternative tables and chairs in each of her classes, but not as an explicit accommodation based on disability.

In fall 2018 and winter/spring 2019 quarters, the Complainant communicated various concerns about the furniture provided, including functionality, and placement in the classrooms. The Complainant communicated with an individual in the University's Facilities Department. The University took various actions in response to the Complainant's expressed concerns, including labeling furniture to prevent it from being moved out of a classroom, and replacing furniture that she reported was not working properly. The Complainant ultimately was advised by the Dean to seek additional support from the Disabled Students Program (DSP).

DSP advised the Student that in order to receive alternative furniture as an accommodation based on disability, she needed to provide medical documentation. On May XX, 2020, she provided DSP with medical documentation from the on-campus student health office.

The Student's disability documentation describes a medical condition listed as XXXXXXXXXXXX which results in leg pain and swelling. Her limitations are limited ambulation, and a need to frequently elevate and move the ankles, knees and hips. There is no mention of any specific seating or furniture requirements.

The Student states in fall of 2019, she continued to experience ongoing problems with provision of furniture, including having furniture placed at the front of the classroom such that she was commonly mistaken for a teaching assistant. She also felt like she should not have to move furniture into position or have to ask people to move out of the designated furniture because the furniture was not properly labeled.

The University confirmed for OCR that the Student was approved for the following accommodations: 1) 150% extended time on exams; 2) private exam setting; 3) exam reader; and 4) availability of notetaking assistance, including note taking service or digital recording device such as Smart Pen. The University's approved accommodations does not include a listing of alternative furniture, or placement of such furniture. DSP confirmed for OCR that the current on-line platform, that DSP uses to track accommodations, does not have furniture as an accommodation, in part because it is provided to so few students (currently out of 2,000 students registered at DSP, 4 students have a furniture accommodation). DSP acknowledged that it was providing the Student with the furniture accommodation outside of a formal process.

At the beginning of winter 2020 quarter, the Student provided OCR with pictures of the furniture in each of her classrooms. She reported the following problems: 1) the table and chair placed at the front of the classroom; 2) the chairs provided to her in some classrooms are too low and made of hard plastic; 3) the table and chair are not marked which fails to ensure they are available; or if marked, identifies the chair as being provided for a student with a disability. The Student also reported two additional concerns: 1) elevators are not in working condition; and 2) her student notetakers have access to her name and e-mail address which she thinks violates her privacy rights. She believes that notetakers are told to keep an eye on the attendance of all students for whom they take notes, which she thinks is also an unwarranted violation of her privacy.

OCR spoke to the DSP Director who also serves as the Student's DSP counselor. He stated that the University has taken several steps to respond to the Student's need for alternative furniture, and her follow-up requests for adjustments. First, DSP has developed a formal agreement with the Facilities Department (Facilities) to track alternative furniture through an on-line form. This tracking allows Facilities staff to move furniture back into a specific placement at the end of each day during routine cleaning and maintenance. Second, they have placed Bluetooth devices on specialized furniture to track furniture placement (since high back chairs were being moved into unauthorized office spaces). Third, DSP received an on-campus accessibility grant of \$10,000 to purchase new chairs and tables, and to arrange for appropriate storage and transport of furniture each new term.

OCR and the DSP Director visited every classroom setting for the Student in winter quarter. OCR confirmed the following: 1) where possible, the Student's table and chair have been moved from the front to the rear of the classroom (in some lecture halls, with fixed theater seating, the Student's chair and table are located in the far back, where there is available space).; 2) tables and chairs appeared consistently marked with neutral labels as follows: "Authorized Use Only; Do Not Remove; Facilities Management Furniture Program"; 3) Only one classroom was on a second floor, requiring access through stairs and/or an elevator; OCR confirmed on the day of the on-site, this elevator was in operation and recent facilities records confirmed only two outages during the current academic year, one during a day during a campus-wide power outage and on for a ½ day in October 2019 to repair a door mechanism.

OCR discussed the Student's concerns regarding the suitability of the furniture given limitations based on her disability. DSP stated that the Student's documentation did not provide specific guidance on what kind of furniture met her needs. The Student told OCR that she prefers desk type chairs with padding and high backs, which is currently provided to her in some of her classrooms, but not all. DSP acknowledged that it is purchasing these kinds of chairs with the grant.

DSP also confirmed that student notetakers are provided training around confidentiality to ensure that they do not discuss the names of students they provide notes for with others. They are also advised not to introduce themselves to the disabled student in front

of other students. DSP acknowledged that notetakers upload their notes on a platform that contains the name and e-mail address of all disabled students who will receive their notes. This is done so that the notetakers can reach out to all students for whom they are taking notes, and so that the disabled student can contact them to discuss any issues that may arise in the notes. DSP stated that the notetaker is never advised to keep track of the attendance of disabled students in classes.

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. The Title II regulations, at 28 C.F.R. §35.130(a), contain a similar prohibition applicable to public postsecondary educational institutions.

The Section 504 regulations, at 34 C.F.R. §104.44(a), require recipient colleges and universities to make modifications to their academic requirements that are 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.

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.

ANALYSIS AND CONCLUSIONS

In this case, after receiving notice of the Student's disability, the University took several steps to provide the Student with accommodations, including the provision of alternative furniture. Even though a need for alternative furniture was not explicitly included in her

medical documentation, the University worked with her to provide this accommodation informally. Subsequently, the Student raised several concerns about furniture placement, and labeling that have been resolved. The Student states that she requires specific furniture, such as a high backed and padded chair which is not currently available in each of her classroom settings. OCR notes that the Student's medical documentation does not indicate a need for any specific type of furniture and the University and the Student have not yet engaged in an interactive process to determine what is specifically needed to accommodate the Student's disability. OCR further notes that the University has already taken several proactive steps to ensure that alternative furniture be placed in classrooms and are appropriately tracked and monitored in order the address some of the Student's concerns. However, the current procedure does not provide for a specific furniture accommodation request on the DSP student platform of accommodations. With respect to the Student's concern about privacy and notetaking, OCR notes that the University's training of notetakers includes provisions regarding confidentiality and that the disclosure of the name and e-mail of students requiring notes is specifically made to support disabled students. However, the University does not have a way for disabled students to conceal their name if they would prefer to be anonymous to the notetakers.

On February 20, 2020, prior to the conclusion of OCR's investigation, the University expressed interest in voluntarily resolving the issues raised by OCR. On April 22, 2020, the University signed a Resolution Agreement that requires the University to build into its on-line DSP platform a method for identifying and describing furniture accommodations based on disability, identify an on-campus resource for DSP to consult with regarding classroom ergonomics and requests for alternative furniture, and identify a method to prevent unwanted disclosure of disability status to student notetakers, on an individual basis. The Agreement also requires the University to develop an explicit furniture accommodation for the Student.

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 implemented, 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.

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.

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

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please call Ava De Almeida Law, Senior Investigator, at (415) 486-XXXX.

Sincerely,

/s/

Sara Berman
Team Leader

Enclosure

Cc: Nancy Greenan Hamill. Chief Campus Counsel