

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, 2021

**SENT VIA ELECTRONIC MAIL**

Ron Oberstein, DC  
President  
Life Chiropractic College West  
[roberstein@lifewest.edu](mailto:roberstein@lifewest.edu)

(In reply, please refer to OCR case number 09-20-2282.)

Dear President Oberstein:

The U.S. Department of Education (Department), Office for Civil Rights (OCR) has resolved the above-referenced complaint against Life Chiropractic College West (College). The complainants alleged that the College discriminated against them on the basis of disability.<sup>1</sup> Specifically, OCR investigated whether the College:

1. Failed to provide the complainants with the approved academic adjustment of modification of course load/sequence; and
2. Denied the complainants' request for a modification to the College's Adding from Ahead policy, as an academic adjustment, without demonstrating that the policy is essential to the instruction being pursued by the complainants or directly related to a licensing requirement.

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. As a recipient of federal financial assistance, the College is subject to Section 504 and the implementing regulations.

OCR gathered evidence by conducting interviews and reviewing documents provided by the complainants and the College. After careful review of the information gathered in the investigation, OCR determined that, with regard to issue 1, the preponderance of the evidence supports a conclusion that the College did not violate Section 504 and the regulations. With regard to issue 2, prior to OCR completing its investigation, the College voluntarily agreed to address the areas of compliance concern identified by OCR by

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<sup>1</sup> OCR previously provided the College with the identity of the complainants. We are withholding their names from this letter to protect their privacy.

entering into the attached resolution agreement (Agreement) under Section 302 of OCR's Case Processing Manual.<sup>2</sup> This letter summarizes the applicable legal standards, the relevant facts obtained during the investigation, the reasons for OCR's determinations, and a summary of the terms of the Agreement.

### **Legal Standard**

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.

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

The Section 504 regulations, at 34 C.F.R. § 104.44(a), require a college to make modifications to its 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 a college can demonstrate are essential to the program of instruction being pursued or to any directly related licensing requirement will not be regarded as discriminatory.

### **Facts Gathered**

This OCR complaint was filed by two complainants, who are students in the same program at the College. They both have learning disabilities, and their respective psychoeducational evaluation report recommended the same academic adjustment<sup>3</sup>: "Modification of course load/sequence as possible to lessen intensity of academic work."

The College uses block scheduling, where students are expected to move through the program as a cohort in a specified course sequence. The complainants told OCR that in Spring 2019, the College implemented a new academic policy called "Adding from Ahead" (Policy), which states: "Students are not allowed to add courses from ahead unless they are on a special schedule." Another policy states that students who have failed a course are placed on special schedules with the intent to get them back on a block schedule as soon as possible. The complainants told OCR that prior to the Policy, students were

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<sup>2</sup> Case Processing Manual (Aug. 26, 2020), <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.

<sup>3</sup> "Academic adjustment" and "accommodation" are used interchangeably in this letter.

allowed to add courses from future quarters starting in the fourth quarter, even if they had not failed a course. Both complainants are academically high achieving and are not eligible for a special schedule as they have not failed a course.

On June X, 2019, the complainants emailed the Vice President of Academic Affairs (VP)<sup>4</sup>, identifying themselves as students with learning disabilities who are about to start their sixth quarter of study. They explained that due to their learning disabilities, they require significantly more time to study, and they requested to lighten the heavy unit load of their tenth quarter, which they described as being “notoriously difficult,” by bringing one class forward into their sixth, seventh, and eighth quarters. On June XX, 2019, the VP denied their request, citing the Policy.

On June XX, 2019, one of the complainants reached out to the Disability Services Coordinator (DSC)<sup>5</sup> to ask for help in advocating for them. On the same day, DSC requested to meet with the VP to discuss why the complainants’ request for an academic adjustment was denied. Documentation indicates that the DSC met with the VP on June XX, 2019, and at the meeting, the DSC explained the complainants’ right to a modification of the Policy under federal law and provided references to regulatory guidance.

On July XX, 2019, the DSC emailed the VP and thanked her for meeting on June XX, 2019 and for her continued consideration of the complainants’ request to add classes from ahead. The DSC asserted that the complainants’ request to add a course from future quarters is no different from other modifications that are regularly granted to students with disabilities, such as priority registration and the use electronic devices even though they are typically prohibited. The DSC submitted to VP for approval and signature an accommodations letter for each of the complainants, dated July XX, 2019, which listed “[m]odification of courseload/sequence” as an approved academic adjustment. The letters were not signed by the VP.

On July XX, 2019, the VP replied to the DSC, stating that she has shared the information provided by the DSC with general counsel and that more clarification was needed regarding the complainants’ disabilities in question; the VP did not specify what additional information or clarification was needed. On the same day, the DSC replied that additional clarification can be provided and questioned the involvement of general counsel in what she believed was a routine matter. General counsel is a higher education attorney.

On July XX, 2019, VP’s executive assistant emailed the DSC, stating that the VP has reviewed the documents and is not able to make an exception to the Policy; there was no explanation for the decision, including any legal or factual basis for the VP’s decision. On the same day, the DSC replied that she would like to see the general counsel’s response and justification for denying the complainants’ request for an academic adjustment.

On July XX, 2019, the DSC emailed the VP, following up on her request for a written explanantion for the denial of the complainants’ request. On the same day, the VP

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<sup>4</sup> The VP is no longer an employee of the College.

<sup>5</sup> The DSC is no longer an employee of the College.

replied, "The decision has been made. It is not within our policy and we cannot do it. There is no explanation beyond this that will be provided to you."

On August X, 2019, the complainants met with the College President to appeal the VP's decision. The President listened to complainants and accepted their written documentation. The DSC was present at the meeting at the complainants' request. On August X, 2019, the complainants sent a follow-up email to the President, reiterating that they were seeking to use their "ADA accommodations to create flexibility" in their course schedules.

By letter to each complainant dated September XX, 2019, they were notified of the President's decision to uphold the VP's denial of their request for a modification of the Policy on three grounds. First, the letter stated that increasing the course load in one quarter to decrease it in another is not considered an accommodation. No statutory or regulatory cite was provided for this assertion. Second, the letter noted that the accommodation that was recommended in their evaluation reports was about lessening their course load, not increasing it. Lastly, the letter stated that, if their request was granted, there would be no guarantee that they would succeed in the earlier quarters with the additional coursework, and because the courses were sequenced, taking courses out of sequence could be detrimental to the learning process. In lieu of their request to add courses from future quarters, the President offered an alternative accommodation to allow them to extend their enrollment at the College for up to two quarters without incurring tuition; in other words, if the complainants found the course load in later quarters to be too heavy, they could reduce their course load at that time and extend their enrollment for up to two quarters tuition-free.

In a letter to OCR, the College explained that allowing the complainants to add courses from ahead would violate their service providers' recommendation to lessen their course load, regardless of the existence of the Policy.

The College's procedures for providing accommodations are as follows: The DSC reviews documentation and recommends accommodations to the VP. Once approved, the VP issues an accommodation letter to the student, listing the approved accommodations.

One set of College policies identifies the DSC as the Disability Services/ADA Coordinator, while another set of policies identifies the Executive Vice President as the Section 504/ADA Coordinator.

## **Analysis**

With respect to the first issue, the facts do not show that the complainants were approved to receive a modification of course load/sequence as an academic adjustment. While the DSC recommended it, the VP did not approve it, and therefore, it was not included in the accommodations letter for each complainant. The College's procedures specify that all academic adjustments recommended by the DSC must be approved by the VP, who is authorized to issue the accommodations letter to students. Consequently, in this case, there was no failure to implement an approved accommodation with respect to a modification of course load/sequence, since the College had not approved this item in the first place. As such, OCR found that, in accordance with CPM Section 303(a), there is insufficient evidence to support a finding of noncompliance with respect to this issue.

With respect to the second issue, OCR identified the following compliance concerns with the College's handling of the complainants' request for a modification of the Policy.

First, OCR has identified a compliance concern because the evidence indicates that the VP may have failed to engage in an interactive process with the complainants, or with the DSC who was helping them, in denying the complainants' request for a modification. The VP's email shows that she consulted with general counsel, but failed to articulate to the complainants or to the DSC any legal or factual basis for denying the complainants' request; she also failed to engage in a dialogue with them about possible alternative accommodations. The VP overrode the recommendation of the DSC, a person with expertise in identifying accommodations needed by students with disabilities and the person identified as the Section 504/ADA coordinator in one set of College's policy, without offering any information as to why she was overriding her recommendation. Rather than engaging in an interactive process as required by federal law, the VP cut off all discussion, stating to the DSC, "The decision has been made. It is not within our policy and we cannot do it. There is no explanation beyond this that will be provided to you."

Second, in her reply to the DSC, the VP cited to the Policy as the reason for her decision, with no other explanation provided; as such, OCR has identified a compliance concern that the VP appears to have applied the Policy in a rote manner, without taking into consideration whether a modification of the Policy was needed by the complainants due to their disability.

Third, OCR has identified a compliance concern with the delay in informing the complainants of the College's basis for denying their request for a modification. The College asserted to OCR that its decision to deny the complainants' request for a modification was based not on the Policy, but solely on their disability documentation which did not support increasing coursework. While the College's assertion is not supported by the VP's written reply stating that her decision to reject the complainants' request was based on the Policy, OCR notes that, even under the College's assertion, it took three months—from June to September 2019—for the College to inform the complainants of the reasons for the denial. The College's delay of three months to inform them that their disability documentation was inadequate denied the complainants with an

opportunity to submit additional or clarifying disability documentation to support their request for a modification.

Fourth, while OCR recognizes the President's efforts to engage in an interactive process with the complainants by meeting with them and offering an alternative accommodation to allow them to extend their studies for two additional quarters without incurring tuition, the President's letter to the complainants raised three additional compliance concerns.

One, the President wrote that increasing the course load in one quarter to decrease it in another is not considered an accommodation. While increasing the course load may not be an appropriate accommodation in a particular circumstance, a blanket application of such a proposition would not be compliant with Section 504. Section 504 regulations describe academic adjustments broadly to allow for flexibility to meet the varied needs of students with disabilities; the law does not support a generalized statement that academic adjustment does not apply to increase the course load.

Two, the President also wrote that because the courses were sequenced, taking courses out of sequence could be detrimental to the learning process. While this may be true, under Section 504, an academic adjustment can include a modification of the course sequencing. The College already allows students who have failed a course to be on special schedules that deviate from the specified course sequence; consequently, it may be possible that deviating from the program's course sequence is not a fundamental alteration of the College's program or in violation of a licensing requirement. Thus, students with disabilities may have a right to request and receive academic adjustments to deviate from the regular course sequencing.

Three, the President's foregoing statements about increasing the course load or taking courses out of sequence may have effectively discouraged the complainants from seeking additional or modified disability documentation to support their request for a modification. The Presidents' statements implied that even if they were to submit new or additional documentation, the College may not grant their request because increasing a course load is not considered an accommodation and taking courses out of sequence is ill advised.

Lastly, OCR has identified a compliance concern in that the College policies have provided inconsistent information on who is responsible for coordinating compliance with Section 504 or the ADA—whether the DSC or the Executive Vice President.

In summary, OCR identified the foregoing compliance concerns with respect to Issue 2.

Prior to completing the investigation, the College expressed an interest in voluntary resolution and OCR determined that it is appropriate to do so in this case. The College entered into the attached Agreement, which requires the College to: review and revise its publications to add a statement to the Policy that a modification of the Policy will be considered for students with disabilities when requested and to ensure internal consistency in designating the Section 504, Disability Services, and/or ADA coordinator; to conduct

Section 504 training to staff and administrators who are involved in determining, reviewing, and/or resolving requests for accommodations for students with disabilities; and to initiate and engage in an interactive process with the complainants to discuss their need for a modification of course load/sequence or other accommodations. Based on the commitments made in the enclosed Agreement, OCR is closing the investigation of this complaint as of the date of this letter and notifying the complainants concurrently. When fully implemented, the Agreement is intended to address the complaint allegations. OCR will monitor the implementation of the Agreement until the College is in compliance with the terms of the Agreement. Upon completion of the obligations under the Agreement, OCR will close the case.

### **Conclusion**

This concludes OCR's investigation of the complaint and should not be interpreted to address the College'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 complainants 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 complainants may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the College 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, 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.

If you have any questions, please contact Jenny Moon, civil rights attorney, at [jenny.moon@ed.gov](mailto:jenny.moon@ed.gov).

Sincerely,

/s/

Naghmeh Ordikhani  
Team Leader

Cc: Antoinette McGill, attorney