



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

915 2ND AVE., SUITE 3310
SEATTLE, WA 98174-1099

REGION X
ALASKA
AMERICAN SAMOA
GUAM
HAWAII
IDAHO
MONTANA
NEVADA
NORTHERN MARIANA
ISLANDS
OREGON
WASHINGTON

March 30, 2017

Dr. Bob Kustra
President
Boise State University
1910 University Drive
Boise, Idaho 83725

Re: Boise State University
OCR Reference No. 10152223

Dear Dr. Kustra:

This is to inform you that the U.S. Department of Education (Department), Office for Civil Rights (OCR) is discontinuing its investigation of the above-referenced discrimination complaint against Boise State University (university). As explained below, prior to completion of OCR's investigation, the university expressed an interest in voluntarily resolving the complaint and signed the enclosed Voluntary Resolution Agreement (agreement) to address the complaint allegation.

The complaint alleged that the university discriminated against a student on the basis of disability (deafness), when the professor of her EDTECH 521 course required her to listen to audio recordings and to provide audio files of herself speaking. OCR opened an investigation into whether the university failed to provide necessary academic adjustments or auxiliary aids and services to the student that would allow her to participate in the course and complete the course assignments.

OCR accepted this complaint for resolution under the authority of Section 504 of the Rehabilitation Act of 1973 (Section 504) as amended, 29 U.S.C. § 794, and its implementing regulations and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131, *et. seq.*, and its implementing regulations. These statutes prohibit discrimination on the basis of disability in programs and activities that receive federal financial assistance from the Department and by public entities, respectively. The university is a recipient of federal financial assistance from this Department and is a public entity, and is therefore subject to Section 504 and Title II.

Discrimination based on disability is prohibited by the regulations implementing Section 504 at 34 C.F.R. § 104.4, 34 C.F.R. § 104.43, and 34 C.F.R. § 104.44; and Title II at 28 C.F.R. § 35.130 and 28 C.F.R. § 35.160. Specifically, 34 C.F.R. § 104.4 states that no qualified individual with a disability shall, on the basis of disability, be

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

excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which received Federal financial assistance. Section 504 at 34 C.F.R. § 104.43(c) states that a recipient to which the subpart applies may not, on the basis of disability, exclude any qualified student with a disability from any course, course of study, or other part of its education program or activity. Section 504 at 34 C.F.R. § 104.44(a) states that a recipient shall make such modifications to its academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating, on the basis of disability, against a qualified student with a disability. Section 504 at 34 C.F.R. § 104.44(d) states that a recipient shall take such steps as are necessary to ensure that no student with a disability is denied benefits, excluded from participation, or otherwise subjected to discrimination because of the absence of educational auxiliary aids for students with impaired sensory, manual, or speaking skills.

The regulation implementing Title II at 28 C.F.R. § 35.130 states that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in or denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity. Title II at 28 C.F.R. § 35.160(b)(1) states that a public entity shall furnish appropriate auxiliary aids and services where necessary to afford individuals with disabilities, including applicants, participants, companions, and members of the public, an equal opportunity to participate in and enjoy the benefits of, a service, program, or activity of a public entity.

In the summer 2015 term, the student enrolled in a compressed schedule summer class entitled “Online Teaching in the K-12 Environment” (EDTECH 521). According to the student, before classes began for that term, she spoke to an academic advisor who advised her that, because EDTECH 521 was an online class with closed-captioned videos, he did not believe the student needed to request any accommodations. Based on the academic advisor’s input, the student signed up for the class and did not contact the Disability Resource Center (DRC).

In the second week of classes, the student’s professor gave assignments which required students to upload audio files of themselves speaking, and to listen to audio files and respond. The student alleged that the professor insisted that the student needed to complete those assignments as described, or she would fail the class. The professor also advised the student to speak with her advisor to ascertain whether she could withdraw from the class and obtain a tuition refund. The student contacted the DRC, which responded with suggestions for academic adjustments/auxiliary aids or services, but stated that because of the compressed, six-week nature of the class, which had already commenced, it would be difficult to implement necessary academic adjustments in a timely manner that would allow the student access to the course content.

The student withdrew from the course following the second week of classes. The student stated that the university initially refused to provide her a tuition refund. However, since OCR's notification to the university of this complaint, both the university and the student have confirmed that the university has issued the student a tuition refund.

The evidence indicates that upon the student informing the professor and DRC about the need for an accommodation, the university may not have ensured that interim measures and appropriate accommodations were provided to allow the student to participate in the class while the DRC continued its evaluation for longer-term solutions. This raises concerns as to whether the university made modifications to its academic requirements as necessary to ensure that the requirements in the EDTECH 521 class did not discriminate or have the effect of discriminating against the student on the basis of disability. OCR's further investigation would have indicated whether this led to the student's exclusion from the program.

In accordance with Section 302 of the OCR Case Processing Manual, a complaint may be resolved at any time when, before the conclusion of an investigation, the institution expresses an interest in resolving the complaint. In such a case, the provisions of an agreement to resolve the complaint must be aligned with the complaint allegations or any information obtained during the discontinued investigation and must be consistent with applicable regulations. In this case, the university requested to resolve the complaint prior to the conclusion of OCR's investigation. Subsequent discussions with the university resulted in the university signing the enclosed agreement.

The university submitted a signed agreement to OCR on March 23, 2017. The actions the university will take under the agreement include the following:

- Review and revise its policies and procedures related to the provision of academic adjustments and auxiliary aids and services to students with hearing impairments, including the provision of interim measures where necessary.
- Provide notice to staff, including academic advisors, of the university's obligations to provide academic adjustments and auxiliary aids and services to students with disabilities, and the methods the university employs to provide them.
- Provide training for academic advisors regarding the university's policies and procedures prohibiting discrimination based on disability.
- Send the student a letter of regret expressing its commitment to provide necessary academic adjustments and auxiliary aids and services; expressing regret for the actions that caused the student to withdraw; and inviting the

student to re-enroll with all necessary academic adjustments and auxiliary aids and services. The university will also enclose a copy of its revised policies and procedures.

OCR will monitor the university's implementation of the agreement. When OCR concludes the university has fully and effectively implemented the terms and obligations of the agreement and is in compliance with the statutes and regulations at issue in this case, OCR will terminate its monitoring and close the complaint.

This concludes OCR's investigation of the complaint. The first report under the agreement is due by June 15, 2017.

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. This concludes OCR's investigation of the complaint. The complainant may have the right to file a private suit in federal court regardless of OCR's determination.

Please be advised that the university may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the complainant 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.

Thank you for the cooperation that you and your staff extended to OCR staff in resolving this complaint. If you have any questions, please feel free to contact Emily Hazen, equal opportunity specialist, at (206) 607-1615 or at emily.hazen@ed.gov.

Sincerely,

/ s /

Kelli Lydon Medak
Supervisory Attorney

Enclosure: Voluntary Resolution Agreement