



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVENUE, SW
WASHINGTON, DC 20202-1475

NORTH CAROLINA
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VIRGINIA
WASHINGTON, D.C.

August 11, 2016

Angel Cabrera, President
George Mason University
4400 University Drive
Fairfax, Virginia 22030

RE: OCR Complaint #11-16-2126
Resolution Letter

Dear Dr. Cabrera:

This letter is to advise you of the outcome of the above-referenced complaint that the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) received on March 3, 2016 against George Mason University (the University). The Complainant, an undergraduate student in the XXXX program, alleged that the University discriminated against him on the basis of disability. Specifically, the complaint alleged that the University failed to respond to his XXXX appeal of the University's denial of his request for a waiver for XXXX courses due to his disability.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive Federal financial assistance from the Department. Because the University receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

Before OCR completed its investigation, the University expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement. The following is a discussion of the relevant legal standards and information obtained by OCR during the investigation that informed the development of the Resolution Agreement.

Legal Standards

The Section 504 regulation, at 34 C.F.R. § 104.43(a), provides that a qualified person with a disability may not be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in any postsecondary aids, benefits, or services on the basis of disability. The regulation at § 104.44(a) requires a university to modify its academic requirements as 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. The regulation at § 104.44(d) requires a university to ensure that no

qualified individual with a disability is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination because of the absence of educational auxiliary aids for students with impaired sensory, manual, or speaking skills. OCR interprets the Title II regulation to require public universities to provide academic adjustments and auxiliary aids to the same extent as required under Section 504.

Universities may establish reasonable requirements and procedures for students to provide documentation of their disability and request academic adjustments and auxiliary aids and services. Students are responsible for obtaining disability documentation and for knowing and following the procedures established by the university. Once the student has provided adequate notice and documentation of his/her disability and the need for modifications due to the disability, the university must provide the student with appropriate academic adjustments and auxiliary aids and services that are necessary to afford the student an equal opportunity to participate in a school's program. However, the university is not required to make adjustments or provide aids or services that would result in a fundamental alteration of the university's program or impose an undue burden.

In determining what modifications are appropriate for a student with a disability, the university should familiarize itself with the student's disability and documentation, explore potential modifications, and exercise professional judgment. The question of whether a university has to make modifications to its academic requirements or provide auxiliary aids is determined on a case-by-case basis. OCR generally does not substitute its judgment for that of qualified educators and professionals regarding modifications. Instead, OCR reviews relevant factual evidence to determine whether a university acted in a reasonable manner and whether it took appropriate steps consistent with Section 504 and Title II in making decisions regarding a student's eligibility for academic adjustments. Both Section 504 and Title II envision a meaningful and informed process with respect to the provision of modifications, e.g., through an interactive and collaborative process between the university and the student. If a university denies a request for a modification, it should clearly communicate the reasons for its decision to the student so that the student has a reasonable opportunity to respond and provide additional documentation that would address the university's objections.

Section 504 and Title II do not require a university to modify academic requirements that are essential to the instruction being pursued by the student or to any directly related licensing requirement. In reviewing an institution's determination that a specific standard or requirement is an essential program requirement that cannot be modified, OCR considers whether that requirement is educationally justifiable. The requirement should be essential to the educational purpose or objective of a program or class. OCR policy requires, among other factors, that decisions regarding essential requirements be made by a group of people who are trained, knowledgeable and experienced in the area; through a careful, thoughtful and rational review of the academic program and its requirements; and that the decision-makers consider a series of alternatives for the essential requirements, as well as whether the essential requirement in question can be modified for a specific student with a disability. OCR affords considerable deference to academic decisions made by post-secondary institutions, including what is or is not an essential program requirement.

The University and the Complainant frequently refer to academic adjustments and auxiliary aids as "accommodations." The Section 504 regulation addressing post-secondary education refers to "academic adjustments and auxiliary aids," while the Title II regulation refers to "reasonable

modifications.” When the term “accommodations” is used in this document, it refers to academic adjustments and auxiliary aids as those terms are used in 34 C.F.R. § 104.44 and reasonable modifications as that term is used in 28 C.F.R. § 35.130(b)(7).

Factual Background

The Complainant is registered with the University’s Disability Services (DS) office and is entitled to accommodations as listed in his Faculty Contact Sheets. In 2013, the Complainant requested a course waiver for XXXX, but the University denied his request on XXXX, for three reasons, including that his disability documentation did not support the request. In September 2014, the Complainant officially appealed the denial of his course waiver request to the University’s Compliance, Diversity and Ethics office; on XXXX, that office issued a letter concurring with the DS office decision that the waiver was not appropriate based on his medical documentation and the centrality of the course.

Early in the XXXX semester, the Complainant met with DS staff to discuss his new request for a course waiver based on a XXXX evaluation, which stated: “It is highly recommended that other courses be substituted for his JAVA class and its follow-up class.” On March 3, 2015, DS staff informed the Complainant that his documentation did not support a course waiver at that time. Over the next two months, DS met with the Complainant and his academic department on his options in order to graduate. When the Complainant asked about the waiver appeal process on May 5, 2015, DS staff directed him to the Compliance, Diversity and Ethics office. The Complainant did not file another appeal with that office, but in mid-October 2015, he contacted a member of the Provost’s staff and wrote a letter to the Provost about his waiver request situation. The staff person emailed some questions to the Complainant and he responded, but the Complainant did not receive a formal response from the Provost’s office other than a telephone conversation in which the staff person suggested that the Complainant contact the academic affairs manager and work with his academic unit to resolve the issue.

Conclusion

Pursuant to Section 302 of OCR’s Case Processing Manual, the University signed the enclosed Resolution Agreement on August 11, 2016, which, when fully implemented, will resolve the allegations raised in this complaint. The provisions of the Agreement are aligned with the allegations and issues raised by the Complainant and the information discussed above that was obtained during OCR’s investigation, and are consistent with applicable law and regulation. OCR will monitor the University’s implementation of the Agreement until the University is in compliance with the statutes and regulations at issue in the case. Failure to implement the Agreement could result in OCR reopening the complaint.

This concludes OCR’s investigation of the complaint. This letter 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. 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.

Please be advised that the University must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, or participates in an OCR proceeding. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

We appreciate the University's cooperation in the resolution of this complaint. If you have any questions, please contact Ms. Kristi Bleyer at (202) 453-5901 or via e-mail at Kristi.Bleyer@ed.gov or Ms. Deborah Kelly at (202) 453-5919 or via e-mail at Deborah.Kelly@ed.gov.

Sincerely,

/S/

Michael Hing
Supervisory Attorney, Team I
District of Columbia Office
Office for Civil Rights

Enclosure

cc: XXXX