



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVENUE, SW
WASHINGTON, DC 20202-1475

REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, DC

August 2, 2016

Debra Saunders-White
Chancellor
North Carolina Central University
1801 Fayetteville Street
Durham, NC 27707

RE: OCR Complaint No. 11-16-2194
Resolution Letter

Dear Chancellor Saunders-White:

This letter is to advise you of the outcome of the complaint that the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) received on April 28, 2016 against North Carolina Central University (the University). The Complainant alleged that the University discriminated against her on the basis of disability by failing to provide her with auxiliary aids and services to facilitate her participation in the educational program.

OCR initiated an investigation into whether, during the XXXX semester, the University failed to provide her with closed captioned videos during the XXXX course.

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.

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

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.

The University and 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

Prior to the Division expressing a willingness to enter into an agreement concerning this complaint, OCR obtained documents and spoke to the Complainant. According to the information obtained thus far, OCR provides the factual background below.

Upon beginning the XXXX semester, the Complainant was approved to receive disability-related accommodations from the University, including closed captioned videos. One of the courses she was enrolled in during that semester included instructional videos that corresponded with each course module, as part of its curriculum.

The Complainant told OCR that there were about 20 videos assigned throughout the semester; however, less than half of the assigned videos were provided to her with closed captioning. The Complainant also told OCR that throughout the semester, she was in frequent communication with both Student Disability Services and the course instructor requesting that the closed captioned videos be provided to her. As the University did not provide all of the videos by the end of the semester, the instructor informed the Complainant that she would only be tested on information contained in the videos that had been appropriately provided. The Complainant ultimately received an A in the course.

Conclusion

Pursuant to Section 302 of OCR's *Case Processing Manual*, the University signed the enclosed Resolution Agreement on August 1, 2016, which, when fully implemented, will resolve the allegation raised in this complaint. The provisions of the Agreement are aligned with the allegation 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 Shana Heller or Kimberly Conway, the OCR attorneys assigned to this complaint. You can reach Ms. Heller at 202-453-6599 or Shana.Heller@ed.gov or Ms. Conway at 202-260-0991 or at Kimberly.Conway@ed.gov.

Sincerely,

/S/

Kristi R. Harris
Supervisory Attorney, Team IV
District of Columbia Office
Office for Civil Rights

Enclosure

cc: Benita Jones, Assistant University Legal Counsel, North Carolina Central University