



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

April 4, 2017

Via Email at chancellor@uncg.edu

Chancellor Franklin D. Gilliam, Jr.
Office of the Chancellor
The University of North Carolina at Greensboro
303 Mossman Building
Greensboro, NC 27402-6170

Re: OCR Complaint No. 11-17-2001
Letter of Findings

Dear Chancellor Gilliam:

The Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) has completed its investigation of the complaint we received on XXX against the University of North Carolina at Greensboro (the University). XXX. The Complainant alleged that the University discriminated against the Student on the basis of disability. Specifically, the complaint alleged that the University failed to provide the Student with reasonable accommodations¹ during the XXX semester.

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.

In reaching a determination, OCR reviewed documents provided by the Complainant, Student and University and interviewed the Complainant, Student and University staff. After carefully considering all of the information obtained during the investigation, OCR identified a violation, which the University agreed to resolve through the enclosed resolution agreement. In addition,

¹The 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).

OCR cautions the University to follow the guidance provided in the “Technical Assistance” subsection of this letter.

OCR’s findings and conclusions are discussed below.

Background

The Student was enrolled at the University XXX. She had recently been diagnosed with XXX. Although events prior to XXX are not part of the current investigation, the following facts regarding XXX were provided to OCR by the Complainant, Student, and University as important background information. In XXX the Student went to the Office of Accessibility, Resources and Services (OARS) because she struggled with attending class due to XXX. The Student stated that she was told OARS could not provide any accommodations for students with XXX. However, the Assistant Director of OARS (the Assistant Director) said that the Student wanted the rest of her classes to be offered online and that he recommended that she register with OARS and discussed several alternative accommodations such as consideration for absences, frequent breaks from class, and several testing accommodations. He also said that he recommended she ask faculty and the head of the XXX department (the Department Head) if independent study, alternative classes, or classes through another institution that was part of the Greensboro consortium would be possible. The next day after meeting with the Student, he emailed with her about any immediate testing accommodations she might need and strategies for minimizing XXX in class and spoke with her mother regarding the documentation that would be helpful in registering with OARS. The Student dropped several classes and enrolled part-time in online sections of several other required classes and did not contact OARS again until the summer.

In XXX the Student submitted medical documentation from her XXX and XXX detailing the Student’s condition and recommendations for accommodations. When the Student met with the Assistant Director in XXX, OARS granted her several testing and classroom accommodations. The Student also requested independent study, but she was told that OARS could not fundamentally change the curriculum to allow for independent study and that it would be up to her academic department to do so. The Student withdrew from the University on XXX and planned to enroll in an online school to finish her degree.

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.

A university is not required to provide an academic adjustment or auxiliary aid if it can show that the requested adjustment or aid would pose an undue financial or administrative burden. Generalized conclusions are not sufficient to support a claim of undue burden. Instead, undue

burden must be based on an individualized assessment of current circumstances that show a specific academic adjustment or auxiliary aid would cause significant difficulty or expense.

Analysis

The Complainant alleged that she spoke with OARS during the summer of XXX to make sure all accommodations were in place for the Student's first day of class but that OARS denied everything that was requested including online classes and video recording. The Student clarified that she received and had no concerns with her testing accommodations; rather her allegation was regarding the University's failure to provide her with alternative learning options so that she could remain at home and not have to attend class when she was unable to. Both the Complainant and the Student stated that the Assistant Director of OARS told them it would not be possible for OARS to grant independent study or any type of attendance waiver because it would change the structure of the course but that the Student should reach out to the Department Head and her professors to see if they would be willing to make such accommodations. The Complainant and Student stated that the Department Head told her that he could not make those accommodations because of budget and scheduling constraints.

The University stated that OARS is not authorized to provide independent study because it could be considered a fundamental alteration to the course and that the Student was told by the Assistant Director that she should talk to her professors regarding her options regarding the class participation component of the courses. The University's position is that:

asking for the entire format of an on-campus course that requires interaction and is set up for class participation to be changed to a self-study mode would fundamentally alter the course in such a way that it could not be considered a reasonable accommodation, at the least without the involvement and consent of [the Student's] faculty.

OCR analyzed the assertions and documentation from the Complainant, Student, and University as detailed in chronological order below. It appears that OARS denied the Student independent study or any attendance waiver. But, even if OCR considers that the interactive process may have been arguably still ongoing and no final determination had been made by the University when the Student withdrew, there was still a procedural flaw in the way the University handled the interactive process. Specifically, the University improperly placed the burden on the Student when determining whether attendance was an essential requirement of the course of study and whether any waiver of the attendance requirement would constitute a fundamental alteration of the program. In addition, OCR is concerned that the University may be misinterpreting OCR policy and strongly cautions the University to follow the guidance provided in the "Technical Assistance" subsection of this letter.

Chronology

On XXX, OARS received the Student's medical documentation, which stated that the Student has a chronic medical condition that is XXX and that her "symptoms disrupt every day activities due to XXX as well XXX." Her XXX recommended that accommodations be made so that the

Student can “XXX” and that the Student “be allowed to leave class, arrive late for class or miss class due to her chronic illness. Her XXX concluded that the Student’s symptoms “do not make [her] a good candidate for learning inside a classroom at this point.” The XXX recommended that the student be accommodated with a video or web-based option in the event she was not able to attend class and until she was able to manage XXX symptoms.

On XXX, OARS sent an email to the Student confirming that her documentation had been “accepted for academic accommodations.” The email stated that the accommodations would be discussed with her XXX after she had attended all of her classes at least once.

Classes for the XXX semester began on XXX. Two days prior, on XXX, the Student wrote the following email to her professors:

I am writing this to let you know that I have been approved for special accommodations with The Office Accessibility Resources & Services and I plan to meet with someone from their office on Wednesday for further discussion and to complete the process. Also, I just want to say that although I am working extremely hard to manage my symptoms, they are just too painful sometimes; when they are, I may need to excuse myself. Nonetheless, I still plan to participate in your class as I am very excited to be in it! If you have any questions, please let me know.

One professor responded, “Thanks for the heads-up. Life happens. I get it. Whatever you need - we can figure it out together.” Other professors did not respond at all.

On XXX, the Student met with the Assistant Director to receive her Faculty Accommodation Letter, which detailed the accommodations that the Student was authorized to receive. These accommodations included testing accommodations as well as classroom accommodations such as frequent breaks and preferential seating XXX. Based on the Assistant Director’s handwritten notes and recollection from their meeting that day, the Student requested independent study so that she could teach herself the curriculum. The Student explained that the classes did not have any attendance policies and that the professors taught out of the book, but that one class required student participation and interaction during class periods and collaboration on assignments. The Assistant Director expressed to the Student that he could not think of any way she could participate in class discussions if she did not attend class but suggested that she speak with the Department Head and her professors to discuss other ideas such as independent study. He stated to her that such ideas “could constitute a fundamental change of instruction which OARS cannot require.” The Assistant Director explained that it was a departmental decision as to whether she could get credit for studying the material on her own and taking the final exam as well as whether she could take an online class at another school and receive credit from the University; because the faculty would need to figure out how to provide the material in an online or independent study format and would have to adjust the way they assess participation, etc., the faculty would have to approve the change. He also mentioned that there could be concerns regarding requirements for professional licensure exams that independent study might not satisfy. He said that he did not consult with any professors or the Department Head on the Student’s behalf because OARS does not take the initiative to intervene unless a student requests

them to do so, but that OARS would support the XXX department in whatever decision they made with regard to the Student's request. The University's attorney explained that the University offers online degrees in many areas but not for XXX and thus there was not a track that they could have easily diverted the Student to.

On XXX, the Complainant called the Assistant Director about concerns that the Student was very upset because she XXX had missed almost the entire class. The Assistant Director said he could not share much over the phone because of confidentiality issues and instead suggested that he, the Complainant, and the Student setup a meeting to discuss the Student's requested accommodations. He also reiterated that requests for independent study, recording or videotaping of courses, or other ways that the Student could teach herself the material outside of the classroom, had to be discussed with the Department Head since these requests required a high level of modification to the course. The Assistant Director emailed the Student to let her know that the Complainant had called and suggested that the Student schedule an appointment with him to discuss the concerns the Complainant raised. The Student explained that the Complainant suggested she withdraw from the College if the XXX department could not adjust her classes.

In the late afternoon of XXX, the Student wrote the following email to the Department Head:

I have registered with OARS recently because of a medical condition that has been causing me much trouble and disrupting my life in all aspects (especially when in class) and I was told to contact you about independent study to see if it would be possible for me to go that route?

Within an hour, the Department Head responded:

Because of budget constraints the department faculty generally do few independent studies except for extenuating circumstances such as the inability of a student to graduate on time without one. We also want to encourage students to take our regularly scheduled courses. In addition, it is well beyond the drop/add date.

You can check with individual faculty members in your major (XXX) to see if they are will (sic) to supervise an independent study. However, given my workload this term I'm am (sic) unable to offer one for you. However, I would recommend that you speak with a professional advisor in XXX Student Services to see what options are available. If the advisor believes that an independent study is the only option please ask s/he to contact me.

The Department Head stated that his area is XXX and that since the Student was XXX major, she would have needed to have XXX professor supervise her independent study. He also stated that the professional advisors have access to student records and know what courses the students need to graduate on time; if there are no other existing course alternatives, then the XXX department can accommodate students who need independent study. The University had no

record of the Student contacting the Student Services Department as suggested by the Department Head.

On the next day XXX, the Assistant Director offered to meet with the Student again, suggested that the Student meet with the Department Head in person, and also advised the Student to research and discuss the option of exam-course equivalents with the Registrar's office. The Student informed the Assistant Director via email that the Department Head was not be able to help her and therefore she felt that academic withdrawal was her only option. The Assistant Director responded that she should speak with the Dean of Students Office and gather more information before deciding to withdraw. The Student, however, withdrew on XXX. The Assistant Director wanted to follow up with the Student but when he checked the Student's enrollment status on XXX and saw that she had withdrawn, he did not send her a follow up email. The Assistant Director stated that he assumed the interactive process was ongoing and discouraged the Student from withdrawing so promptly because likely there might have been other options and additional resources that the Dean of Students could have provided.

Determination

OCR acknowledges that the Student withdrew XXX after asking for the accommodation of independent study. Had the Student remained enrolled, it is unclear whether the staff and faculty including the professional advisor in the Student Services Department, the Dean of Students Office, the Student's XXX professors, and the Assistant Director of OARS would have gone through a careful, thoughtful and rational review of the academic program and its requirements. But, OARS, not the Student, had the responsibility to coordinate the thoughtful and rational review of the academic program and its requirements; the burden should not have been the Student to initiate the discussion regarding fundamental alterations and essential requirements with staff and faculty and to seek out different options on her own.

Before a formal determination can be made as to what constitutes a fundamental alteration of an essential major requirement, the University must take into consideration, 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. Every program is different, but factors to be considered in determining whether a standard is essential include the nature and purpose of the program; the relationship of the standard to the functional elements of the program; whether exceptions or alternatives are permitted; whether the standard is required in similar programs in other institutions; whether the standard is essential to a given vocation for which the program is preparing students; and whether the standard is required for licensure or certification in a related occupation or profession. Once an institution complies with these standards, the courts and OCR accord the decision reached by the institution substantial deference. The University must therefore comply with these standards prior to finding that any requirement is essential and that accommodations will therefore not be granted to students in meeting that requirement. Furthermore, if it is determined that a requested academic adjustment would result in a fundamental alteration, the University must then consider whether there are

alternative academic adjustments that could accommodate a student without fundamentally altering the course.

While OCR understands the University's position that OARS does not take the initiative to intervene unless a student requests them to do so, in some circumstances, such as the determination that an accommodation is a fundamental alteration to a program, OARS must take the initiative to lead a careful, thoughtful, and rational review of the academic program and its requirements. OARS should have been leading the efforts to request independent study or an alternative accommodation on behalf of the Student and to ensure that the Student's disability was being taken into account by all decision-makers. Because the University caused a procedural flaw in the interactive process, OCR finds that the University was in violation of Section 504 and Title II.

Technical Assistance

OCR notes that the Department Head's response to the Student's request for independent study mentioned "budget and scheduling constraints" as reasons why department faculty only offer independent study if there are extenuating circumstances. Although OCR recognizes that the Department Head did not render a final decision on the Student's request for independent study, OCR cautions the University that because the Student is a student with a disability, an undue burden analysis would have been necessary prior to reaching a final decision. Factors to be taken into consideration in determining whether a modification would impose such a hardship include the University's budget and the specific nature of the modification requested; establishing undue burden is generally a difficult standard for a postsecondary institution to satisfy.²

Also, although the XXX semester was outside of the scope of this investigation, OCR notes that when the Student spoke with the Assistant Dean of Students in XXX, the Assistant Dean advised the Student to speak with OARS and her advisor. He also sent an email to each of the Student's professors advising them that the Student has a medical condition and stating that the Student "understands that it is **up to each individual professor as to whether or not accommodations can be made**. Any assistance you can provide this student, however you deem appropriate for your course, would be appreciated." (emphasis added). OCR is aware that at the time the Assistant Dean sent the email to the Student's professors, the Student was not yet registered with OARS and had not yet submitted any medical documentation. However, OCR reminds the University that once students with disabilities are registered with OARS, it is not up to each individual professor as to whether or not accommodations can be made. Rather, accommodations are granted through an interactive process, and once granted, professors cannot unilaterally decline to provide such accommodations.

² See U.S. v. Bd. of Trustees for Univ. of Alabama, 908 F.2d 740 (11th Cir.1990) ("In light of UAB's annual transportation budget of \$1.2 million, an expenditure of \$15,000[to make university vans accessible], plus occasional amounts representing the difference in commercial rental fees versus the UAB rental fee for vans, is not likely to cause an undue financial burden on UAB.") See also McPherson v. Michigan High Sch. Athletic Ass'n 119 F3d 453, 462 (6th Cir. 1997) (The court was unwilling to require a modification that imposed "an *immense* financial and administrative burden" on the organization, forcing it to make "*near-impossible* determinations.") (emphases added).

Conclusion

On April 3, 2017, the University agreed to implement the enclosed Resolution Agreement (Agreement), which commits the University to take specific steps to address the identified areas of noncompliance. The Agreement entered into by the University is designed to resolve the issues of noncompliance. Under Section 303(b) of OCR's *Case Processing Manual*, a complaint will be considered resolved and the University deemed compliant if the University enters into an agreement that, fully performed, will remedy the identified areas of noncompliance (pursuant to Section 303(b)). OCR will monitor closely the University's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively. OCR may conduct additional visits and may request additional information as necessary to determine whether the University has fulfilled the terms of the Agreement and is in compliance with Section 504 and Title II with regard to the issues raised. As stated in the Agreement entered into by the University on April 3, 2017, if the University fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings, including to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10) or judicial proceedings, including to enforce the Agreement, OCR shall give the University written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

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 regarding this letter, please contact Dana Russo, the OCR attorney assigned to this complaint, at 202-453-6559 or dana.russo@ed.gov.

Sincerely,

Michael Hing

Team Leader, Team 1
Office for Civil Rights
District of Columbia Office

cc: XXX