



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

May 17, 2017

Dr. Teresa A. Sullivan
President
University of Virginia
Post Office Box 400244
Charlottesville, VA 22904-4224

Re: OCR Complaint No. 11-17-2031
Resolution Letter

Dear Dr. Sullivan:

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 XXXX against University of Virginia (the University). The Complainant alleged that the University discriminated against individuals on the basis of disability. Specifically, the complaint alleged that the University failed to provide deaf and hard of hearing XXXX with Communication Access Realtime Translation (CART) services and written transcription of the University's Board of Visitors (BOV) meetings, as requested in XXXX.

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 its investigation, OCR reviewed documents provided by the Complainant and the University. During the course of the investigation, the University agreed to resolve concerns identified by OCR through the enclosed Resolution Agreement as set forth below, pursuant to Section 302 of OCR's *Case Processing Manual*, which the University signed on May 16, 2017.

Legal Standards

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

The Section 504 regulation, at 34 C.F.R. § 104.4(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 under any program or activity which receives Federal financial assistance from the Department.

The Title II regulation, at 28 C.F.R. § 35.160, requires public entities, including universities, to ensure that communication with individuals with hearing, vision, or speech disabilities is as effective as communication with individuals without disabilities. To do this, universities must provide appropriate auxiliary aids and services where necessary to provide effective communication so that individuals with disabilities have an equal opportunity to participate in, and enjoy the benefits of, the services, programs, and activities of the university. Title II requires universities to give primary consideration to the auxiliary aid or service requested by the individuals with the disability when determining what is appropriate for that individual. A university is not required to provide a particular auxiliary aid or service if the university can demonstrate that it would fundamentally alter the nature of a service, program, or activity, or that it would be an undue financial and administrative burden. However, a university still has an obligation to provide an effective auxiliary aid or service to the maximum extent possible.

Factual Background

The Complainant is XXXX. XXXX SENTENCE REDACTED XXXX.

On XXXX, XXXX initiated a series of requests for information directed to several University officials. Many of the requests sought to compel what XXXX considered public records pertaining to the University's Strategic Investment Fund¹ and BOV meetings.² Due to the nature of some of the requests³, the University informed OCR that it interpreted XXXX requests as requests made pursuant to the Freedom of Information Act (FOIA). Accordingly, the University's FOIA Officer responded to XXXX requests beginning with a letter dated XXXX.⁴ Subsequent correspondence between XXXX and the University revealed that XXXX made subsequent requests to the University, including a request for auxiliary aids and services for individuals with disabilities at issue in this matter.

¹ According to the University, the Strategic Investment Fund is a more than \$2 billion investment fund, which the University established in 2016 to support transformative projects in the areas of education, research, and health care services, all without relying on tuition or tax dollars. XXXX SENTENCE REDACTED XXXX.

² The BOV is responsible for the University's long term planning. Specifically, the BOV approves the policies and the budget for the University and ensures the preservation of the University's Honor System. With the exception of closed sessions, BOV meetings are generally open to the public and occur over the course of 2-3 days approximately five times per year.

³ In XXXX initial correspondence to the Office of the President, dated XXXX, XXXX submitted a XXXX document drafted as its notice of XXXX. XXXX SENTENCE REDACTED XXXX.

⁴ In its response, the University explained that it provided information where releasable under FOIA; identified where requested records did not exist; and sought clarification for the remainder of XXXX request. The University also proposed a phone call between the parties to discuss the nature and scope of the remainder of XXXX requests. Email documentation indicated that XXXX considered the University's response insufficient and a refusal to provide requested public information. Despite failing to take affirmative steps to clarify its requests as the University requested, XXXX continued to reiterate XXXX requests for information as originally presented.

Analysis

Following a series of requests for information, on XXXX, XXXX emailed the University's Secretary of the BOV (the Secretary). The email requested, in relevant part, that the University provide written transcripts of BOV meetings that occurred in XXXX and XXXX. XXXX also requested "CART and a written transcription of the University's BOV meetings to XXXX that are deaf and hard of hearing, henceforth." XXXX further asserted that the University's failure to provide the aforementioned auxiliary aids and services for deaf and hard of hearing would violate Title II. XXXX reiterated its request to the University in an email sent on XXXX.

In response to the Complainant's allegation, the University informed OCR that it acknowledged receipt of XXXX request on XXXX, and thereafter provided a substantive response to XXXX in an email dated XXXX. The University maintained that at no time did the University deny XXXX request. OCR reviewed the relevant email correspondence and corroborated the University's position.

As a threshold matter, OCR notes that the University interpreted XXXX request for auxiliary aids and services for individuals with disabilities as a FOIA request. OCR cautions the University that a request for auxiliary aids and services should be addressed under the University's procedures for providing such aids and services as necessary to afford individuals with disabilities an equal opportunity to participate in its programs and activities, pursuant to Section 504 and Title II.

Allegation 1(a): Request Written Transcriptions of Past Meetings

With respect to XXXX request for written transcriptions on XXXX, as an auxiliary aid and service, for BOV meetings that occurred in XXXX and XXXX, the University informed XXXX that it "was willing to prepare specific written transcription in response to XXXX request," but sought clarification from XXXX due to ambiguities in the request. Specifically, the University asked XXXX to clarify whether it sought transcriptions of all recordings of all relevant public sessions, or whether it wanted only certain sessions.⁵ Additionally, because the BOV did not convene in XXXX, the University asked XXXX to clarify whether it sought transcriptions for meetings that occurred in XXXX rather than its original request for "XXXX meetings."

The University informed OCR that to date, XXXX had not provided information responsive to its request for clarification. Although the Complainant disputed the University's position and reported that XXX had, in fact, clarified its request for written transcriptions, the Complainant did not provide OCR with any documentation to support that XXXX had clarified its request.⁶ Therefore, OCR found insufficient evidence to rebut the University's contention that XXXX did not provide information responsive to the University's request for clarification. However, notwithstanding XXXX lack of clarification, and during the course of OCR's investigation, the

⁵ BOV meetings include several public sessions and occur over the course of multiple days.

⁶ Specifically, on XXXX, OCR asked the Complainant for documentation evidencing that XXXX had clarified its requests to the University. Although the Complainant responded to OCR, the information provided was not responsive to OCR's request.

University provided XXXX with written transcripts of all recorded BOV public sessions that occurred in XXXX and XXXX, on XXXX.

Because the University provided XXXX with written transcripts more than 180 days after XXXX initial request, OCR considered whether the pendency of this matter nevertheless amounted to a denial of a request for auxiliary aids and services, and thus denied equal access to the University's program and activities. In doing so, OCR considered the reasonableness of the University's actions.

First, OCR considered that XXXX made its request for written transcriptions on XXXX, which was approximately XXXX months after the BOV meetings at issue occurred in XXXX and XXXX. Given that the meetings at issue occurred in past, OCR considered that XXXX was not denied the ability to participate, or effectively communicate, in a future public event; rather, XXXX was seeking to recapture information pertaining to past events. OCR also considered that upon receiving the XXXX request, the University conveyed a "willingness to provide written transcripts," thereby ensuring that individuals with disabilities have an equal opportunity to participate in the University's programs and activities to the same extent as non-disabled individuals. Moreover, given the University's demonstrated need to clarify XXXX request, OCR determined that the University acted in a reasonable manner when it initially sought further clarification. Finally, OCR determined that the elapsed time period in addressing XXXX request for written transcripts was directly attributed to XXXX failure to clarify its request rather than the University's actions. Absent further evidence, OCR was unable to establish that the pendency of this matter constituted a denial of the requested auxiliary aids and services.

Based on the foregoing, OCR determined that the University resolved Allegation 1(a) during the course of OCR's investigation, and no further prospective relief is available to individuals with disabilities. Accordingly, OCR will take no further action regarding Allegation 1(a).

Allegation 1(b): Request for Written Transcriptions and CART Services for Future Meetings

With respect to the portion of XXXX request, dated XXXX, that the University "[henceforth] provide CART and a written transcription of the University's [BOV] meetings" for deaf and hard of hearing XXXX, the University stated that it informed XXXX in its XXXX correspondence that the request remained "under consideration." To date, the University has not rendered a final decision regarding XXXX request.

However, the University also provided OCR with information indicating that in instances where the University provided live-streaming for public events, it may limit the provision of real-time captioning or CART services. OCR notes that the University's position conflicts with its responsibility to provide auxiliary aids and services to ensure equal opportunity to participate in the University's programs and activities. Moreover, in ensuring effective communication, the University is required to give primary consideration to the auxiliary aid or service requested by the individual with the disability. Therefore, in this matter, the University would be obligated to give primary consideration to XXXX request for written transcriptions and CART services for upcoming BOV meetings irrespective of whether the meetings were live-streamed to the public.

Although OCR has not completed its investigation of this portion of the allegation, OCR is concerned whether the University gave/will give primary consideration to XXXX request for CART services and written transcription for individuals with disabilities. Further, OCR is concerned that the pendency of this issue prevented deaf and hard of hearing XXXX from accessing and participating in BOV's meetings from the date of XXXX initial request on XXXX, through the present. To establish the foregoing, OCR would be required to conduct interviews with University personnel to determine whether the University took appropriate steps consistent with Section 504 and Title II to address XXXX request. However, during the course of the investigation, and considering OCR's concerns, the University expressed interest in resolving this matter pursuant to Section 302 of OCR's *Case Processing Manual*.

Conclusion

On May 16, 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 concern, as described with respect to the complaint. The Agreement entered into by the University is designed to resolve the issues of concern. Under Section 302 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 concern. 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 May 16, 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, assists, or participates in a proceeding under a law enforced by OCR. 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 Erika Westry, the OCR attorney assigned to this complaint, at 202-453-7025 or Erika.Westry@ed.gov.

Sincerely,

/s/

Letisha Morgan
Team Leader, Team II
District of Columbia Office
Office for Civil Rights

Enclosure

cc: Catherine Spear, Esq.
Robert Tyler, Esq.