



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 16, 2017

David J. Cole, M.D.  
President  
Medical University of South Carolina  
179 Ashley Ave., MSC 001  
Charleston, South Carolina 29425

RE: OCR Complaint No. 11-17-2183  
Resolution Letter

Dear Dr. Cole:

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 the Medical University of South Carolina (the University). The Complainant, a student at the XXXX, alleged that the University discriminated against her on the basis of disability. Specifically, the complaint alleges that:

1. During the XXXX semester, the University discriminated against the Complainant when it informally diagnosed her with an additional disability and gave an unsatisfactory professional conduct evaluation based on that perceived disability; and
2. During the XXXX semester, the University failed to adequately implement some approved academic adjustments, in particular extra time on all tests, an appropriate quiet testing environment, and meetings scheduled at a time convenient for the Complainant's disabilities.

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 (ADA 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 ADA 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 ADA Title II regulation to require public universities to provide academic adjustments and auxiliary aids to the same extent as required under Section 504.<sup>1</sup> Both Section 504 and the ADA define a disability as a physical or mental impairment that substantially limits one or more major life activities; in addition to having an actual disability, the definition of a person with a disability includes having a record of such impairment or being regarded as having such an impairment.

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 must 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 ADA Title II in making decisions regarding a student's eligibility for academic adjustments. Both Section 504 and ADA 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.

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<sup>1</sup> 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 ADA 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).

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.

The Section 504 regulation, at 34 C.F.R. § 104.7(b), requires universities that employ 15 or more people to adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints of Section 504 violations. The ADA Title II regulation, at 28 C.F.R. § 35.107(b), requires public universities that employ 50 or more people to adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints of ADA Title II violations.

### **Factual Background**

The University is a state academic health science center located in Charleston, South Carolina. It is comprised of six colleges: the College of Health Professions (COHP); the College of Medicine; the College of Nursing; the College of Pharmacy; the College of Dental Medicine; and the College of Graduate Studies. The University has about 3,000 students total. It also has an affiliated medical center.

The XXXX has academic programs in a variety of fields, such as XXXX. The Complainant first enrolled as a graduate student in the XXXX in XXXX. Between XXXX and XXXX, the Complainant achieved all A and B grades in her courses. In XXXX, the Division of XXXX notified the Complainant that she received an unsatisfactory professional conduct evaluation and was required to develop a behavior improvement plan. The Complainant unsuccessfully appealed the determination in XXXX. In XXXX, the Complainant officially registered with the University's Disability Support Services in XXXX and was approved for accommodations.

### **Analysis and Conclusion**

The Complainant contended that the mandatory behavior improvement plan required her to address behaviors related to a disability for which she has never been diagnosed, but which XXXX faculty regard her as having. The Complainant has other disabilities and believes that individual professors provided her some accommodations during her XXXX semesters, although nobody ever referred her to the University's disability services until after the unprofessional conduct evaluation. The Complainant also asserted that the behavior plan required her to address any concerns she had through the professional conduct staff, rather than through a disability grievance process.

During the investigation, OCR learned that the University is in the process of revising relevant disability services policies and procedures. OCR discussed with the University potential issues as to whether the XXXX followed appropriate policies and procedures. Prior to the completion of OCR's investigation, the University expressed interest in resolving the complaint pursuant to Section 302 of OCR's *Case Processing Manual* and then signed the enclosed Resolution Agreement (the Agreement) on XXXX. The Agreement, 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 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. Complainants 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 Kristi Bleyer, the OCR attorney assigned to this complaint, at 202-453-5901 or [kristi.bleyer@ed.gov](mailto:kristi.bleyer@ed.gov).

Sincerely,

/s/

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

Enclosure

cc: Annette Drachman, General Counsel (via email)