



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

September 10, 2018

Dr. Al M. Panu
Chancellor
University of South Carolina Beaufort
Office of the Chancellor
One University Blvd.
Bluffton, SC 29909

Re: OCR Complaint No. 11-17-2249
Letter of Findings

Dear Dr. Panu:

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 May 1, 2017 against the University of South Carolina (the University). The Complainant filed the complaint on behalf of a student (the Student) at the University. The Complainant alleges that the University discriminated against the Student on the basis of disability. Specifically, the complaint alleges the following:

1. In approximately February of XXXXX, the Student's XXXXX instructor failed to provide the modification of extended time.
2. In approximately April of XXXXX, the Student's XXXXX instructor failed to provide the modification of extended time.
3. In February of XXXXX, the University failed to provide the Student an in-class note-taker.

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.

In reaching a determination, OCR reviewed documents provided by the Complainant and the University and interviewed the Complainant and University faculty/staff.

After carefully considering all of the information obtained during the investigation, OCR found insufficient evidence to support the Complainant's allegations. However, OCR identified a

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

violation of Section 504 regarding the University's service animal policy, which the University agreed to resolve through the enclosed resolution agreement.

OCR's findings and conclusions are discussed below.

Background

The Student began attending the University in the XXXXX. XXXXX, per her request, the University provided her a letter with a list of accommodations (the accommodation letter) due to the Student's disability of XXXXX. The accommodation letter listed "[e]xtended time for assignments: 2 calendar day[s]," and "tape recording lectures." The accommodation letter also stated the following in bolded letters: "*The following are accommodations for this student.* The student will address which accommodations he or she needs. This is the student's responsibility [original emphasis]." The document indicates that the accommodations letter for the Student is valid until the Student graduates and does not need to be renewed.

Starting with the fall semester of the XXXXX academic year, the Student was placed on academic probation. In the spring semester of 2016-XXXXX, the Student's courses included XXXXX. In her XXXXX course, the Student received a zero for a writing assignment after she did not turn it in by the due date of February 26, XXXXX. In her XXXXX course, she received reduced grades for multiple assignments when she did not turn them in by the posted deadlines. The Student ultimately received "C" grades in both XXXXX and XXXXX. Due to her cumulative grades not meeting a grade target set previously when the Student was placed on academic probation¹, the Student was removed from the University at the end of the XXXXX semester.

Allegation 1: In approximately February XXXXX, the Student's XXXXX instructor failed to provide the modification of extended time.

Allegation 2: In approximately April of XXXXX, the Student's XXXXX instructor failed to provide the modification of extended time.

Legal Standard

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

¹ OCR notes that this XXXXX is not the subject of this complaint and outside the timeliness requirements of OCR (although the Complainant has mentioned it to OCR during the investigation of this complaint).

Universities to provide academic adjustments and auxiliary aids to the same extent as required under Section 504.²

Universities may establish reasonable requirements and procedures for students to provide documentation of a 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 University'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.

Analysis

XXXXX

The Complainant alleged that the Student's XXXXX professor failed to comply with the Student's approved accommodation allowing her two additional days to complete assignments. The University denied that it failed to provide her extended time, stating that the Student did not notify the XXXXX professor of her need for accommodations before the assignment was due. Both the University and the Complainant reported that the Student notified the XXXXX professor of her accommodation of extended time after the essay's due date of February 26, XXXXX. The Student also told OCR staff that she was not denied extended time on any subsequent XXXXX assignment.

Concerning the February 26th assignment, the XXXXX professor told OCR staff that she did not allow the Student extended time because she did not arrange for additional time before the assignment was due. The XXXXX professor told OCR staff that, if the Student informed her prior to the assignment's due date, she would have provided her additional time and would have met with her to provide additional writing resources. She also told OCR staff that the Complainant did not request accommodations for any assignment aside from the essay that was due on February 26, XXXXX.

The University and the Student provided relevant documents to OCR. The XXXXX syllabus included a course calendar and due dates, and it listed the due date for "XXXXX" as February 26, XXXXX. On February 27, XXXXX, the Student emailed the XXXXX professor her accommodation letter. On the same day XXXXX, the Student emailed the professor again. In this email, she acknowledged that she did not provide her accommodation letter earlier in the

² 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).

semester. She also stated that she had been busy and had not noticed that the essay was due, and she asked if it was possible to make up “XXXXX.”

On February 28, XXXXX, the XXXXX professor responded via email and denied her request to make up the essay. She thanked her for sending her accommodation letter and stated that “there isn’t anything I can do about the essay at this point.” She further states that the class schedule XXXXX, she sent out weekly reminders, and there was ample time to plan for the essay. She also stated that she has already told other students that they could not submit the essay past the deadline, but stated, “XXXXX.”

XXXXX

The Complainant alleged that, in April of XXXXX, the Student’s XXXXX professor did not provide the approved accommodation of extended time on assignments and gave her zero points for her late submissions. The University denied that it failed to implement her accommodation, and stated that the Student did not provide a copy of her accommodation letter until April 18, XXXXX.

OCR spoke to the XXXXX professor who said that her course was XXXXX; and that enrolled students received a syllabus that explained, week by week, what was due. She told OCR staff that the Student did not submit an essay that was due on April 18, XXXXX. She also stated that the Student asked for additional time on the essay prior to the April 18th due date, but she did not provide her accommodation letter until after the paper was due. She said that the Student turned in the paper, and that she took ten points off the paper because it was not submitted on time. She also stated that, after she submitted her essay, the Student did not submit any other late assignments.

The University submitted an email from March 29, XXXXX from the Student to the XXXXX professor in which the Student stated that she was XXXXX. In this email, the Student also asked to “XXXXX.”³ The XXXXX professor responded by stating that the Student could submit an exercise and a test late, but that she could not accept her late discussion assignments.

On April 12, XXXXX, the Student emailed the XXXXX professor to ask why she did not receive credit for two late discussion assignments. On April 13th, the XXXXX professor responded stating that she does not accept discussion assignments late per the class syllabus. She also reminded her of a discussion assignment that was due on April 18th by noon and an essay that was due at the same time. On April 13th, the Student responded by stating that XXXXX” She went on to state that she was told to inform her professors of her accommodations whenever necessary.

On April 17, XXXXX, the Student emailed the professor asking for more time on her essay. She said that her XXXXX. She asked for another day or two to submit it. On Tuesday April 18, XXXXX, after the Student’s essay was already due, the XXXXX responded to the Student. The XXXXX professor stated that she would accept the paper late, but that there would be a point

³ OCR notes here that the Student appeared to be referencing a high school Section 504 plan, and not the accommodations letter she received from the University.

deduction. She went on to state that the Student should provide her accommodation letter at the beginning of her classes so that arrangements can be made at the time. She further stated, “XXXXX.” In addition, she encouraged the Student to get her remaining assignments in on time so that she can earn a passing grade.

On April 18, XXXXX, the Student submitted a copy of her accommodation letter to her XXXXX professor.⁴ The XXXXX professor confirmed that she did not receive the Student’s accommodation letter until the April XXXXX email. In support of this contention, the University submitted an April XXXXX email in which the XXXXX professor emailed the XXXXX. In this email the XXXXX professor asked XXXXX for advice about the Student submitting her accommodation letter on the evening of April 18th, after her assignments were past due. XXXXX responded by stating that students are provided with an instruction memo that stipulates that they must contact their professors and discuss the accommodations that they will use in each class.

OCR’s Findings Concerning Allegations 1 and 2

The University policy DS 2.00, which was in place during the 2016-XXXXX academic year, states that “[t]he student must pick up the [‘]letter to the professor[’] and take a letter to each faculty member from whom accommodations are being requested.” It goes on to state, “Student must present the letter and discuss accommodations with the faculty member so that the faculty member is aware of which accommodations have been approved for the individual student.” It also states that students should “make all accommodations requests before or during the first week of classes.”

Information submitted by the University also indicates that the Student was informed of this policy. The University provided OCR with an email dated August 18 XXXXX to which the Student’s accommodation letter was attached. The email provided instructions concerning the letter to the Student including the statement, “[y]our accommodations are not effective until: [y]ou discuss your accommodation[s] with each professor.” This email also states that, “[a]ccommodations are not retroactive.”

The information described above indicates that the University did not violate Section 504 when the Student’s professors did not provide her additional time for assignments. In both classes, the information obtained by OCR indicates that the Student submitted her accommodation letter and requested additional time after assignments were past due. OCR regulations do not require the University to retroactively apply approved accommodations. Also, students are responsible for knowing and following the procedures established by the University. The information provided to OCR indicates that the Student was informed of her obligation to proactively inform her professors of needed accommodations at the time her letter was issued in August of XXXXX. OCR notes that the Student often included disability-related language in her emails to University

⁴ OCR staff asked the XXXXX professor why she emailed the Student about her accommodations on April 18, XXXXX before, as indicated by the submitted emails, she received her accommodation letter. She told OCR staff that she emailed the Student about providing her accommodation letter because she had not yet received it, but the Student had made multiple references to “accommodations” and other disability-related language in email conversations.

staff, including noting her XXXXX when requesting extended time. However, as stated above, the Student did not provide her professors her accommodations letter until the dates mentioned in this document. For these reasons, OCR finds that there is insufficient evidence that the University violated Section 504 when the Student's XXXXX professors did not provide her additional time on assignments.

OCR notes that the Complainant disputes that the Student only requested accommodations after she submitted the accommodations letter to the professors. Specifically, the Complainant stated to OCR that the Student provided the accommodations letter to the professors at the start of the semester, and the professors were already in receipt of the accommodations at the time that the requests for accommodations were made. OCR was unable to substantiate this. While the Complainant indicated to OCR that she would provide OCR evidence supporting this position, including email correspondence between the professor and the Student showing this interaction, to date, OCR has not received any such evidence. Instead, the evidence OCR did receive from the University supports the University's position that the Student was seeking retroactive accommodations. Using a preponderance of the evidence standard, OCR finds insufficient evidence that the University violated Section 504 or Title II regarding this allegation.

Allegation 3: In February of XXXXX, the University failed to provide the Student an in-class note-taker.

The Complainant alleged that the University failed to provide her a note-taker. The Complainant said that, in February of XXXXX, the Student met with XXXXX, and that they had a discussion about the Student's absences. She stated that XXXXX then told her that she could get a note-taker assigned. The Complainant also stated that XXXXX told the Student that the note-taker would be able to take notes when she was absent from class. The Complainant further stated that the accommodation of a note-taker was not specifically listed in her accommodation letter, but it was considered equivalent to the listed accommodation of "tape recording lectures."

The University denied that it discriminated against the Student by failing to provide her a note-taker. It acknowledged that a note-taker was approved on February 20, XXXXX for the Student's XXXXX class, which had already started in January XXXXX, but stated that this accommodation was not included in the Student's accommodation letter. It stated that XXXXX began searching for a note-taker but could not find one until March 13, XXXXX. It further stated that she did not ultimately assign the note-taker because the Student told her that she was dropping her XXXXX class on March 21st, and that the Student dropped the class on March 27th.

XXXXX told OCR staff the she did meet with the Student in February XXXXX. She said that she suggested to the Student that she utilize a note-taker to supplement the Student's notes in this particular class. She said that she did not suggest a note-taker due to concerns about attendance because note-takers are to supplement the student's own notes. She said that she usually explains this to students, but she could not recall whether she had this particular conversation with the Student during the February 20th meeting. She said that the note-taker was just for one of her classes, and her recollection was that it was for her XXXXX class. She also acknowledged that she mistakenly failed to include the accommodation in the Student's letter.

Regarding obtaining a note-taker, XXXXX told OCR staff that the time it takes to obtain a note-taker depends on how quickly she is able to find someone to fill the position and the note-taker's schedule. During the XXXXX school year, she said that the University was hiring note-takers and, according to the University's policy at the time, they could not also be enrolled in the class for which they were taking notes. She said that she initially emailed a note-taker who previously informed her that she had availability. She said that this person did not respond to her email. On March 13, XXXXX, she emailed a larger pool of note-takers. She said that she did briefly delay contacting the entire pool of note-taker because she gave the first person she contacted a few days to respond. She also said that spring break started at the beginning of March XXXXX, delaying her search. After Spring break, she said that the Student contacted her and indicated that she was not going to class on the 13th of March. She said that she did not assign the note-taker on this date because the Student said that she would not attend class on the 13th. She said that she met with the Student on March 21, XXXXX and the Student indicated that she was dropping her XXXXX class.

The University provided a February 20, XXXXX email from XXXXX, sent the same day as the approved accommodation, to a potential note-taker asking whether she would like to accept an assignment for the Student's XXXXX class. On March 10, XXXXX, the Student contacted XXXXX about rescheduling a meeting and she asked why a note-taker was not assigned. She also stated that she might not be able to make it to her March 13th class due XXXXX. On March 13, XXXXX, XXXXX responded by stating that she was having a difficult time obtaining a note-taker. She went on to state that, "the purpose of a note-taker is to supplement your notes when you are in class." And XXXXX stated that they can talk about the note-taker when the Student comes in for her meeting (which was ultimately held on March 21, XXXXX). On that same day, XXXXX sent an email entitled "Note-taker opening for XXXXX," which was the time of the Student's XXXXX class. This email asked if any note-taker was available "if this is confirmed[.]" On March 13th, someone responded to say that they were available if the assignment was confirmed.

University policy DS 2.00 states that students, who are already registered with the University's Office of Disability Services and approved for accommodations, must request accommodations for each upcoming semester during the last three weeks of the current semester. It states that, at that point, arrangements can be made for the upcoming semester. The University provided a copy of a Student Responsibility Statement and a document signed by the Student indicating that she received a copy. The Student Responsibility Statement states, "I understand that it is my responsibility to update the office as necessary regarding the need for additional services." It goes on to state that the Office of Disability Services will implement approved additional services as deemed appropriate, but it does not list a time period by which they will be provided.

OCR reviewed the University's calendar regarding this allegation. As noted, the class at issue was a Spring XXXXX class, which commenced on January 9, XXXXX,⁵ and met on XXXXX. XXXXX and Student agreed to a note-taker at a meeting on Monday, February 20th and XXXXX secured a note-taker for the Student to begin providing services on March 13, XXXXX. The University confirmed that the University's Spring Break occurred the week of March 6,

⁵ This was confirmed by the Complainant and Student to OCR staff.

XXXXX. Therefore, the time that elapsed between the agreement of this mid-semester accommodation and the identification of a note-taker was two weeks. OCR notes that during this time, the Student's other accommodations were available to her. OCR notes that the University provided documentation that immediately after approving the accommodation, XXXXX contacted a note-taker to attempt to fill this position. After giving this individual a reasonable amount of time to respond, XXXXX then reached out to a larger group and secured a note-taker. At that time, the Student also decided to drop the course. Because the delay in providing the approved accommodation was not for an extended amount of time, OCR finds that there was insufficient evidence that the University violated Section 504 by failing to provide the Student a note-taker.⁶

Additional Concern

The Section 504 regulation, at 34 C.F.R. § 104.4(a), provides that no qualified person with a disability shall be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in a division's programs or activities on the basis of disability. The Title II regulation contains a similar prohibition at 28 C.F.R. § 35.130(a). The Title II regulation also requires divisions to make reasonable modifications to policies, procedures, or practices when necessary to avoid discrimination on the basis of disability, unless the modification would fundamentally alter the nature of the service, program, or activity.

The Title II regulation, at 28 C.F.R. § 35.136, provides that a public school division generally must modify its policies, practices, or procedures to permit individuals with disabilities to use service animals. The regulation, at 28 C.F.R. § 35.104, defines a service animal as "any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability." The regulation provides a non-exhaustive list of examples of work or tasks that may be performed by a service animal.

Under the Title II regulation, at 28 C.F.R. § 35.136, persons with disabilities have the right to be accompanied by service animals in all parts of facilities where the public, participants in programs and activities, or invitees are allowed. A public school division is not permitted to ask about the nature or extent of a person's disability or require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal. If it is not readily apparent that an animal is trained to do work or perform tasks for an individual with a disability, the public school division is permitted to make two inquiries to determine whether an animal qualifies as a service animal: 1) if the animal is required because of a disability; and 2) what work or task the animal has been trained to perform.

The Title II regulation provides that a public entity may ask an individual with a disability to remove a service animal from the premises if: (1) the animal is out of control and the animal's

⁶ OCR notes that University policy allows University staff a period of weeks prior to a given semester in order to arrange for additional approved accommodations. However, the documents submitted to OCR do not indicate that the Student was put on notice of policy DS 2.00 and this policy is not listed on the University's website. OCR cautions the University about providing students with notice of relevant disability-related policies in order to avoid confusion and to allow them to plan accordingly. OCR provided technical assistance to the University on this point.

handler does not take effective action to control it; or (2) the animal is not housebroken. 28 C.F.R. § 35.136(b). In addition, if admitting service animals would fundamentally alter the nature of a service or program, service animals may be prohibited. 28 C.F.R. § 35.130(b)(7).

As part of the data submitted concerning the allegations, the University submitted Policy DS 6.00. This policy details University rules for student use of service animals on campus. The policy requires any University student who wishes to use a service animal on campus to register with the Disability Services Office. The policy also requires an application process and the submission of documentation about the student's disability. Under the policy, students are also required to submit documentation related to the service animal including the animal's service training, services provided to the student, the animal's history of service to the student, and animal licensure. The policy also requires students to participate in an orientation. The University indicated that this policy was still in place.

As generally described above, the University can only make two inquiries of people who wish to be accompanied by service animals on University property. Further, the University cannot require disability information or documentation on the service animal in order to utilize service animals. This standard applies to students or other participants in University programs or activities. For these reasons, OCR finds that this policy violates Title II. In the attached agreement, the University agreed to modify the policy to bring it in compliance with Title II and to disseminate it to students.

Conclusion

On September 5, 2018, 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 September 5, 2018, 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 regarding this letter, please contact Timothy Riveria, the OCR attorney assigned to this complaint, at 202-453-6796 or Timothy.Riveria@ed.gov.

Sincerely,

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

Enclosure

cc: XXXXX, University counsel