



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 1, 2019

Via email to: [kasterner@southuniversity.edu](mailto:kasterner@southuniversity.edu)

Karl Sterner, President  
South University – Columbia  
9 Science Court  
Columbia, South Carolina 29203

Re: OCR Complaint No. 11-19-2091  
Letter of Findings

Dear Dr. Sterner:

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 February 7, 2019 against South University (the University). The Complainant alleged that the University discriminated against him on the basis of disability. OCR investigated the following allegations:

1. The University failed to promptly and equitably respond to the Complainant's disability discrimination and retaliation complaints; and
2. After the Complainant complained about the lack of disability accommodations, his professor/advisor retaliated by giving him a failing grade in the XXXXX course, which led to his dismissal from the University.

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. The laws enforced by OCR prohibit retaliation against any individual who asserts rights or privileges under these laws or who files a complaint, testifies, assists, or participates in a proceeding under these laws. Because the University receives Federal financial assistance from the Department, OCR has jurisdiction over it pursuant to Section 504.

During the investigation, OCR: reviewed documents provided by the Complainant and the University; and interviewed the Complainant, University staff, and a witness identified by the Complainant. After carefully considering all of the information obtained during the investigation, OCR found sufficient evidence of a violation of Section 504 regarding Allegation 1 for one of the Complainant's internal complaints. During OCR's investigation, the University expressed a willingness to resolve Allegation 2 pursuant to Section 302 of OCR's *Case Processing Manual* prior to OCR completing its investigation of that allegation. OCR's findings and conclusions are discussed below.

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

## **Background Information**

The University is one campus of a private university.<sup>1</sup> The University has a Non-Discrimination Policy stating that it does not discriminate on the basis of disability, among other protected bases, and that it will provide reasonable accommodations to qualified individuals with disabilities; the policy also states that the University will not retaliate against persons who allege discrimination. The University also has a “Student Grievance Procedure for Internal Complaints of Discrimination and Harassment”.

The Complainant enrolled in the University’s XXXXX program to start in the Summer 2017 quarter. He registered with the University’s Disability Services office in May 2017 and was provided an Accommodation Notification Letter, which specified that he was entitled to a number of accommodations<sup>2</sup>, including: XXXXX. The Complainant signed the Student Acknowledgement of Responsibilities, which indicates that students are obligated to request accommodations letters from Disability Services at the start of each new term and to provide course instructors with copies of the accommodations letter. After his first quarter, the Complainant did not contact Disability Services or request another accommodations letter for the Fall 2017 or Winter 2018 quarters.

During the Winter 2018 quarter, the Complainant was enrolled in the XXXXX course. In the middle of the quarter, during February 2018, the Complainant communicated with the University’s XXXXX program director (the Program Director) about grade issues in the XXXXX course, to which the Program Director questioned the Complainant about whether he had provided the course professor with his accommodations letter and medical documentation for any absences. The Complainant provided the course professor with a copy of the original, May 2017 Accommodation Notification Letter, unsigned by the Disability Services coordinator, which the course professor signed on February 24, 2018. On March 14, 2018, the Complainant emailed the Program Director about XXXXX in the XXXXX class, labeling his email “Violations of Accommodations” (sic). The Program Director notified the University’s Disability Services coordinator immediately. The Program Director and the Disability Services coordinator met with the Complainant on March 19, 2018 to discuss the Complainant’s concerns. The Disability Services coordinator reminded the Complainant of his responsibility to request accommodation letters from Disability Services for each new term, after which the Complainant signed again the Student Acknowledgement of Responsibilities. At the end of the quarter, on March 29, 2018 and on April 2, 2018, the Complainant contacted the Disability Services coordinator requesting to meet about his grades and accommodations in the XXXXX course. The Disability Services coordinator and the Program Director met with the Complainant on April 13, 2018 to discuss his concerns.

On April 25, 2018, the Complainant met with Disability Services and received an updated Accommodation Notification Letter for the Spring 2018 quarter. However, the Complainant did not provide the Accommodation Notification Letter to the Program Director, who was the

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<sup>1</sup> Between October 2017 and September 2018, the entire university was owned by a non-profit entity, Dream Center Education Holdings (DCEH).

<sup>2</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”. 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.

Complainant's default faculty advisor for his XXXXX course<sup>3</sup> that quarter. At the end of the Spring 2018 quarter, the Program Director determined that the Complainant had not XXXXX. At the end of the Summer 2018 quarter, the Complainant received an F in the XXXXX course because XXXXX. The Complainant then received notice that he was dismissed for unsatisfactory academic progress.

On September 26, 2018, the Complainant met with the University's Disability Services coordinator and the DCEH Office of Disability Support Services director to discuss his disability discrimination concerns pertaining to his F grade in the XXXXX course and subsequent dismissal. On September 28, 2018, the Complainant submitted to the University a grade change/appeal letter regarding his XXXXX course, in which he mentions among other factors that the Program Director "has been sabotaging my academic progress, lack of support and/or failure to follow ADA policies and accommodation" and "retaliation of staff and professors", along with examples of how he believed his accommodations were not provided in the XXXXX course. On September 29, 2018, the Complainant also filed with the University an appeal of his academic dismissal from the XXXXX program, in which he mentions similar concerns about retaliation and ADA violations, as well as a formal discrimination complaint with the DCEH Student Resolution team.

The University processed the Complainant's concerns on two tracks: academic appeals and discrimination complaints. In response to the grade appeal, on October 17, 2018, the Program Director offered the Complainant XXXXX. The Complainant responded the same day, refusing to accept the offer, claiming that it was continuing retaliation and violations of his disability rights. The Complainant then appealed the Program Director's decision on his grade appeal to the Dean of Academic Affairs and Operations, who upheld the decision on November 5, 2018. The Complainant appealed again to the Dean overseeing the XXXXX department, who upheld the previous decision on November 16, 2018. Throughout the appeal process, the University kept open the XXXXX option.

In response to the Complainant's discrimination complaint, during the same time period as the academic appeals, the University's Disability Services coordinator communicated with the Complainant and the DCEH Office of Disability Support Services director about the Complainant's disability issues. The University's Disability Services coordinator and the DCEH Office of Student Resolution director met with the Complainant on October 23, 2018, after which the Office of Student Resolution director emailed the Complainant letting him know that she and the University's Disability Services coordinator would start investigating his disability concerns. There was no evidence that the University or DCEH ever issued an outcome to the investigation.

**Allegation 1:** The University failed to promptly and equitably respond to the Complainant's disability discrimination and retaliation complaints.

#### 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

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<sup>3</sup> XXXXX is a course that XXXXX.

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.

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, Section 504 does 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.

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. OCR examines a number of factors in evaluating whether a university's grievance procedures are prompt and equitable, including whether the procedures provide for the following: notice of the procedures to students, parents and employees, including where to file complaints; application of the procedures to complaints alleging discrimination by employees, other students, or third parties; adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence; designated and reasonably prompt timeframes for major stages of the complaint process; written notice to the parties of the outcome of the complaint; and an assurance that steps will be taken to prevent recurrence of any discrimination and to correct its effects.

### Facts and Analysis

The University's "Student Grievance Procedure for Internal Complaints of Discrimination and Harassment" is printed in the University's *Student Handbook 2018-2019*. The grievance procedure provides that the University "will investigate the allegations" and that the "student who made the complaint and the accused shall be informed promptly in writing when the investigation is completed, no later than 45 calendar days from the date the complaint was filed."

With regard to the Complainant's March 2018 informal complaint concerning the provision of his accommodations in the XXXXX course, after the Complainant notified the Program Director about the course professor's provision of accommodations, the Program Director directed the Complainant to the University's Disability Services coordinator for appropriate handling. The Disability Services coordinator looked into the situation and discovered that the Complainant had not updated his Accommodation Notification Letter since May 2017, as was his responsibility to do each term. Immediately, the Disability Services coordinator verbally informed the Complainant that he did not have a valid accommodations letter in place, but he worked with him to ensure that the Complainant followed the proper process to have his accommodations in place for the next quarter. In addition, the Disability Services coordinator and the Program Director also met with the Complainant at the end of the quarter to discuss his issues about his grades and their relationship to his disability needs. The Disability Services coordinator told OCR that the University did not formally process the Complainant's Winter 2018 quarter accommodations concerns under the internal grievance procedure because the Complainant had not properly renewed his accommodation letter for that quarter, nor the one before. The University responded promptly to the Complainant's concerns and verbally informed him of its determination that he did not have a proper letter in place to be entitled to accommodations in the course and it provided guidance to the Complainant to correct the situation for the future.

With regard to the Complainant's September 2018 formal discrimination complaint, although the *Student Handbook* at the time contained contradictory information about where complaints should be filed, because the Complainant initially contacted the University's Disability Services director about his September 2018 disability concerns, the Complainant was quickly directed to the new, centralized student complaint office for filing. After that, campus and centralized disability services and complaint resolution offices were all in contact together with the Complainant to clarify his disability discrimination and retaliation concerns, and ultimately the DCEH Office of Student Resolution director confirmed responsibility and action for the investigation of the Complainant's complaint in October 2018. However, after that date, there is no evidence that the investigation was ever completed or that the Complainant was informed in writing of the outcome of his complaint about disability discrimination and retaliation in his XXXXX course grade and dismissal. OCR finds this lack of a completed investigation and notification to the Complainant of an outcome, over eight months after the Complainant filed his complaint, to be a failure to comply with both the Section 504 regulation and the University's applicable grievance procedure. Under Section 303(b) of OCR's *Case Processing Manual*, OCR finds a violation of the Section 504 regulation with respect to the University's response to the Complainant's Fall 2018 disability discrimination and retaliation complaint pertaining to the XXXXX course.

**Allegation 2:** After the Complainant complained about the lack of disability accommodations, his professor/advisor retaliated by giving him a failing grade in the XXXXX course, which led to his dismissal from the University.

#### **Legal Standard**

The Section 504 regulation, at 34 C.F.R. § 104.61, which incorporates the procedural provisions of the regulation implementing Title VI of the Civil Rights Act of 1964, prohibits retaliation against

any individual who asserts rights or privileges under Section 504 or who files a complaint, testifies, assists, or participates in a proceeding under Section 504.

### Resolution

The facts established a *prima facie* case of retaliatory adverse action against the Complainant. The Complainant advocated for his disability accommodations in the XXXXX course in January 2018 and March 2018 and informally complained about these disability discrimination concerns, including to the Program Director, at least through April 2018. Subsequently, the Program Director determined that the Complainant XXXXX in the XXXXX course in the Spring 2018 quarter and then assigned the Complainant a failing grade in the course XXXXX at the end of the Summer 2018 quarter, which constituted adverse action. OCR assumes an apparent causal relationship between the protected activities and the adverse action because of the consequential and short difference in time, during which period the Complainant also expressed concerns about the Program Director's attitude towards his disability and compliance with his accommodations.

Before OCR completed its examination of the asserted non-retaliatory reasons for the action and potential concerns as to whether the reasons were excuses for retaliation, the University expressed a willingness to resolve it pursuant to Section 302 of OCR's *Case Processing Manual*, which states that allegations may be resolved prior to OCR making a determination if the University expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified issues that can be addressed through a resolution agreement.

### Conclusion

On July 24, 2019, 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 and alleged concern. Under Section 304 of OCR's *Case Processing Manual*, a complaint will be considered resolved and the University deemed compliant when the University enters into and fulfills the terms of a resolution agreement. 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 visits and may request information as necessary to determine whether the University has fulfilled the terms of the Agreement. If the University fails to implement the Agreement, OCR may initiate proceedings to enforce the specific terms and obligations of the Agreement. Before initiating such proceedings, OCR will 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 Kristi Bleier, the OCR attorney assigned to this complaint, at 202-453-5901 or [kristi.bleier@ed.gov](mailto:kristi.bleier@ed.gov).

Sincerely,

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

Enclosure

cc: Alisa M. Krouse, Vice Chancellor for Student Affairs *via email*  
Theresa Gallion, Esquire *via email*