



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 28, 2020

Via Email: chancellor@ncat.edu

Harold L. Martin, Sr.
Chancellor
North Carolina Agriculture and Technical State University
1601 East Market Street
Dowdy Building, Suite 418
Greensboro, NC 27411

Re: OCR Complaint No. 11-20-2024
Resolution Letter

Dear Chancellor Martin:

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 October 31, 2019, against the North Carolina Agriculture and Technical State University (the University). The Complainant filed the complaint on behalf of her son, a student (the Student) at the University. The Complainant alleged that the University discriminated against the Student on the basis of disability. Specifically, the complaint alleged the following:

1. The University discriminated against the Student on the basis of his disability, when it failed to process the Student's request for academic adjustments and/or auxiliary aids and services¹ for the XXXXX XXXXX semester in a XXXXX XXXXX (until XXXXX XXXXX XXXXX), such that it resulted in a delay of the Student's receipt of such aids and services, as required by his Accommodation Plan (the Plan).
2. The professor (Professor A) for the Student's XXXXX XXXXX (XXXXX XXXXX) course (Course A) discriminated against the Student on the basis of his disability, when she refused to provide the Student with XXXXX XXXXX XXXXX XXXXX on his XXXXX and XXXXX for Course A during the XXXXX XXXXX semester, an academic adjustment and/or auxiliary aid and service required by his Plan.

¹ The Complainant and the University frequently referred 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 enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, 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), 42 U.S.C. §§ 12131 et seq., 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.

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.

Summary of Investigation

During the investigation, OCR reviewed documents provided by the Complainant and the University. Before OCR completed its investigation, the University expressed a willingness to resolve the complaint. OCR determined that it is appropriate to resolve the complaint pursuant to Section 302 of the *Case Processing Manual* because the investigation has identified issues that can be addressed through a resolution agreement.

Background Information

The Complainant and the University provided OCR with information and documentation indicating that the Student first enrolled in the University for the XXXXX XXXXX semester. Prior to his

enrollment, the Student² submitted documentation to the University's Office of Accessibility Resources (OARS), in which he requested various accommodations with respect to his disabilities, including XXXXX XXXXX XXXXX XXXXX and XXXXX XXXXX. OARS subsequently approved the Student to receive accommodations for each semester of his enrollment, from the XXXXX XXXXX semester through the present.

The XXXXX XXXXX semester ran for XXXXX weeks, from XXXXX XXXXX XXXXX through XXXXX XXXXX XXXXX. On XXXXX XXXXX XXXXX, one week before the start of the semester, the Complainant submitted an accommodation request form on behalf of the Student to OARS for the Student's XXXXX XXXXX semester online courses: Course A and XXXXX XXXXX (XXXXX XXXXX) course (Course B).

Thereafter on XXXXX XXXXX XXXXX, OARS sent an email to the professors for Course A and Course B (Professors A and B, respectively), and copying the Student, approving the Student to receive the following XXXXX accommodations as outlined on an OARS Disability Verification Form [the Plan]:

- XXXXX XXXXX XXXXX XXXXX on XXXXX XXXXX and XXXXX
- XXXXX XXXXX XXXXX XXXXX
- XXXXX XXXXX XXXXX

As well as the following classroom or other accommodations:

- XXXXX XXXXX XXXXX XXXXX
- XXXXX XXXXX (XXXXX XXXXX XXXXX)
- XXXXX XXXXX XXXXX XXXXX XXXXX
- XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX
- XXXXX XXXXX
- XXXXX XXXXX XXXXX XXXXX XXXXX
- In addition, the Student would benefit from XXXXX XXXXX XXXXX XXXXX XXXXX and XXXXX, as well as XXXXX to XXXXX XXXXX, and XXXXX XXXXX XXXXX XXXXX that may occur in the classroom

The University previously approved the Student to receive the same or similar accommodations for the XXXXX XXXXX semester.

Allegation 1

The University discriminated against the Student on the basis of his disability, when it failed to process the Student's request for accommodations for the XXXXX XXXXX semester in a timely manner (until XXXXX XXXXX XXXXX), such that it resulted in a delay of the Student's receipt of such accommodations, as required by his Plan.

Facts

² OCR notes that the Complainant frequently acted on behalf of or corresponded on the Student's behalf with University personnel, with the written consent of the Student. Therefore, when OCR refers to the Student, OCR may also be referring to the Complainant.

On XXXXX XXXXX XXXXX, the Student contacted Professor A to ask if she received any information about his Plan, as it applied to Course A. Professor A responded to the Student that day and stated that she had not received the Plan.

On XXXXX XXXXX XXXXX, the Complainant emailed the XXXXX XXXXX XXXXX (the Director) to inquire why Professor A had not received the Student's Plan. Thereafter, as discussed above, on XXXXX XXXXX XXXXX OARS sent an email to Professors A and B, and copying the Student, with the Student's Plan attached. On XXXXX XXXXX XXXXX, the Director sent the Complainant an email in which she apologized for not seeing the Student's request for accommodations, dated XXXXX XXXXX XXXXX, until she received the Complainant's email on XXXXX XXXXX XXXXX. The University also acknowledged to OCR that there was a delay in processing the Student's request for accommodations for the XXXXX XXXXX semester. The Student subsequently obtained a XXXXX for Course A on XXXXX XXXXX XXXXX. The University also informed OCR that the Student did not receive a XXXXX as a result of the XXXXX, as he missed the deadline for doing so.

With respect to Course B, during the course of OCR's investigation, the Complainant clarified that the delay in the University notifying Professor B of the Student's Plan did not result in the failure of Professor B's provision of accommodations to the Student, such that the Student suffered any harm specific to Course B.³ The University also provided OCR with similar information in this regard. The Complainant and the University stated that the Student completed the semester with respect to Course B and received a grade of "A" for the course.

Analysis

Based on the information and documentation obtained thus far, including the University's acknowledgement that there was an undue delay in processing the Student's request for accommodations for the XXXXX XXXXX semester, such that the Student's Plan was sent to Professors A and B midway through the semester on XXXXX XXXXX XXXXX, OCR has a compliance concern that the University failed to comply with Section 504 and Title II by not providing the Student with the Plan in a timely manner, particularly with respect to Course A.

However, as discussed above, before OCR completed its investigation, including interviewing the Director and other University personnel, the University requested to resolve Allegation 1 through a resolution agreement obtained pursuant to Section 302 of OCR's *Case Processing Manual*. OCR has determined that entering into a resolution agreement under Section 302 of the *Case Processing Manual* is appropriate.⁴

Allegation 2

Professor A discriminated against the Student on the basis of his disability, when she refused to provide the Student with XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX

³ The Complainant further explained that Course B was very different from Course A, in that Course B "was a very easy online class and didn't require much of the Student other than to do readings and answer questions based on what he read. I believe his exams were also open note/book as well."

⁴ To the extent that the Complainant informed OCR, and OCR did not otherwise find, any concerns specific to Course B, OCR did not require that the University provide a specific remedy from the University for Course B.

XXXXX for Course A during the XXXXX I XXXXX semester, an accommodation required by his Plan.

Facts

As discussed above, Professor A received the Student's Plan on XXXXX XXXXX XXXXX, after the Student/the Complainant had contacted OARS to inquire about the same. That day, Professor A emailed the Student after receiving the Plan, and proposed that the Student receive XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX, such that instead of receiving XXXXX XXXXX to complete his XXXXX, he would receive XXXXX XXXXX, and instead of receiving XXXXX XXXXX on XXXXX, he would receive XXXXX XXXXX Professor A asked the Student whether the XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX. The Student did not respond to Professor A. Rather, on XXXXX XXXXX XXXXX, the Complainant forwarded Professor A's email to Student to the Director and OARS and asked for assistance with the matter. On XXXXX XXXXX XXXXX, the Complainant sent an email to Professor A on behalf of the Student, wherein she stated that the Student would not agree to anything less than XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX, as required by the Student's Plan.

Thereafter, in an email sent on XXXXX XXXXX XXXXX, Professor A responded to the Complainant's email. In her email, Professor A stated that because the Student did not respond to her email, she did not provide the accommodation of XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX as provided in the Plan, but despite not receiving the XXXXX XXXXX, she believed that he did very well on his XXXXX. The Complainant responded to Professor A's email stating that Professor A should not be allowed to take away the Student's XXXXX XXXXX XXXXX accommodation because he didn't respond to her email. Professor A responded to the Complainant's email stating that she never took away the accommodation from the Student. The Complainant and Professor A continued to correspond with one another, including through OARS, regarding the Student's XXXXX XXXXX XXXXX accommodation.

However, as discussed above, on XXXXX XXXXX XXXXX, the Student obtained a XXXXX for Course A. The Student is currently enrolled in another iteration of Course A at the University for the XXXXX 2020 XXXXX, which is taught by a different professor.

Analysis

Based on the information and documentation obtained thus far, OCR has a compliance concern that the University failed to comply with Section 504 and Title II, when Professor A did not provide the Student with XXXXX XXXXX XXXXX XXXXX, as required by his Plan, and seemingly attempted to negotiate the terms of the Student's accommodations with him. Specifically, OCR considered the University's acknowledgement that there was an undue delay in processing the Student's request for accommodations for the XXXXX XXXXX semester, such that the Student's Plan was sent to Professor A midway through the semester on XXXXX XXXXX XXXXX, as discussed above in Allegation 1; as well as correspondence between Professor A and the Student/Complainant, wherein Professor A proposed to provide the Student with XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX instead of the XXXXX XXXXX required by his Plan.

However, as discussed above, before OCR completed its investigation, including interviewing Professor A, the Director and other University personnel, the University requested to resolve Allegation 2 through a resolution agreement obtained pursuant to Section 302 of OCR's *Case Processing Manual*. OCR has determined that entering into a resolution agreement under Section 302 of the *Case Processing Manual* is appropriate.

Conclusion

On April 27, 2020, the University agreed to implement the enclosed Resolution Agreement (the Agreement), which commits the University to take specific steps to address the identified areas of noncompliance. Under Section 304 of OCR's *Case Processing Manual*, a complaint will be considered resolved and a recipient deemed compliant when the recipient 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, please contact Mordecai Simha, the OCR attorney assigned to this complaint, at 202-453-7084 or Mordecai.Simha@ed.gov.

Sincerely,

Letisha Morgan-Cosic

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

Enclosure

cc (Via Email): Melissa J. Holloway, General Counsel, mjholloway@ncat.edu