



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION XV

1350 EUCLID AVENUE, SUITE 325
CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

December 16, 2013

XXXXXX X. XXXXX
Graydon Head & Ritchey LLP
1900 Fifth Third Center
511 Walnut Street
Cincinnati, Ohio 45202

Re: OCR Docket #15-13-2179

Dear XX. XXXXX:

This letter is to inform you of the disposition of the above-referenced complaint filed against Union Institute and University (the University), on June 17, 2013, with the U.S. Department of Education's Office for Civil Rights (OCR), alleging disability discrimination. Specifically, the complaint alleged that the University has limited access to its "ADA Grievance Procedures" to students with documented disabilities.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance from the U.S. Department of Education (the Department). As a recipient of Federal financial assistance, the University is subject to Section 504 and its implementing regulation; therefore, OCR had jurisdiction to investigate this complaint.

Based on the complaint allegation, OCR investigated whether the University had adopted grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging discrimination on the basis of disability, as required by the Section 504 implementing regulation at 34 C.F.R. § 104.7(b).

Summary of OCR's Investigation

OCR reviewed the University's Section 504 grievance procedure, which is available in the University's Catalog and on the University's website at:

<http://www.myunion.edu/Academics/AcademicServices/ADAPolicy/ADAProcedures/ADAGrievanceProcedure.aspx>. OCR found that the grievance procedure applies only to students who believe they have been denied appropriate accommodations, modifications, auxiliary aids, effective communication, or suffered discriminatory harassment. In order for a student to file a grievance, the student must have first requested accommodations through the University's Accessibility Office. The grievance procedure requires students to first attempt to resolve any grievances using an informal resolution process. The grievance procedure provides some timelines for completion of various phases of the investigation or the process. The grievance procedure also provides for notice of the disposition of the complaint to the parties by the University's Americans with Disabilities Act (ADA) compliance officer. The grievance procedure also provides that a student may appeal a decision to the University's vice president of academic affairs. The grievance procedure does not, however, provide the contact information, such as a phone number, name or title, or address, for the vice president of academic affairs.

Applicable Regulatory Standards

The Section 504 regulation, at 34 C.F.R. § 104.7(b), states, in part, that a recipient shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504. When evaluating a recipient's grievance procedures under Section 504, OCR considers a number of factors in evaluating whether a recipient's grievance procedures meet regulatory requirements, including: whether the procedures provide for notice of the procedures, including where complaints may be filed; application of the procedure to complaints alleging discrimination carried out 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 the major stages of the complaint process; notice to the parties of the outcome of the complaint; and an assurance that the school will take steps to prevent recurrence of any harassment and to correct discriminatory effects on the complainant and others, if appropriate.

Analysis and Conclusion

OCR found that the University has adopted a Section 504 grievance procedure which is published in the University's Catalog and on the University's website. The grievance procedure indicates with which offices complaints may be filed (the Accessibility Office, ADA Compliance Office, and Vice President of Academic Affairs), provides some prompt timeframes for various stages of the investigation of all complaints, and provides that complainants will be provided with notice of the outcome of the investigation. Further, complainants have the right to an appeal.

However, as noted above, the University's Section 504 grievance procedure only applies to students with documented disabilities, rather than all individuals accessing the University. Additionally, the University's Section 504 grievance procedure does not incorporate appropriate due process standards. Specifically, the grievance procedure does not indicate how complaints should be filed (e.g., in writing), requires all complainants to utilize an informal resolution process before proceeding to the formal grievance process, does not provide complainants an opportunity to identify witnesses and other relevant information during the investigation, does not provide complainants with written notice of the outcome of the investigation, does not explain that complaints to be filed pursuant to the procedure include allegations of disability discrimination, including disability harassment, carried out by employees, other students, or third parties, does not include the address, and telephone number of all of the University employees with whom complaints should be filed and provide for an alternate person if the person with whom the complaint is filed is alleged to have been involved in the discrimination/harassment, and does not include an assurance that, in cases of disability harassment, the University will take steps to prevent recurrence of any harassment and to correct discriminatory effects on the complainant and others, if appropriate. Therefore, OCR found that the University's Section 504 grievance procedure does not meet all of the requirements of the Section 504 regulation, at 34 C.F.R. § 104.7(b).

To resolve this matter, the University voluntarily submitted the enclosed Resolution Agreement (the Agreement), signed December 13, 2013. Pursuant to the terms of the Agreement, the University will revise its Section 504 grievance procedure. as described below and provide adequate notice of the procedures. The revised procedures will include, among other things, the following: (1) clarification that the Section 504 grievance procedure applies to all individuals, including students and employees, regardless of whether the individual has requested accommodations through the University's Accessibility Office; (2) notice to students and employees of the procedure, including where complaints may be filed and how they may be filed (in writing, e.g.); (3) clarification that complaints of disability discrimination, including disability harassment, carried out by employees, other students, or third parties may be filed under the University's Section 504 grievance procedure; (4) clarification that any informal complaint process is voluntary and is not a mandatory prerequisite to filing a formal grievance (complainant must be notified of the right to end the informal process at any time and begin the formal stage of the complaint process); (5) adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence; (6) involvement of the University's Section 504 Coordinator in the University's investigation of Section 504 grievances, to ensure the University's adherence to the requirements of Section 504 and its implementing regulation; (7) assurance that, in cases of disability harassment, the University will take steps to prevent recurrence of any harassment and to correct discriminatory effects on the complainant and others, if appropriate; and (8) written notice to the parties of the outcome of the complaint. The University's actions, when completed, will resolve the issue raised in the complaint consistent with the requirements of Section 504.

This concludes OCR's investigation of the complaint and 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.

Please be advised that the University may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the harmed individual may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy. The Complainant may file a private suit in federal court, whether or not OCR finds a violation.

We appreciate your cooperation during the resolution of this complaint. If you have questions about the resolution or monitoring of this complaint, feel free to contact Ms. XXXX X. XXXX, the OCR staff person assigned to monitoring this complaint. Ms. XXXX can be reached by telephone at (216) 522-XXXX or by e-mail at XXX.X.XXX@ed.gov.

Sincerely,

/s/

Donald S. Yarab
Team Leader

Enclosure