



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

1350 EUCLID AVENUE, SUITE 325  
CLEVELAND, OH 44115

REGION XV  
MICHIGAN  
OHIO

May 30, 2014

Rev. Dr. Philip Johnson  
President  
Finlandia University  
601 Quincy Street  
Hoover Center, First Floor  
Hancock, Michigan 49930

Re: OCR Docket #15-14-2014

Dear Rev. Johnson:

This letter is to notify you of the disposition of the complaint filed against Finlandia University (the University) on November 25, 2013, with the U.S. Department of Education's Office for Civil Rights (OCR), on behalf of a student (Student). The complaint alleged that the University discriminated against the Student on the basis of his disability by refusing to provide the Student with any academic adjustments that were necessary for him to participate in the University's academic program.

OCR initiated an investigation under the authority of 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 Department.

Based on the allegation, OCR opened an investigation of the following legal issue: whether the University failed to make modifications to its academic requirements necessary to ensure that those requirements did not discriminate or have the effect of discriminating against a qualified student with a disability in violation of 34 C.F.R. § 104.44.

Under Section 302 of OCR's *Case Processing Manual* (CPM), a complaint may be resolved before the conclusion of an OCR investigation if a recipient expresses an interest in resolving the complaint and signs a resolution agreement that addresses the complaint allegations. Such a request does not constitute an admission of liability on the part of a recipient institution, nor does it constitute a determination by OCR that the recipient has violated any of the laws that OCR enforces. The provisions of the resolution agreement are to be aligned with the complaint allegations or the information obtained during the investigation and consistent with applicable regulations.

Prior to the conclusion of OCR's investigation, the University expressed an interest in resolving the complaint allegations through submission of an agreement. At that point, OCR had sufficient information to determine that the University's Section 504 policies and procedures regarding academic adjustments and grievance procedures did not fully comport with the requirements of Section 504. OCR also had sufficient information to determine that the University provided the Student several of the academic adjustments that the complaint alleged the University did not provide him and had not violated Section 504 when it refused one of the requested academic adjustments. However, OCR had not completed its investigation regarding several of the academic adjustments that the complaint alleged that the University did not provide to the Student. Based on the University's request, OCR accepted an agreement from the University that addressed the Section 504 policy and procedure compliance issues identified by OCR and the allegations for which OCR had not yet completed its investigation.

## **Background**

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## **Allegation Regarding Academic Adjustments**

The complaint alleged that the University refused to provide the Student accommodations for the xxxxxxxx semester, which is the relevant semester for this complaint.

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- **Disability Policies and Procedures and Grievance Procedure**

During the investigation, OCR examined the University's policies and procedures regarding the provision of academic adjustments and auxiliary aids and services for students with disabilities. The University's disability accommodation procedures were available online at: [http://www.finlandia.edu/disability-student-services.html?searched=disability&advsearch=oneword&highlight=ajaxSearch\\_highlight+ajaxSearch\\_highlight1](http://www.finlandia.edu/disability-student-services.html?searched=disability&advsearch=oneword&highlight=ajaxSearch_highlight+ajaxSearch_highlight1).

One of the statements on the webpage regarded which students with disabilities the University served. OCR found that the language could potentially discourage students with disabilities other than a learning disability or ADD/ADHD from applying to or attending the University:

Who we serve:

Finlandia University is an ideal setting for students diagnosed with a Learning Disability and/or ADD/ADHD. Our small classroom settings and personal attention provide students with the level of support they need. Although we do serve students on campus with other disabilities, it is recommended that the student and their family have extensive conversations with the DSS staff to determine if Finlandia University can meet the individual's needs.

The University's policies and procedures also incorrectly used the term "reasonable" when describing the types of accommodations that its disability services program director would provide. This same language was also in the University's catalog, available at: <http://www.finlandia.edu/assets/files/Registrar/Campus%20Catalog%202013-14.pdf>:

The University's webpage and catalog also impermissibly limited what assistive technology the University would provide to qualified students:

Assistive Technology

DSS has very limited access to assistive technology.

Currently we can offer the following:

Text books on CD through Reading for the Blind and Dyslexic (the tutoring center has one computer that can play the CD's, DSS does not supply the software for personal use)

Kurzweil text reader is available in the Maki Library

The procedures also suggested that students needing notes should arrange this service for themselves, which would identify them as a student with a disability to a classmate, when that choice to self-identify belongs to the student with a disability. The procedures also required documentation of the disability from within the past three years, even for individuals with a disability such as blindness or other disability that is readily apparent.

Finally, the procedures set an arbitrary limit on the amount of time allowed for extended time on assignments.

OCR was unable to locate a University disability grievance procedure online.

### **Applicable Regulatory and Legal Standards**

The Section 504 implementing regulation at 34 C.F.R. § 104.44(a) states that a recipient shall make such modifications to its academic requirements as are 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 Section 504 regulation also provides, at 34 C.F.R. § 104.44(d)(1), that a recipient shall take such steps as are necessary to ensure that no person 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.

If an auxiliary aid is necessary for classroom or other appropriate (nonpersonal) use, the institution must make it available, unless provision of the aid would cause undue burden. A student with a disability may not be required to pay part or all of the costs of that aid or service. An institution may not limit what it spends for auxiliary aids or services or refuse to provide auxiliary aids because it believes that other providers of these services exist, or condition its provision of auxiliary aids on availability of funds. In many cases, an institution may meet its obligation to provide auxiliary aids by assisting the student in obtaining the aid or obtaining reimbursement for the cost of an aid from an outside agency or organization, such as a state rehabilitation agency or a private charitable organization. However, the institution remains responsible for providing the aid.

Section 504 does not require recipients to make modifications that would fundamentally alter the nature of the service, program or activity. While a university must accommodate course or other academic requirements to the needs of an individual student with a disability, academic requirements that can be demonstrated by the institution to be essential to the instruction being pursued by such student or to any directly related licensing requirement will not be regarded as discriminatory and need not be changed. 34 C.F.R. § 104.44(a). With regard to whether a requested academic adjustment or auxiliary aid would fundamentally alter an essential program requirement, courts and OCR give great deference to an institution's academic decision-making. However, in order to receive such deference, relevant officials within the institution are required to have engaged in a reasoned deliberation, including a diligent assessment of available options.

An appropriate deliberative process should include a group of people making the decision who are trained, knowledgeable, and experienced in the relevant areas. While it reasonably might be expected that a course instructor would be included in the process of determining what requirements are essential to participation, allowing an individual

professor to have ultimate decision-making authority or to unilaterally deny an accommodation is not in keeping with the diligent, well-reasoned collaborative process that warrants the accordance of deference by OCR to the judgments of academic institutions. The decision makers must consider a series of alternatives, and the decision should be a careful, thoughtful and rational review of the academic program and its requirements.

A person with a disability is “qualified” with respect to postsecondary education services if the person meets the academic and technical standards requisite to admission or participation in the recipient's education program or activity. 34 C.F.R. § 104.3(1)(3).

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 whether a recipient’s grievance procedures meet the prompt and equitable standard, OCR considers a number of factors, including whether the procedures provide for:

- (1) notice of the procedures, including where complaints may be filed;
- (2) application of the procedure to complaints alleging discrimination carried out by employees, other students, or third parties;
- (3) adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence;
- (4) designated and reasonably prompt timeframes for the major stages of the complaint process;
- (5) notice to the parties of the outcome of the complaint; and
- (6) an assurance that the school will take steps to prevent recurrence of any discrimination and to correct discriminatory effects on the complainant and others, if appropriate.

A grievance procedure cannot be prompt or equitable unless students know it exists, how it works, and how to file a complaint. The school must make sure that all designated employees have adequate training as to what conduct constitutes disability discrimination and are able to explain how the grievance procedure operates.

Grievance procedures may include informal mechanisms for resolving disability discrimination complaints to be used if the parties agree to do so. In addition, the complainant must be notified of the right to end the informal process at any time and begin the formal stage of the complaint process. In some cases, mediation will not be appropriate even on a voluntary basis.

Although not required under Section 504, many institutions provide an opportunity to appeal the findings or remedies in a grievance. In such cases, OCR evaluates the grievance process, inclusive of the appeal level, to determine whether, as a whole, the process is both prompt and equitable. Finally, OCR recommends, and many institutions include, a provision advising that retaliation against any individual who files a complaint or participates in the grievance process is prohibited.

### **Analysis and Conclusion**

The complaint alleged that the University did not provide the Student academic adjustments for the xxxxxxxx semester. The Student and his mother clarified that the University did not provide the Student the following: xxxxxxxxxxxxxxxx xxxxx xxx  
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Regarding the remaining academic adjustments and accommodation requests at issue, as noted above, the University requested to resolve the complaint allegations prior to the conclusion of OCR's investigation. Therefore, OCR is not making findings with regard to them but is addressing the allegations raised in a resolution agreement.

Additionally, as discussed above, OCR identified a number of compliance issues regarding the University's written policies and procedures governing academic adjustments for students with disabilities and its disability grievance procedures. Therefore, OCR concludes that the University's policies and procedures do not comply with the requirements of Section 504.

On May 23, 2014, the University signed the enclosed Resolution Agreement (Agreement), which requires the University to revise its Section 504 disability accommodation policies and procedures and its Section 504 grievance procedures to ensure that they fully comply with Section 504, to adopt the revised policies and procedures, to provide notice of the revised policies and procedures, and to provide training on its revised policies and procedures to relevant University staff.

In light of this agreement, OCR finds that this complaint is resolved, and we are closing our investigation as of the date of this letter. OCR is informing the Complainant of this resolution by concurrent letter. OCR will monitor the University's full implementation of the commitments contained in the Agreement.

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 complainant 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 have the right to file a private suit in Federal court, whether or not OCR finds a violation.

OCR looks forward to receiving the University's first monitoring report by July 18, 2014. The report should be directed to xxxxxxxxxxx attorney, who can be reached at xxxxx xxxxxxxx. Monitoring reports submitted by e-mail should be submitted to [OCRCleMonitoringReports@ed.gov](mailto:OCRCleMonitoringReports@ed.gov).

If you have any questions about this letter or OCR's resolution of this case, please contact me at xxxx xxxxxxxx

Sincerely,

/s/

Donald S. Yarab  
Supervisory Attorney/Team Leader

Enclosure