



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

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REGION XV  
MICHIGAN  
OHIO

February 13, 2015

Charyn K. Hain, Esq.  
Varnum LLP  
333 Bridge Street NW  
Grand Rapids, Michigan 49504

Re: OCR Docket #15-14-2215

Dear Ms. Hain:

This letter is to notify you of the disposition of the above-referenced complaint that was filed on July 23, 2014, with the U.S. Department of Education (the Department), Office for Civil Rights (OCR), against Davenport University – Holland Campus (the University), alleging that the University discriminated against a student with a disability (the Student). Specifically, the complaint alleged that beginning on xxxxxxxx xxx xxxxxx and continuing through the winter 2014 semester, the University did not provide the Student, who was taking two online courses, an equal opportunity to benefit from the online courses in which he was enrolled.

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

Based on the complaint allegations, OCR investigated the following legal issues:

1. Whether the University failed to ensure that a qualified student with disabilities was not excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in its programs, activities, aids, benefits, or services in violation of the regulation implementing Section 504 at 34 C.F.R. §§ 104.4(a) and 104.43.

2. Whether the University had taken such steps necessary to ensure that a qualified student with a disability was not excluded from participation in the University's program because of the absence of auxiliary aids as required by the regulation implementing Section 504 at 34 C.F.R. § 104.44(d).
3. Whether the University failed to make modifications to its academic requirements necessary to ensure that the requirement did not discriminate on the basis of disability by failing to provide the student with an equal opportunity to participate in its program and a service that was as effective as that offered to students without disabilities, in violation of the regulation implementing Section 504 at 34 C.F.R. § 104.44(a).

During OCR's investigation, OCR obtained documentation regarding the above allegations from the University and the Student. OCR investigated the Student's complaint by interviewing the Student as well as the University staff with knowledge of the circumstances that were the subject of the complaint. After a careful review of the information obtained during the investigation, OCR has determined that there is insufficient evidence to support a finding that the University discriminated against the Student on the basis of disability, in violation of Section 504, as alleged. However, during the course of OCR's investigation, OCR identified a compliance issue with respect to the University's disability services policies. Accordingly, OCR has determined that the evidence is sufficient to conclude that the University's blanket policy against providing scribes constitutes a violation of Section 504. The bases for these determinations are discussed below.

## **Summary of OCR's Investigation**

### **Background**

X---paragraph redacted---X

X---paragraph redacted---X

The Student enrolled at the University's Holland campus in the undergraduate business administration program, registering for xxx xxxxxxxxxxx xxxxxx xxxxxxx during the winter 2014 semester. Each course was accelerated and scheduled to last seven weeks. One course was scheduled for the first session, starting on the first day of the semester, and the second course was scheduled for the second session and was to begin later in the semester. The Student completed the xxxxx xxxxxx xxx xxxxxxxxx x x xxxxxxx. The Student told OCR that he relied on the services of his xxxxxxxxxxxxxxxxxx xxx to serve as a xxxxxxx for him in his home to complete his course work. The Student attempted to secure payment for the xxxxxx from the University. When the University declined to reimburse the Student for the xxxxxxx as he believed the University had promised him, he dropped the second course and subsequently withdrew from the University.

- **Evidence Obtained During OCR’s Investigation**

The Student told OCR that when he spoke with the Admissions Representative in xxxxxxxx xxx xxxxxxxx xxxxxx before he enrolled at the University, the Admissions Representative indicated that the Student would be able to receive the accommodations he needed, including a xxxxxxxx. According to the Student, the University’s Student Access Coordinator (SAC) for the Holland Campus, who is generally responsible for receiving and responding to accommodations requests, also indicated that he would be provided the accommodations he needed, including a scribe. The Student also stated that his advisor did not say that the University would xxx xxx x xxxxxx but that everything would be taken care of. According to the Student, the xxxxxx was the only accommodation he requested, and he believed the University would pay for that accommodation.

All of the University witnesses interviewed denied telling the Student that he would receive a xxxxxx as an accommodation; rather, the University witnesses told OCR that the Student was instructed to submit the University’s forms for requesting accommodations and that the appropriate accommodations would be determined for the Student.

The University provided documentation demonstrating that, in xxxxxxxxxxxxxxxx xxxxxx before classes began, the Student initiated the University’s accommodations request process when he submitted a “Verification of Disability” form that provided medical documentation of his disability. In xxxxxxxxxxxx xxxxxx after the Student began his first course, the University’s Assistant Director of Student Conduct and Access (Assistant Director), who is responsible for reviewing and responding to all accommodations requests for the University, notified the Student that he had not provided all of the required documentation for securing his accommodations. Specifically, the Student had not provided the “Accommodation Request Form.” The Student’s xxxxxxxx provided the Assistant Director with a completed Accommodation Request Form on approximately xxxxxxxx xxx xxxxxx. On the form, the Student indicated that he was seeking the following accommodations: xxxx xxxx xxx xxxxxxxxxxx xxx xxxxxxxxxxx xxxxxx xxxx xxxxxxxx xx xxxxxxxxxxx xxx xxxxxxxxxxx. The Student’s Accommodation Request Form did not identify a xxxxxx as one of the accommodations he was seeking.

On xxxxxxxx xxx xxxxxx the Student’s xxxxxxxx sent an e-mail to the University inquiring about xxxxxxxxxxx xxxxxxxxxxx and stating that the Student needed to have his information xxxx xx xxx xxx xxxxxx xxx xxxxxx xxxxxx. On January xx, 2014, the Assistant Director followed up with the Student and his xxxxxxxx via e-mail regarding the Student’s needs, including the Student’s use of xxxxxxxxxxx xxxxxxxxxxx. The Student’s xxxxxxxx responded to the Assistant Director on the same day. After receiving the Student’s completed documentation and following up with the Student via e-mail regarding his needs, the Assistant Director drafted a Provisional Letter of Accommodation (PLA) and an Instructor’s Documentation of Accommodations (IDA) and provided it to the Student on xxxxxxxx xxx xxxxxx. In general, the University’s PLA identifies students’ disabilities, lists their approved accommodations, and includes space for students to indicate whether they agree with the University’s proposed

accommodations or would like to meet with the SAC and Director of Student Access to request different accommodations. The IDA, in contrast, is meant to be distributed to instructors by students, lists only the approved accommodations, and does not mention any disabilities.

The Student's PLA did not identify a xxxxxx as an approved accommodation for the Student. OCR notes that the Student's "Verification of Disability Form," completed by the Student's physician, identified a xxxxxx as one potential accommodation that the Student could use. The Assistant Director told OCR that he considered the information provided by the physician, but relied more heavily on the information provided by the Student in terms of developing the Student's PLA and IDA. Specifically, the PLA listed the following approved accommodations: xxxxxxxx xxxx xx xxxxx xx x xxxxxxx xxxxx xxx xxxxxxx xxxxxxxxxxx xxx xxxxxxx xxxxxx xxxxxxxxxxxxxxx xxxxxxx xxxxxx xxxxxxxxxx xxx xxxxxxx xxxxxxxxxxx xx xxxxxxxxxxx xxxxxxx xxxxxxx xxxxxxxxxxx xxxxxxxxxxx xxx xxxxxxxxxxx xx xxxxxx xxxxxx xxxxxxxxxxx xxx xxxxx xxx xxxxxxxxxxxxxx The Student checked the box on the PLA indicating that he agreed with the listed accommodations, signed the form, and returned it to the University on xxxxxxx xxx xxxxx The Student later explained to OCR that he and his xxxxxxx assumed that xxxxxxxxxxx xxxxxxx referred to the xxxxxx that he had requested.

The Student's IDA contained the same list of accommodations; however, it indicated in particular, that certain testing-related accommodations were available only at the Testing Center on campus. University staff indicated that some of the Student's approved accommodations would have been available to him only on campus. For example, the Assistant Director explained that xxxxxxxxxxx xxxxxxx is available at the Testing Center, but such xxxxxxx for the Student's xxxxxxx computer is the Student's personal responsibility.

During his enrollment in the course, however, the Student did not attempt to avail himself of any of his accommodations before deciding to use the assistance of his xxxxxxx xxxxxx and was never required to come to the University to complete his coursework. Although the Student checked the box on the PLA which states that he "recognize[d] that it [was] his responsibility to copy and distribute the IDA to faculty for any and all classes [for which he] would like accommodations," the Student did not do so. The Student also did not communicate with any University staff to obtain any of the other approved accommodations, such as an xxxxxxxxxxx. The Student also did not contact the University to state that his approved accommodations were not working. OCR reviewed the Student's xxxxxxxxxxx xxxxxxx xxxxxxxxxxx xxxxxxxxxxx xxx xxx xx xxxxxx xxxxx xx xxx xx xxx xxxxxxx but they do not make any reference to the Student's approved accommodations.

The Student noted that he did not use xxxxxxxxxxx xxxxxxx because his xxxxxx helped him xxxxxxx xxx xxxxxxxxxxx which involved xxxxxxxxxxx xxx xxx xxxxxxx xx Blackboard for his online course. The Student did not report any difficulty with accessing the course materials. The Student added that he could not have completed his assignments at the University without the xxxxxxx By xxxxxxx xxxxx the xxxxxx

began to ask the University for payment, which was the first time that the Student or his xxxxxxx communicated with the University about his actual use of the xxxxxxx. The Assistant Director explained on multiple occasions in his correspondence with the Student and his xxxxxxx that the Student was not approved for a xxxxxxx as an accommodation because, in this instance, the University offered other appropriate accommodations for the Student, including ensuring that the class materials were xxxxxxxxxxxx xxxxxxxx xxx xxxxx xx xx xxxxxxxxxxxx xxxxxxx xxxxx xxxxx xxxxxxxxxxxx xxxxx xxx xxxxxxxxxxxx xxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx. As stated above, the University declined to pay for xxxxxxx services, and the Student withdrew from the University. As also noted above, the Student received a x in his course.

### **Additional Issue Raised During OCR’s Investigation**

During the course of OCR’s investigation, OCR reviewed documentation indicating that the University had a blanket policy against providing individuals with xxxxxxxx. Specifically, in a xxxxxxxx xx xxxxx xxxxxxx to the Student and his xxxxxxxx the Assistant Director stated that “[a]s a policy, Davenport University do[es] not provide xxxxxxx as an accommodation.” During an interview with OCR staff, the Assistant Director confirmed this was, in fact, the University’s policy, although he explained that such a policy has not been memorialized.<sup>1</sup>

### **Applicable Legal Standards**

The Section 504 regulation provides that no qualified student with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any academic, research, occupational training, housing, health insurance, counseling, financial aid, physical education, athletics, recreation, transportation, other extracurricular, or other postsecondary education aid, benefits, or services, or under any program or activity which receives Federal financial assistance. 34 C.F.R. §§ 104.4(a), 104.43(a).

In addition, the Section 504 regulation provides, at 34 C.F.R. § 104.44(a), 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 implementing regulation at 34 C.F.R. § 104.44(d)(1) also requires a recipient to take such

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<sup>1</sup> OCR also observed in the University’s November 12, 2014, position statement, that the University stated that “Note taking services are offered by Davenport University in one of two ways: 1) having the instructor provide written notes/summaries to the student or to all students in the class, or 2) having a fellow student in the class voluntarily take notes for the student with disabilities and provide those notes to that individual.” The position statement also says that the University has never paid someone to take notes for a student with disability in an in-seat class, and notes that “such personal services are not required.” As OCR found this statement only in the University’s position statement and none of the other documents regarding the University’s provision of services, and because OCR did not investigate this issue or otherwise observe this statement in any of the disability-related policies and related documents, OCR has addressed the inaccuracy of the University’s statement with the University through technical assistance.

steps as are necessary to ensure that no student 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. The regulation further states that auxiliary aids may include taped texts, interpreters or other effective methods of making orally delivered materials available to students with hearing impairments, readers in libraries for students with visual impairments, classroom equipment adapted for use by students with manual impairments, and other similar services and actions. 34 C.F.R. § 104.44(d)(2).

However, recipients need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature. 34 C.F.R. § 104.44(d)(2). Postsecondary schools do not have to provide personal services relating to certain individual academic activities. Personal attendants and individually prescribed devices are the responsibility of the student who has a disability and not of the institution.

Institutions do not have a duty to identify students with disabilities. Students in institutions of postsecondary education are responsible for notifying institution staff of their disability should they need academic adjustments. The student must inform the school that he has a disability and needs an academic adjustment. Postsecondary schools may require students with disabilities to follow reasonable procedures to request an academic adjustment, and students are responsible for knowing and following those procedures. Schools may set reasonable standards for documentation of disability and needed accommodations. Schools may require students to provide documentation prepared by an appropriate professional, such as a medical doctor, psychologist, or other qualified diagnostician. The documentation should provide enough information for the student and the school to decide what is an appropriate academic adjustment. If the documentation that the student provides does not meet the postsecondary school's requirements, a school official should tell the student in a timely manner what additional documentation the student needs to provide.

The institution must analyze the appropriateness of an aid or service in its specific context. Aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for students with disabilities and students without disabilities, but must afford students with disabilities equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs. 34 C.F.R. § 104.4(b)(2).

For OCR to find that the University discriminated against a student on the basis of disability by failing to provide academic adjustments or auxiliary aids and services, the evidence must demonstrate that: (1) the student is a qualified individual with a physical or mental impairment that substantially limits one or more major life activities; (2) the student notified the recipient of his/her disability and need for academic adjustments, including auxiliary aids; (3) there is an academic adjustment or auxiliary aid that, if provided, would allow the student to participate in the recipient's educational program; and (4) the recipient failed to provide appropriate and effective academic adjustments or auxiliary aids.

## **Analysis**

Here, the evidence is insufficient to conclude that the Student was denied an equal opportunity to benefit from the online courses in which he was enrolled. Rather, the evidence shows that the Student was given an approved list of accommodations, which he signed indicating his agreement with the provisions; and, instead of availing himself of those approved accommodations or otherwise communicating to the University that the approved accommodations were not appropriate for him, he enlisted the services of a xxxxxxxx xxxxxxxx. The evidence shows that the Student (1) never attempted to retrieve his xxxxxxxxxxxxxx from disability services, (2) never provided the IDA to his instructor to inform him of the approved accommodations, and (3) never expressed any concern or complained to the University about the accommodations that were approved for his use. The evidence further shows that, although not using approved accommodations, the Student was able to access the University's programs, successfully complete his course and earn a B grade. Accordingly, the evidence is insufficient to conclude that the University denied the Student an equal opportunity to benefit from the online courses, as alleged.

As noted above, during the course of OCR's investigation, OCR identified a compliance issue with respect to the University's disability services policies. According to the information obtained, the University appears to maintain a blanket policy against providing xxxxxxxx as accommodations for students with disabilities. A postsecondary educational institution must analyze the appropriateness of an aid or service in its specific context; accordingly, any blanket policy prohibiting the use of any auxiliary aid or service necessarily neglects to consider whether an aid is appropriate in a particular situation so that a student with a disability has equal opportunity to gain the same benefit as a student without a disability and constitutes a violation of Section 504. There may be factual circumstances not presented in the instant case, where the provision of a xxxxxxxx even for an online student, is an appropriate and necessary auxiliary aid or service to be provided.

## **Resolution and Conclusion**

To resolve the compliance findings made with respect to the University's blanket policy against providing scribes in violation of Section 504, the University submitted the enclosed resolution agreement (the Agreement) on February 13, 2015. Under the terms of the Agreement, the University will: (1) send a memorandum to all University Student Access Coordinators and the Assistant Director of Student Conduct and Access clarifying that accommodations for students with disabilities are to be determined on an individual basis and that a xxxxxxx may, under certain circumstances, be an appropriate accommodation for students with disabilities; (2) add a statement to its disability services documents clarifying the University's obligation to analyze the appropriateness of an auxiliary aid or service based on the individual needs of students on a case-by-case basis; and (3) upon approval from OCR, adopt, implement, and publish the revised disability services documents. OCR will monitor the implementation of the agreement. If the

University does not fully implement the agreement, OCR will reopen the investigation and take appropriate action.

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 alleging such treatment. 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 file a private suit in federal court, whether or not OCR finds a violation.

OCR appreciates your cooperation and that of the University during the investigation and resolution of this complaint. If you have any questions about this letter or OCR's resolution of this case, please contact xxxx xx xxxxx Supervisory Attorney/Team Leader, at (216) 522-xxxx or by e-mail at [xxxxxxxxxxxx@ed.gov](mailto:xxxxxxxxxxxx@ed.gov).

For questions about implementation of the Agreement, please contact Mr. xxxxx xxxxxxxxxxxx who will be monitoring the University's implementation, by e-mail at [xxxxxxxxxxxxxxxxxxxx@ed.gov](mailto:xxxxxxxxxxxxxxxxxxxx@ed.gov) or by telephone at (216) 522-xxxx. We look forward to receiving the University's first monitoring report by February 27, 2015. Should you choose to submit your monitoring reports electronically, please send them to [OCRCleMonitoringReports@ed.gov](mailto:OCRCleMonitoringReports@ed.gov).

Sincerely,

/s/

Meena Morey Chandra  
Director

Enclosure