



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

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REGION XV  
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July 1, 2020

Via E-mail Only to [zambardi@oakland.edu](mailto:zambardi@oakland.edu)

Victor A. Zambardi  
Vice President for Legal Affairs,  
General Counsel and  
Secretary to the Board of Trustees  
Wilson Hall, Room 203  
371 Wilson Boulevard  
Rochester, Michigan 48309

Re: OCR Docket No. 15-19-2070

Dear Mr. Zambardi:

This letter is to notify you of the disposition of the above-referenced complaint filed on March 5, 2019, with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Oakland University (the University) alleging that the University discriminated against the Student based on disability. Specifically, the complaint alleged that, in XXXXX, the University denied the Student's request for a disability-related academic adjustment XXXXX that was necessary for the Student to participate in its academic program.

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 by recipients of federal financial assistance. 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 on the basis of disability by public entities. As a recipient of federal financial assistance from the Department and as a public entity the University is subject to these laws.

Based on the complaint allegations, OCR opened an investigation of the following legal issue:

- whether the University failed to make modifications to its academic requirements as necessary to ensure that such requirements do not discriminate, or have the effect of discriminating, against a qualified student with a disability in violation of Section 504's implementing regulation at 34 C.F.R. § 104.44(a).

During its investigation to date, OCR reviewed information provided by the Student and the University and interviewed the Student and University staff. Prior to completing the investigation, the University asked to resolve this complaint pursuant to Section 302 of OCR's Case Processing Manual.

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

XXXXXX multiple paragraphs removed XXXXX

### **Applicable Legal Standards**

The Section 504 implementing regulation at 34 C.F.R. §104.4(b)(1)(ii) prohibits recipients from affording a qualified person with a disability an opportunity to participate in or benefit from the entity's aid, benefit, or service that is not equal to that afforded to others. The Section 504 regulation also 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. Similarly, the Title II regulation, at 28 C.F.R. § 35.130(b)(7), provides that a public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability.

Under both Section 504 and Title II, however, recipients are not required 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 individual disabled students, academic requirements that can be demonstrated by the institution to be essential to its program of instruction or to particular degrees need not be changed. 34 C.F.R. § 104.44(a); 28 C.F.R. § 130(b)(7).

Once a postsecondary institution receives documentation of a student's disability and a request for services, the institution and the student should work together in an interactive process to identify appropriate academic adjustments. Students can be required to know about and follow reasonable procedures when requesting academic adjustments.

With regard to whether a requested academic adjustment or auxiliary aid would fundamentally alter an essential program requirement, courts and OCR give 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.

## **Analysis**

Prior to completing the investigation, the University asked to resolve this complaint pursuant to Section 302 of OCR's Case Processing Manual. The information obtained to date indicates that XXXXX. There is no evidence that the University took any action in response to the Student's request.

For OCR to complete its investigation regarding this allegation, OCR would need to interview the additional University staff members to evaluate the University's procedures denying accommodations such as, course substitutions.

## **Voluntary Resolution and Conclusion**

Under Section 302 of OCR's *Case Processing Manual*, allegations under investigation may be resolved at any time when, prior to the issuance of a final investigative determination, the recipient 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. In this case, the University expressed an interest in resolving the allegation prior to the conclusion of OCR's investigation and OCR determined resolution was appropriate. On May 15, 2020, the University signed the enclosed Resolution Agreement, which, when fully implemented, will address all of the allegations in the complaint. OCR will monitor the implementation of the Resolution 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 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, OCR 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 looks forward to receiving the University's first monitoring report by August 1, 2020. For questions about implementation of the Agreement, please contact XXXXX.

XXXXX will be overseeing the monitoring and can be reached by telephone at XXXXXX or by e-mail at XXXXXX. If you have questions about this letter, please contact me at XXXXXX.

Sincerely,

XXXXX

Supervisory Attorney/Team Leader

Enclosure