



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

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MICHIGAN
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January 28, 2021

Via E-mail Only to president@udmercy.edu

Antoine M. Garibaldi, Ph.D.
President
University of Detroit Mercy
4001 West McNichols Road
Detroit, Michigan 48221-3038

Re: OCR Docket No. XXXXXXXXX

Dear Dr. Garibaldi:

This letter is to notify you of the disposition of the above-referenced complaint filed on August 11, 2020, with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against the University of Detroit Mercy (the University) alleging that the University discriminated against a student (the Student) based on disability. Specifically, the complaint alleged that:

- 1) The University placed unreasonable demands on the Student to establish that she had a disability and required academic adjustments and auxiliary aids and services;
- 2) the University denied many of the Student's requests for academic adjustments and auxiliary aids and services without a discussion with the Student regarding why they were necessary and without offering alternative adjustments; and
- 3) the University failed to provide the Student agreed-upon XXXXXXXXXX services during the XXXX semester of the XXXX-XXXX academic year.

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. As a recipient of federal financial assistance from the Department, the University is subject to this law.

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

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

During its investigation to date, OCR reviewed information provided by the Student and the University and interviewed the Student.

Summary of OCR's Investigation to date

The Student enrolled in the University's XXXXXXXX program and began her coursework on XXXXXXXXXXXXXXXXXXXX. The Student stated that prior to starting the XXXXXXXX program, she had her doctor complete the forms required by the University to document that she had disabilities (XX and XXXXXX) and submitted them to the assistant director of the University's Disability and Accessibility Support Services office (the Assistant Director). She stated that she needed to submit this paperwork before she could meet with the Assistant Director to discuss disability-related academic adjustments. On XXXX X, XXXX, the Assistant Director sent an email to the Student listing the following concerns about her documentation:

[X List Redacted X]

The Assistant Director also asked for the Student's documentation of accommodations she received in high school.

On XXXXXXXXXXXXXXX, the Student responded that that XXX XXXXXXXXXXXXXXX
XXXXXXXXXXXX XXXX XXX XXXX XXXXXXXXXXXXXXX XXX XXX XXXX XXXX XXX
XXXX XXXXXXXXXXXXXXX. The Student asked the Assistant Director to clarify what else the
Student needed to do to receive services. The Assistant Director responded that per the
“documentation forms, the physician needs to be credentialed in the area of diagnosis” and noted
that the Student’s paperwork lacked “XXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXX” in her diagnosis. The Assistant Director stated that a XXXXXXXXXXXXXXX or
XXXXXXXXXXXX “XXXXX XXXX XXXXXX XXXXXXXXXXXXXXX XX XXX.”

The Complaint then saw a XXXXXXXXXXXX regarding her disabilities and submitted additional paperwork to the Assistant Director. On XXXXXXXXXXXX, the Assistant Director informed her that the paperwork did not “meet ADA guidelines.” The Assistant Director stated that the paperwork was deficient in the following respects:

[X List Redacted X]

[paragraph redacted]

With respect to the requested academic adjustments, the Student told OCR that she attended XXXXXXXXXXXX College before transferring to the University. She said that at XXXXXXXXXXXX, she received the following academic adjustments for her disabilities: XXXXXXXXXXXXX, XXXXXXXXXXXXX, XXXXXXXXXXXX, XXXXXXXXXXXX, XXXXXXXXXXXX, XXXXXXXXXXXX, use of XXXXXXXX, XXXXXXXXXXXXXXXXXXXXXXXXXX.

XXXXXXXXX XXXXXX for XXXXXXXXXXXXXXXXXXXX and XXXXXXXXXXXX, use of XX, and instructors XXXXXXXXXXXXXXXXXXXX. The Student stated that she provided this information to the Assistant Director when she originally submitted her paperwork to the University and requested these same academic adjustments.

The Student stated that she spoke with the Assistant Director regarding her request for disability-related academic adjustments. From the tone of their conversation, the Student believed that the Assistant Director doubted that she had a disability. According to the Student, the Assistant Director did not discuss with the Student what academic adjustments the Student would need. Rather, the Assistant Director stated that she would inform the Student of her “decision” of whether to provide any academic adjustments.

On XXXXXXXXXXXXXXXXXXXX the Assistant Director contacted the Student’s professors via email and copied the Student, informing them that the Student would receive two accommodations for the upcoming semester: XXXXXXXX XXXX XX XXXXX and use of XXXXXXXX. On XXXXXXXXXXXXXXXXXXXX the Student responded to the Assistant Director and asked her whether she would receive any of her other requested accommodations. On the same day, the Assistant Director replied and told the Student that the above-listed accommodations were the only ones for which she qualified.

When OCR staff spoke with the Student, she was several weeks into the semester and still had not received XXXXXXXXXXXXXXXX. The Student told OCR that a student who helped the Assistant Director, but who did not work for the University’s disability services office, was supposed to contact the Student and help arrange XXXXXXXXXXXXXXXX. This student told the Student that she was unable to find XXXXXXXXXXXXXXXX. The Student informed OCR that she XXXXXXX XXXXXX XXXX XXXX XXXX XXXX and said that she could have used XXXXXXXXXXXXXXXX.

On XXXXXXXXXXXXXXXXXXXX, one of the Student’s professors emailed the Assistant Director and asked for guidance because the Student still had not received XXXXXXXXXXXXXXXX. The Student told OCR that as of the date of her interview, she still had not received XXXXXXXXXXXXXXXX.

Applicable Regulatory Standards

The regulation implementing Section 504, at 34 C.F.R. §104.4(a), states that no qualified individual 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 program or activity which receives federal financial assistance. In addition, 34 C.F.R. §104.43(a) states 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 a recipient’s postsecondary education program.

The Section 504 regulation further 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 regulation, at 34 C.F.R. § 104.44(d)(1), also states 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.

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 effective and appropriate academic adjustments or auxiliary aids. With appropriate notice to students, postsecondary institutions such as the University may require students with disabilities to follow reasonable procedures to request academic adjustments. Postsecondary institutions may set standards for what documentation a student must provide to support his or her disability, but those standards must be reasonable.

To determine an appropriate academic adjustment, a school will review the student's request in light of the essential requirements for the relevant program. If the student has requested a specific academic adjustment, the school may offer that academic adjustment, or it may offer an effective alternative. The school may also conduct its own evaluation of the student's disability and needs at its own expense. The school should work with the student to identify an appropriate academic adjustment(s).

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 concerns that can be addressed through a resolution agreement. In this case, on October 27, 2020, the University expressed an interest in resolving the allegations prior to the conclusion of OCR's investigation and OCR determined resolution was appropriate, as the information obtained to date indicates compliance concerns under Section 504.

With respect to allegation #1, OCR's review of the evidence raised concern that the University may have violated Section 504 with respect to its handling of the Student's request for academic adjustments. Specifically, while the University is permitted to require a student to document his or her disability and the need for academic adjustments, as noted above, those documentation requirements must be reasonable. The Assistant Director's handling of the Student's paperwork, including her refusal to accept the evaluation of a XXXXXXXX XXXXXXXX who specializes in the Student's diagnosis, raises concern that the University's documentation requests were unreasonable.

With respect to allegation #2, the evidence OCR has reviewed to date indicates that the University denied most of the Student's specific requests for academic adjustments without a substantive discussion with the Student regarding her needs. The information raises concern that the Assistant Director may have unilaterally determined that the Student was only eligible to receive two of her requested academic adjustments, possibly without discussing the remainder of the Student's requests, considering alternatives, or explaining why she was not eligible to receive the remaining academic adjustments and informing her what additional documentation she could provide to support her need for them.

Finally, regarding allegation #3, the evidence reviewed to date raises a concern that the Student was not provided with XXXXXXXXXXXX, one of the two academic adjustments the College agreed to provide.

To complete its investigation, OCR would need to obtain and review additional information, and interview relevant University staff.

On January 27, 2021, the University signed the enclosed Resolution Agreement, which, when fully implemented, will address 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 Student 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 March 5, 2021. For questions about implementation of the Agreement, please contact XXXXX XXXXX and XXX XXXXXXXXXX, the OCR staff attorneys who have been assigned to monitor the agreement. XXXXX XXXXX can be reached by telephone at (XXX) XXX-XXXX or by e-mail at XXXXXXXXXXXXX@ed.gov. XXX XXXXXXXXXX can be reached by telephone at (XXX) XXX-

XXXX or by e-mail at XXXXXXXXXXXXXXX@ed.gov. If you have questions about this letter, you may contact me at XXXXXXXXXXXXXXX@ed.gov or at (XXX) XXX-XXXX.

Sincerely,

/s

Brenda Redmond
Supervisory Attorney/Team Leader

Enclosures