



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

1350 EUCLID AVENUE, SUITE 325
CLEVELAND, OH 44115-1812

REGION XV
MICHIGAN
OHIO

September 29, 2023

Via E-mail Only to: [redacted content]

Jeffrey Ammons, Esq.
Associate General Counsel
Eastern Michigan University
11 Welch Hall
Ypsilanti, Michigan 48197

Re: OCR Docket No. 15-21-2097

Dear Jeffrey Ammons:

This letter is to notify you of the disposition of the above-referenced complaint filed on [redacted content], with the U.S. Department of Education, Office for Civil Rights (OCR), against Eastern Michigan University (the University) alleging that the University discriminated against a student (the Student) based on disability. Specifically, the Complainant alleged that the University failed to provide the Student with requested academic adjustments/auxiliary aids and services discussed during a [redacted content], meeting with the University's Disability Resource Center (DRC) staff.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. Section 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 from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. Section 12131 *et seq.*, and its implementing regulations at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities, including public education systems and institutions, regardless of whether they receive federal financial assistance from the Department. Because the University receives federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

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

- whether the university discriminated against a student on the basis of disability by failing to provide him with requested academic adjustments/auxiliary aids and services as required by the Section 504 implementing regulation at 34 C.F.R. §§ 104.44 (a) and (d) and the Title II implementing regulation at 28 C.F.R. §§ 35.130(b)(7)(i) and 35.160(b)(1).

During its investigation to date, OCR reviewed information provided by the Complainant and the University and interviewed the Complainant and the [redacted content] University's [redacted content].

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

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Summary of OCR's Investigation to date

The Student reported that at the start of the [redacted content], he attempted to obtain additional or modified reasonable accommodations for his disability in order to finish his studies in the University's [redacted content]. In particular, he needed to complete [redacted content]. After sending an [redacted content] list of requested accommodations, the Student [redacted content] met with the DRC in [redacted content] to discuss and request [redacted content] after which the University denied many of those requests, [redacted content]:

[redacted paragraph]

Although emails obtained and interviews conducted by OCR indicate the University's DRC conferred with [redacted content] and other University partners—and met with the Student [redacted content] to discuss the requested accommodations—many of them were denied for reasons that they were “unreasonable” or “preferential” in nature.

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).

In reviewing an institution's determination that a specific standard or requirement is an essential program requirement that cannot be modified, OCR considers whether that requirement is educationally justifiable. The requirement should be essential to the educational purpose or objective of a program or class. OCR policy requires, among other factors, that decisions regarding essential requirements be made using a diligent process, meaning it is made by a group of people who are trained, knowledgeable, and experienced in the area; through a careful, thoughtful and rational review of the academic program and its requirements; and that the decision-makers consider a series of alternatives for the essential requirements, as well as whether the essential requirement in question can be modified for a specific student with a disability.

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 conclusion of the investigation, 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, the University expressed an interest in resolving the allegation prior to the conclusion of OCR's investigation and OCR determined resolution was appropriate. On September 29, 2023, 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 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. Individuals who file complaints with OCR may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the University must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, it will seek to protect,

to the extent provided by law, personally identifiable information, that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

OCR looks forward to receiving the University's first monitoring report by October 31, 2023. For questions about implementation of the Agreement, please contact OCR attorney Alysa Kociuruba, who will oversee the monitoring and can be reached by telephone at (202) 987-1837 or by e-mail at Alysa.Kociuruba@ed.gov. If you have questions about this letter, please contact me by telephone at (202) 987-1838 or by e-mail at Denise.C.Vaughn@ed.gov.

Sincerely,

Denise C. Vaughn
Team Leader

Enclosure