



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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CLEVELAND, OH 44115-1812

REGION XV  
MICHIGAN  
OHIO

October 24, 2023

**Via e-mail only to: [redacted content]**

Katherine Miefert, Esq.  
Associate General Counsel  
Office of General Counsel  
Xavier University  
3800 Victory Pkwy  
Cincinnati, Ohio 45207

Re: OCR Docket No. 15-21-2139

Dear Ms. Miefert:

This letter is to notify you of the disposition of the above-referenced complaint filed on September 7, 2021, with the U.S. Department of Education, Office for Civil Rights (OCR), against Xavier University (the University) alleging that the University discriminated against a student (the Student) based on disability. OCR opened the following allegations:

1. in [redacted content], the University denied the Student's request [redacted content], for her disability-related [redacted content]; and
2. between [redacted content], the University did not provide the Student with the approved academic adjustment (*i.e.*, extended time [redacted content]).

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 of Education, the University is subject to this law.

To investigate this complaint, OCR reviewed documents provided by the University and interviewed the Student and University staff. After a careful review and analysis of the information obtained during its investigation, OCR has determined that the evidence is insufficient to support a finding that the University violated the regulation implementing Section 504 regarding allegation #2. However, regarding allegation #1, OCR found compliance concerns from the information obtained during its investigation. On September 22, 2023, the University requested to voluntarily resolve the complaint under Section 302 of the OCR's *Case Processing Manual* (CPM) and OCR found that it is appropriate to resolve compliance concerns regarding allegation #1 accordingly. The bases for OCR's determination are explained below.

**Summary of OCR's Investigation**

*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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The University is a private, not-for-profit postsecondary institution with approximately 6,129 students offering Associate's, Bachelor's, Master's and Doctoral degrees, located in Cincinnati, Ohio.

In [redacted content], the Student started the [redacted content] (the Program) at the University. The alleged incidents [redacted content] occurred while the Student [redacted content] in the Program. During this term, the Student was to take [redacted content] courses: [redacted content]. [redacted sentence].

According to the Student, she identified herself to the University as a student with a disability in [redacted content] by registering herself with the University's Office of Disability Services (ODS). Regarding the Student's disability, however, the parties provided inconsistent information to OCR. The Student told OCR, that she had [redacted content] and she also has [redacted content], which were ongoing. The ODS [redacted content] told OCR that when the Student initially registered with the ODS in [redacted content], the Student only mentioned that she was treated for [redacted content] and did not specify what [redacted content] she had. The ODS [redacted content] stated that the Student did not mention that her [redacted content] and did not identify any other medical conditions, [redacted content] to the University. ODS stated that based on the information provided by the Student [redacted content], they found that the Student was eligible for academic adjustments and the Student subsequently received a document listing all agreed-upon academic adjustments from the ODS; both the Student and the University provided a copy of a "Course Accessibility Plan" issued to the instructors for the Student's [redacted content] classes. According to this plan, [redacted content], the Student was to receive additional [redacted content] time [redacted content].

- **Allegation #1:** [redacted content]

[redacted paragraph]

The Student stated that [redacted content], she contacted the administration to let them know about her upcoming [redacted content]; she stated that at this time, she requested [redacted content], and provided documentation from her doctor. The University's handbook requires that to request [redacted content] in the Program, a student must submit a written notification to the Director of [redacted content] for the Program, explaining [redacted content], but the University's documentation did not show that the Student submitted such a request pursuant to the handbook. When asked to clarify the Student's request for [redacted content], the Student's counsel clarified to OCR that on [redacted content], the Student spoke with the ODS [redacted content] stating that she would need [redacted content] and would provide medical documentation to the University soon. The Student's counsel also told OCR that the Student specifically requested to [redacted content]. However, the ODS [redacted content] denied having any such discussion on [redacted content].

The University's documentation indicates that on [redacted content], the Student sent an e-mail to University staff including [redacted content] for the [redacted content] program ([redacted content] and the ODS [redacted content] regarding her need to have [redacted content] in which she requested [redacted content]. The Student's written request did not specifically indicate that

this [redacted content] was related to her disability [redacted content]. The Student provided a letter from her medical care provider requesting [redacted content], without addressing that this was because of her disability.

On [redacted content], the University staff including the ODS [redacted content] met with the Student to discuss her request. During the [redacted content] meeting, the Student provided a letter from her [redacted content] asking that she [redacted content], which did not include any further information regarding her [redacted content]. The ODS [redacted content] acknowledged to OCR that the Student told her that the [redacted content] is related to her disability, but the Student did not provide any more information regarding how [redacted content] was related to her disability. The ODS [redacted content] told OCR that she did not also make any further inquiry to obtain any additional information or documentation regarding the Student's [redacted content] to determine how this [redacted content] would be related to her disability; instead, she assumed the Student did not want to provide any further information.

The University's information indicates that during the [redacted content], meeting, the ODS [redacted content] explained to the Student that her [redacted content] was "not a disability accommodation" but rather it would be a "program decision about [redacted content];" the University's documentation does not indicate that the ODS provided the Student with a written notice regarding the ODS's determination that the Student's request was not disability- related.

After the [redacted content] meeting, the assistant director advised the Student via e-mail that her request was continuously being evaluated, copying the ODS [redacted content] to her e-mail. On [redacted content], the University determined that the Student's request to [redacted content] was not reasonable [redacted content]. [redacted sentence]. The assistant director told OCR that she made this determination in consultation with the ODS [redacted content] and notified the Student of the decision via e-mail copying the ODS [redacted content].

The ODS [redacted content] told OCR that after determining that the Student's request was not related to her disability, the ODS used the interactive process to determine whether her request was a fundamental alteration or not and whether her request was reasonable regardless of disability as they wanted to provide support for her. The ODS [redacted content] told OCR that after determining that the Student's request was not granted, the University moved to consider other accommodations during the timeframe, and they talked about the Student working with her professors [redacted content] as needed, [redacted content]. However, no such consideration of other accommodations was discussed in the [redacted content], e-mail to the Student informing her of the Program's final decision regarding the Student's request. Additionally, this e-mail did not advise the Student that she should contact each professor to [redacted content], nor did it advise her of the University's Section 504 grievance procedure.

The ODS [redacted content] told OCR that they offered [redacted content] option for the Student, but she declined [redacted content], so they looked at other ways to support her. The ODS [redacted content] also told OCR that because of the Student's status (e.g., registered with ODS), they decided to continue to support her with additional accommodations because of her [redacted content]. When asked whether there was any revision made in the Student's Course Accessibility Plan letter as a result of the [redacted content], meeting, the ODS [redacted content] said no, but the University's documentation indicates that on March 17, 2021, the ODS

updated the Course Accessibility Plan letter to the Student to add an academic adjustments regarding [redacted content], which was not new, but not reflected in the previously letter.

After receiving the [redacted content], e-mail from the Program, the Student contacted her professors to request [redacted content]. The University's documentation indicates that her professors contacted the assistant director or interim dean, sometimes copying the ODS [redacted content] to their e-mails, asking for guidance on how to process the Student's requests. [redacted sentence]. [redacted sentence]."

The University's documentation indicates that [redacted content], the Student also made requests to [redacted content] because of her health conditions. [redacted sentence]. [redacted sentence]. The assistant director replied, copying the program director and the ODS [redacted content], directing the professor to [redacted content] stating, "This is what we would do with any student who calls in sick." The professor then replied she would give [redacted content] extension to the Student [redacted content].

On [redacted content], the [redacted content] professor contacted the Student [redacted content]. The Student replied stating that she was still having "severe pain" from [redacted content]. On [redacted content], the assistant director forwarded the Student's e-mail above to the ODS [redacted content], interim dean, and the program director, copying the professors, asking for guidance on how to move forward with this situation. In response, the interim dean asked the parties what their usual process for students who are ill [redacted content]. At this point, the assistant director contacted the ODS [redacted content] to discuss the Student's request [redacted content], and then the assistant director replied to the parties that the Student's [redacted content] was not a disability, [redacted content]," and the Student was still receiving her approved accommodations.

On [redacted content], the Student retained legal counsel who sent a letter to the interim dean alleging that the University was not accommodating her disabilities and requesting to allow the Student to [redacted content]. The University's general counsel responded to the Student's counsel asking to direct all communication to her and provided a written response to the Student's counsel on [redacted content]. The University's counsel wrote, in part, in response that the University, through its ODS and its [redacted content] program administration, began "an interactive process" with the Student to discuss how her disabilities might be accommodated but [redacted content] is not a disability that schools are required to accommodate under the ADA or Section 504."

- **Allegation #2:** [redacted content]
  - [redacted content]

[redacted paragraph]

The University's documentation indicates that the Student attempted to take [redacted content] on [redacted content], but [redacted content] was "closed" so she put in a ticket [redacted content]. After contacting the professor, the Student was scheduled to take [redacted content] on [redacted content]. When she attempted to take [redacted content] on [redacted content] screen

“went blank”. Once she reported the issue to the professor, the Student took [redacted content] with additional time as required by her Course Accessibility Plan letter. [redacted sentence].”

- [redacted content]

The Student was originally scheduled to take [redacted content] on [redacted content]. As stated above, the Student’s medical condition necessitated she reschedule [redacted content]. The University eventually allowed the Student to take [redacted content] on [redacted content], but the Student did not receive extended time [redacted content]. When the Student reported this issue, the University offered to reopen the exam [redacted content]. However, the Student e-mailed the ODS [redacted content] and the professor stating she was not able to get into the [redacted content] right now and she could not be on standby for the remainder of the day. Eventually, the ODS [redacted content] recommended providing the Student with an option to retake the [redacted content] and the Student chose to retake [redacted content] on [redacted content]. The evidence shows that the Student took this exam with the approved extra time.

- [redacted content]

The Student was originally scheduled to take her [redacted content] on [redacted content]. On this date, the Student reported to the professor stating that her computer screen went blank in the middle of [redacted content] so she could not finish her [redacted content] and submitted a ticket for this. The Student also reported to the professor that [redacted content]. On [redacted content], the professor contacted the Student to set up another [redacted content] date and allowed the Student to take [redacted content], per the Student’s request. The Student took the [redacted content] with the allowable extra time.

The University confirmed that the Student successfully completed the [redacted content] semester.

### **Applicable Regulatory Standards**

The Section 504 implementing regulation at 34 C.F.R. §104.4(b)(1)(ii) prohibits a recipient from affording a qualified person with a disability an opportunity to participate in or benefit from the recipient’s aid, benefit, or service that is not equal to that afforded to others.

The regulation implementing Section 504, at 34 C.F.R. § 104.3(j)(1), defines a person with a disability, in relevant part, as any person who has a physical or mental impairment which substantially limits one or more major life activities. Major life activities, as defined in the Section 504 regulation at 34 C.F.R. 104.3(j)(2)(ii), as amended by the Americans with Disabilities Act Amendments Act of 2008 (Amendments Act), include functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, eating, sleeping, standing, lifting, bending, reading, concentrating, thinking, communicating, and working. The Amendments Acts clarified that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

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. Academic requirements that the recipient can demonstrate are essential to the instruction being pursued by such student or to any directly related licensing requirement will not be regarded as discriminatory. 34 C.F.R. § 104.44(a).

Postsecondary schools do not have a duty to find students with disabilities. Rather it is incumbent on a student to notify a school about any disability that may require academic adjustments. The student should contact the school's office that provides services to students with disabilities as early as possible and determine what supporting documentation is required to establish that the student has a disability and is eligible for academic adjustments. The student should expect the postsecondary school to work with them in an interactive process to identify the needed documentation and to determine the appropriate academic adjustments, if any. Institutions of higher education are not required to conduct or pay for an evaluation to document a student's disability and need for an academic adjustment.

The amount of information a postsecondary school may seek from an individual requesting academic adjustments is limited. The school is entitled only to information needed to provide a sufficient basis to evaluate the student's disability and whether requested academic adjustments are necessary and appropriate for the individual.

The interactive process between the postsecondary institution and the student should result in academic adjustments that the postsecondary school will put into operation. A school may reject a proposed academic adjustment because it would fundamentally alter the school's program (for example, by lowering its academic standards) or because it would result in undue financial or administrative burdens. Generally, though, once it has agreed to an academic adjustment, the school should abide by the results of the interactive process. If a postsecondary school decides that it cannot implement an academic adjustment, it must work with the student to find an effective alternative. If the student believes that the academic adjustments are not meeting their needs, it is the student's responsibility to notify the school as soon as possible.

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 and Conclusion**

- **Allegation #1**

OCR investigated whether the University denied the Student's request [redacted content], for her disability-related [redacted content]. The evidence obtained during the investigation shows that the Student identified herself as a student with a disability by registering with the University's ODS and was eligible to receive certain agreed-upon academic adjustments.

The evidence obtained by OCR did not support that the Student submitted an official [redacted content] request, which is a distinct process at the University. OCR did, however, identify

several compliance concerns after reviewing the evidence related to the University's processing of the Student's disability-related academic adjustment request related to her [redacted content]. The evidence obtained suggests the University's lack of understanding of how the interactive process should work in establishing the Student's disability and determining whether her request would be related to such disability. For example, when initial documentation proved insufficient, the ODS could have made a further inquiry regarding the Student's disability and how [redacted content] was related to her disability in order to determine appropriate academic adjustments, but the ODS chose not to do so and instead, made a determination that [redacted content] was not related to her disability. Yet, witnesses told OCR that ODS and Program staff continued to "use the interactive process" to discuss additional supports that could be provided to the Student during her [redacted content]. Despite the University seemingly determining the Student's requests was not disability-related, the evidence demonstrates that ODS was continuously involved in conversations around Program decisions with Program staff regarding the Student's [redacted content] requests, which could reasonably be construed to suggest that they still considered the Student's request related to her disability. In fact, University staff acknowledged that it had used the interactive process to determine whether the Student's request was a fundamental alteration of the program even though it already had determined that the Student's request was not related to her disability.

Additionally, there was a lack of written notice and clear communication provided to the Student regarding the ODS's determination that her request was not related to her disability. Despite ODS and program staff reporting to OCR that the Student could contact each professor to [redacted content], no such guidance was provided in writing when the University notified the Student of its final decision regarding her request. This notice also did not advise the Student of the University's grievance procedure when communicating the ODS's decision regarding the Student's request.

- **Allegation #2**

OCR also investigated whether [redacted content], the University did not provide the Student with the approved academic adjustment [redacted content].

The evidence shows the Student did not take [redacted content] on the dates originally scheduled due to her own requests [redacted content] or because of technical difficulties in accessing [redacted content]. The evidence indicates that the Student was allowed to take [redacted content] at a later date and if she experienced continued technical difficulties, she was able to retake [redacted content]. The evidence shows that the University worked with the Student to [redacted content] and the Student eventually took [redacted content] with approved academic adjustments (extended time).

Accordingly, OCR determines there is insufficient evidence to support a finding that the University violated Section 504 as alleged in allegation #2.

Under Section 302 of OCR's CPM, 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 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 allegation #1 prior to the conclusion of OCR's investigation and OCR determined resolution was appropriate. On October 23, 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.

The complainant has a right to appeal OCR's determination within 60 calendar days of the date indicated on this letter. In the appeal, the complainant must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal. If the complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the recipient. The recipient has the option to submit to OCR a response to the appeal. The recipient must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

OCR looks forward to receiving the University's first monitoring report by January 21, 2024. For questions about implementation of the Agreement, please contact Ms. Suwan Park, who will oversee the monitoring and can be reached by telephone at (202) 987-1981 or by e-mail at



Page 9 – Katherine Miefert, Esq.

Suwan.Park@ed.gov. If you have questions about this letter, please contact me by telephone at (216) 522-4709 or by e-mail at John.Cohen@ed.gov.

Sincerely,

/s/

John Cohen  
Team Leader

Enclosure