



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION XV
MICHIGAN
OHIO

March 21, 2022

Via E-mail Only to barboumm@udmercy.edu

Monica M. Barbour, Esq.
Senior Attorney and Corporate Secretary
University of Detroit Mercy
4001 West McNichols Road
FAC 300
Detroit, Michigan 48221

Re: OCR Docket No. 15-21-2148

Dear Ms. Barbour:

This letter is to notify you of the disposition of the above-referenced complaint filed on XXXXX, with the U.S. Department of Education, Office for Civil Rights (OCR), against the University of Detroit Mercy (the University), alleging that the University discriminated against a student (the Student) on the basis of disability. Specifically, the Complainant alleged that XXXXX XXXXX XXXXX XXXXX XXXXX, the University has repeatedly not provided the Student agreed-upon XXXXXXXXXXXX XXXXXXXXXXX XXX XXXXXXXXXXXX XXXXXXXXXXXX.

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 denied the benefits of or 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).

To conduct its investigation, OCR reviewed information provided by the Complainant and the University and interviewed the Complainant and University staff. After a careful review and analysis of the information obtained during its investigation, OCR has determined that the evidence is sufficient to support a finding that the University violated the regulations implementing Section 504 as alleged. The bases for OCR's determination are explained below.

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

www.ed.gov

Summary of OCR's Investigation

XXXXXX - SENTENCE REMOVED - XXXXXX. XXXXXX - SENTENCE REMOVED –
XXXXXX. The University’s Disability and Accessibility Services (DAS) office approved the
Complainant for academic adjustments and auxiliary aids and services (academic adjustments),
including, prior to XXXXXX, XXXXXX XXXXXX XXXXXX XXXXXX XXXXXX XXXXXX
XXXXXX XXXXXX XXXXXX XXXXXX XXXXXX. The Complainant told OCR that XXXXXX met
with DAS on XXXXXX, at which time DAS also agreed to provide XXXXXX with XXXXXX in
addition to the other academic adjustments. XXXXXX XXXXXX XXXXXX XXXXXX XXXXXX
XXXXXX XXXXXX XXXXXX XXXXXX XXXXXX XXXXXX XXXXXX XXXXXX, the Student was
entitled to XXXXXX XXXXXX XXXXXX XXXXXX XXXXXX XXXXXX XXXXXX XXXXXX XXXXXX
XXXXXX XXXXXX XXXXXX XXXXXX all of which the DAS was to coordinate.

XXXXX - SENTENCE REMOVED – XXXXX. XXXXX – SENTENCE REMOVED – XXXXX. On XXXXX the University signed a resolution agreement resolving that complaint pursuant to Section 302 of OCR’s Case Processing Manual (CPM).

According to the Complainant's unofficial transcript, XXXXX enrolled in four classes for the XXXXX XXXXX semester, three classes for XXXXX XXXXX semester, and three classes for the XXXXX XXXXX Semester.

XXXXX Services

The Complainant stated that DAS was supposed to provide XXXXX with XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX, but this did not happen. XXXXX - SENTENCE REMOVED - XXXXX.

[illegible]

E-mail communications that both the Complainant and/or the University provided to OCR during this timeframe show that the Complainant contacted University staff, including the XXXXX XXXXX XXXXX, XXXXX professors, and a XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX.

On XXXXX, the XXXXX began contacting XXXXX XXXXX XXXXX XXXXX XXXXX
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XXXXX XXXXX, over two weeks into the XXXXX semester, the Complainant e-mailed the XXXXX asking if XXXXX had found any XXXXX XXXXX XXXXX XXXXX XXXXX. On

XXXXXX the DAS XXXXXX e-mailed the Complainant XXXXXX XXXXXX XXXXXX for XXXXXX XXXXXX XXXXXX XXXXXX class. The Complainant provided OCR with a copy of an e-mail XXXXXX sent the XXXXXX XXXXXX XXXXXX, asking about XXXXXX for XXXXXX XXXXXX XXXXXX. (The University did not provide OCR with a copy of the Complainant's XXXXXX, e-mail.)

On XXXXX, the Complainant e-mailed XXXXX XXXXX again and asked for an update on XXXXX XXXXX XXXXX, noting that the last XXXXX heard, the XXXXX was still trying to find XXXXX XXXXX. The XXXXX responded later that day saying XXXXX would send the XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX. The Complainant e-mailed the XXXXX on XXXXX, thanking XXXXX for XXXXX XXXXX but requesting that XXXXX continue to inquire about getting XXXXX XXXXX XXXXX.

On XXXXX the Complainant again e-mailed the XXXXX about XXXXX for XXXXX XXXXX XXXXX. XXXXX responded the same day saying XXXXX was still looking for XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX. The next day, the Complainant responded that they were at the end of the semester, thanked the XXXXX for XXXXX continual efforts XXXXX XXXXX XXXXX, and requested that XXXXX let XXXXX know if anything changed.

On XXXXX, the Complainant e-mailed one of XXXXX XXXXX and shared the difficulties XXXXX experienced XXXXX XXXXX for XXXXX classes, specifically stating that the XXXXX XXXXX received were XXXXX XXXXX XXXXX.

On XXXXX, the Complainant e-mailed the DAS XXXXX and stated that XXXXX did not XXXXX XXXXX for one of XXXXX summer classes and did not receive XXXXX XXXXX for another. The XXXXX responded that XXXXX office was continuing to work on an alternative to XXXXX XXXXX.

On XXXXX, (XXXXX XXXXX XXXXX XXXXX XXXXX) the complainant e-mailed the XXXXX to inquire about XXXXX XXXXX XXXXX. XXXXX stated that XXXXX had not received XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX for the semester yet and requested that the XXXXX keep XXXXX posted regarding XXXXX XXXXX XXXXX XXXXX XXXXX. The XXXXX responded that XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX.

[illegible]

XXXXXXXX XXXXXX XXXXXX XXXXXX XXXXXX XXXXXX XXXXXX XXXXXX XXXXXX
 XXXXXX XXXXXX.

On XXXXX, the XXXXX e-mailed the Complainant XXXXX for XXXXX XXXXX XXXXX. The Complainant responded the same day stating that XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX. On XXXXX, the XXXXX reported to the XXXXX that XXXXX had not yet obtained XXXXX XXXXX.

On XXXXX, the XXXXX e-mailed the Complainant and stated XXXXX would get access to a XXXXX XXXXX XXXXX XXXXX. This correspondence suggests that the XXXXX did not speak with the Complainant prior to making this decision, to determine whether XXXXX provided the services the Complainant needed.

On XXXXX, the XXXXX informed the XXXXX that only XXXXX XXXXX XXXXX
XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX
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XXXXX. According to the XXXXX, the Complainant was not satisfied with XXXXX XXXXX
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XXXXX.

[illegible][illegible]

Documents the University provided show that the XXXXX sent e-mails to XXXXX XXXXX
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XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX.

The DAS XXXXX told OCR that the University relies only on XXXXX XXXXX XXXXX
XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX
XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX. XXXXX -

SENTENCE REDACTED – XXXXX. XXXXX - SENTENCE REDACTED – XXXXX. Additionally, the XXXXX stated that when XXXXX received an e-mail from the Complainant on XXXXX, in which the Complainant explained the difficulties XXXXX encountered in XXXXX XXXXX, the XXXXX was in the process of requesting a budget increase to secure XXXXX XXXXX XXXXX.

[illegible]

The XXXXX said that XXXXX did not ask the Complainant's professors if they would XXXXX
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XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX. Included in the documents
the University provided to OCR, however, was an e-mail from one of the Complainant's
assistant professors to the Assistant Director, asking about XXXXX XXXXX XXXXX XXXXX
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XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX. The assistant
professor stated that XXXXX wanted to be sure that the Complainant was getting everything
XXXXX needed to be successful in the course. The University did not provide OCR with a
response to this e-mail.

XXXXX - PARAGRAPH REDACTED - XXXXX.

With respect to the XXXXX XXXXX system, the XXXXX stated that the Complainant was the only student to use it, and that XXXXX offered XXXXX to the Complainant on XXXXX. The XXXXX stated that the XXXXX showed the Complainant how to XXXXX XXXXX although the XXXXX clarified that XXXXX showed the Complainant how to XXXXX XXXXX XXXXX XXXXX XXXXX but XXXXX did not know if XXXXX used the program and did not follow up to see if XXXXX had issues using it.

XXXXXX XXXXXX XXXXXX

DAS records show that for the XXXXX XXXXX XXXXX XXXXX semesters, the Complainant was to receive XXXXX as another approved academic adjustment, although the Complainant stated that the University agreed to provide the XXXXX XXXXX XXXXX.

[illegible][illegible][illegible]

The Complainant also provided an e-mail exchange XXXXX had with the XXXXX on XXXXX, in which XXXXX stated that the XXXXX XXXXX did not meet XXXXX needs. The XXXXX responded the next day and stated that XXXXX was sorry the Complainant experienced difficulties but that they had “exhausted all possibilities while still following XXXXX XXXXX

XXXXX XXXXX. The XXXXX also stated in XXXXX response that XXXXX would continue to research other possibilities but had not encountered this issue with any other students or XXXXX. (The University did not provide OCR with a copy of this e-mail exchange.)

The University told OCR that it provided the Complainant with the only options available for the XXXXX XXXXX requested for XXXXX XXXXX XXXXX classes but that the Complainant chose not to use XXXXX XXXXX provided.

The XXXXX told OCR that the XXXXX coordinates XXXXX for students with accommodations and that XXXXX is not involved in this process. XXXXX stated that the University typically does not have issues with providing XXXXX to students, although there was one issue with the XXXXX XXXXX XXXXX XXXXX, so the XXXXX had to XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX. XXXXX also stated that the XXXXX serves as XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX; however, XXXXX did not recall any instance in which DAS contacted XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX.

[illegible][illegible]

Applicable Regulatory Standards

The regulation implementing Section 504, at 34 C.F.R. § 104.4(a), provides that no qualified person 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, the regulation implementing Section 504 provides, at 34 C.F.R. §§ 104.4(b)(1)(ii), (iii), and (vii), that a recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing or other arrangements, on the basis of disability, afford a qualified person with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded to others, provide a qualified person with a disability with an aid, benefit, or service that is not as effective as that provided to others, or otherwise limit a qualified person with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service. For purposes of this part of the Section 504 regulation, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for persons with and without disabilities, but must afford persons 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).

The regulation implementing Section 504, at 34 C.F.R. § 104.44, requires recipients to make 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. The regulation implementing Section 504 further states, at 34 C.F.R. §§ 104.44(d)(1) and (2), that recipients must take such 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. 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. However, recipients need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

If an auxiliary aid is necessary for classroom or other appropriate (nonpersonal) use, the institution must make it available, unless provision of the aid would cause undue burden. A student with a disability may not be required to pay part or all of the costs of that aid or service. An institution may not limit what it spends for auxiliary aids or services or refuse to provide auxiliary aids because it believes that other providers of these services exist, or condition its provision of auxiliary aids on availability of funds. See "Dear Colleague Letter, Guidance on Students with Disabilities and Transitioning to Postsecondary Education, Transition of Students With Disabilities" (March 16, 2007, OCR 00038) In order to be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability.

For OCR to find that a university discriminated against a student on the basis of disability by failing to provide academic adjustments or auxiliary aids and services pursuant to 34 C.F.R.

§104.44, 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 and Conclusion

It is undisputed that the Complainant is a qualified student with a disability, that the Complainant notified the University of XXXXX disability and need for academic adjustments and auxiliary aids, and that there were academic adjustments or auxiliary aids that, if provided, would have allowed the Complainant to participate in the University's educational program. Based on the evidence presented, OCR concludes that there is sufficient evidence to support a finding that since XXXXX, the University has not provided the Complainant with adequate XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX, in violation of Section 504 and its implementing regulations.

XXXXX Services

While the University asserts that it provided the Complainant with XXXXX XXXXX XXXXX
XXXXX to the best of its ability, the University relied exclusively on XXXXX XXXXX
XXXXX. The evidence shows that repeatedly throughout the Complainant's enrollment at the
University, including during the time period relevant to this complaint, DAS had trouble
XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX
XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX
XXXXX XXXXX XXXXX. Moreover, the evidence shows that the University did not XXXXX
XXXXX XXXXX XXXXX XXXXX XXXXX and DAS did not meet with the Complainant to
consider or discuss alternative academic adjustments and/or auxiliary aids.

Although the University asserted that it provided the Complainant with access to XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX semester, the XXXXX did not provide the Complainant with access to XXXXX XXXXX until XXXXX, near the end of the XXXXX XXXXX semester. Furthermore, the Complainant stated that XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX and again, OCR saw no evidence suggesting that the University engaged with the Complainant to address the concerns XXXXX had with XXXXX XXXXX or consult with XXXXX about what alternative services would be beneficial. Thus, the evidence is sufficient for OCR to find that the University did not provide the Complainant with XXXXX XXXXX services during the period at issue in this complaint.

XXXXX

The Complainant shared with the University starting in XXXXX that the XXXXX XXXXX
XXXXX XXXXX XXXXX XXXXX in at least two of XXXXX classes did not meet XXXXX
XXXXX XXXXX, and the University responded that there were no alternatives. The University
acknowledged to OCR that the XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX
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The University did not provide information to OCR that it XXXXXX XXXXXX XXXXXX XXXXXX
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For these reasons, OCR finds sufficient evidence to support a conclusion that the University did not comply with Section 504 and its implementing regulations with respect to its provision of XXXXXX XXXXXX XXXXXX to the Complainant.

On XXXXXX, the University signed the enclosed Resolution Agreement, which, when fully implemented, will address the violations in accordance with Section 504. 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 XXXXXX or XXXXXX 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 April 1, 2022. For questions about implementation of the Agreement, please contact Ann Millette, who will be overseeing the monitoring and can be reached by telephone at (216) 522-2679 or by e-mail at

ann.millette@ed.gov. If you have questions about this letter, please contact me by telephone at (216) 522-2667, or by e-mail at Brenda.Redmond@ed.gov.

Sincerely,

/s/

Brenda Redmond
Supervisory Attorney/Team Leader

Enclosure