



**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS**

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April 21, 2016

Ms. Cathy Sandeen
Chancellor
University of Wisconsin Colleges and UW Extension
432 N. Lake Street
Madison, WI 53706

Re: OCR #05-16-2035

Dear Ms. Sandeen:

This is to notify you of the disposition of the complaint you (the Complainant) filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR) on November 2, 2015, against the University of Wisconsin-Richland (University) alleging discrimination on the basis of disability XXXXXXXX. The complaint was filed with the U.S. Department of Justice (DOJ) on May 19, 2015, and was referred by DOJ to OCR on November 2, 2015.

Specifically, the Complainant alleged 1) that professors failed to provide the Student with a tutor as an academic adjustment; and 2) that the University did not provide the Student with
XX.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (Section 504), and its implementing regulation at 34 C.F.R. Part 104, and Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131-12134 (Title II), and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability in educational programs or activities that receive Federal financial assistance and by public entities, respectively. As a recipient of Federal financial assistance and a public entity, the University is subject to these laws.

During its investigation, OCR reviewed documentation provided by the Complainant and the University, and interviewed the Complainant, University staff and other witnesses.

Allegation 1

The Complainant alleges that in February 2015 professors failed to provide the Student with a tutor as an academic adjustment.

University Policies and Procedures

The University prohibits discrimination on the basis of disability in University employment and all educational programs and activities.¹ More specifically, this section provides that “[t]his policy applies to all educational programs, employment practices, and operations of the University of Wisconsin System and its institutions, and to the conduct of all students, faculty and staff that arises out of their employment or academic status, as well as to the conduct of all program participants, guests, visitors, vendors, *contractors, subcontractors and others who do business with the UW System or its institutions.*” University policy also prohibits retaliation against anyone who reports harassment or discrimination. Information about how to file a complaint of discrimination is easily accessible on the University’s website.²

The University provides students with disabilities with information on how to obtain academic adjustments on its website at <http://www.uwc.edu/students/disability>. The Student Handbook also provides students the same information and the same access to the forms required to request academic adjustments.

Factual Summary - Academic Adjustments

The Student began her studies at the University of Wisconsin-Richland in fall 2014. She was assigned to live in a double room with a roommate in Campus View Housing. To prepare for her first semester, in spring 2014 she met with the Assistant Dean for Campus and Student Affairs (Assistant Dean), the Richland campus’s disability services contact. Subsequently, the Student provided the Assistant Dean with appropriate documentation to support her request for preferential seating, testing in a separate room and a note taker, as detailed on her “Need For Services” form dated July 31, 2014. The form did not indicate a tutor was requested.

The University’s Director of Student Accessibility Services (Director) told OCR he is responsible for reviewing each application for accommodations or academic adjustments for all 13 campuses in the University’s system, including online programs. He receives and reviews the accompanying documentation, makes all eligibility determinations and writes each student’s accommodation plan. Each campus has a disability services contact and the Director works with the disability services contacts directly, but does not typically interact with the student. The Director told OCR that he never met with or spoke to the Student or the Complainant.

The Director reviewed the Student’s request for services and accompanying documentation and, on August 22, 2014, granted her request in full. The Director sent the Student a copy of her approved Individualized Accommodation Plan (the Plan). The Plan provided the Student with note takers and preferential seating in class and extended time and a testing location with

¹ <https://www.wisconsin.edu/regents/policies/discrimination-prohibited/> (emphasis added)

² <http://inclusion.uwex.uwc.edu/policies>

minimal distraction for tests. The Director’s letter advised the Student that “if you find that you are in need of further accommodations, please inform your campus contact for Student Accessibility Services who is located in the Student Services office.” The Director’s letter also advised the Student what to do if she agreed with the Plan in whole or in part.

The Student had several roommates in fall 2014. She did not do well academically in the fall of 2014 and so the University placed her on academic probation for the second semester, scheduled to begin in February. On January 4, 2015, the Complainant sent an email to the Assistant Dean asking her to assign the Student a new roommate and asking for someone to help the Student learn to navigate the online grade/assignment tracking system. The Complainant wrote that the Student “has taken responsibility for not asking for help when needed, i.e. math, she knows she will need a tutor and is prepared to ask for help from her professors when needed.”

According to the Complainant, the Assistant Dean invited the Student and the Complainant to meet with her and they met on January 20, 2015. According to the Student, in this meeting the Assistant Dean promised her a math tutor and said the University “dropped the ball” on providing her a tutor in the fall semester. According to the Complainant, at this meeting the Assistant Dean promised to meet with the Student more often in the spring semester than she did in the first. The Student said they met only a few times.³ The Student and the Complainant did not provide OCR with documentation supporting their assertion that the Student was entitled to a tutor as an accommodation for her disabilities.

Factual Summary – Housing

Students attending the University’s Richland campus have limited housing options. Campus View Corporation, a private entity created to provide housing to UW-Richland students, offers students housing in a dorm-like setting.⁴ The UW-Richland website informs students that Campus View Corporation “provides the primary source of housing” for UW-Richland students.⁵

The Complainant told OCR that the Student XXXXXXXXXXXXXXXXXXXXXXXXXXXX.
According to the Complainant, the Student indicated she would XXXXXXXXXXXXXXXXXXXX
but did not provide supporting documentation from her physician XXXXXXXXXXXXXXXXXXXX.
The Student said XXXXXXXX XXXXXXXXXXXXXXXXXXXX XXXXXX XXXXXXXXXXXX XXXXXXXX.
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³ OCR was unable to interview the Assistant Dean because she is no longer employed by the University. The University did not have any information about the meeting.

⁴ <http://richland.uwc.edu/campus/housing/campus-view>

⁵ <http://richland.uwc.edu/campus/resources/students>

⁶ The Complainant asserted there were several factors contributing to the Student’s difficulties in fall 2014.

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The Director, the Assistant Dean and the Executive Director of Campus View Housing began to discuss how this request could be accommodated. XXX XXXX XXXXXXX XXXXXXX XX X
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On March 6, 2015, the Student sent an email to the Assistant Dean thanking her XXX
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Applicable Legal Standards

In an educational setting, Section 504 and its implementing regulation generally provide the same or greater protection than Title II and its implementing regulation. Where, as in this case, Title II does not offer greater protection than Section 504, OCR applies Section 504 standards.

Discrimination generally

The regulation implementing Section 504 at 34 C.F.R. § 104.4(a) provides that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a recipient, or be subjected to discrimination by a recipient of Federal financial assistance. The Title II implementing regulation at 28 C.F.R. § 35.130(a), provides that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

Academic Adjustments

The regulation implementing Section 504 at 34 C.F.R. § 104.44(a) provides that recipients must make modifications to its academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating against qualified disabled students. The Section 504 regulation, at 34 C.F.R. 104.44(d)(1), requires a recipient postsecondary institution to ensure that no qualified disabled student is denied the benefits of, or excluded from participation in, the recipient's education program because of the absence of

educational auxiliary aids for students with impaired sensory, manual, or speaking skills. The Title II regulation, at 28 C.F.R. 35.160(b)(1), provides that a public entity must furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of a service, program, or activity conducted by a public entity. The Section 504 regulation, at 34 C.F.R. 104.44(d)(2), and the Title II regulation, at 28 C.F.R. 35.104, provide that auxiliary aids include interpreters.

Under the applicable regulations, postsecondary recipients may require a student to follow reasonable procedures to request and document the need for academic adjustments and/or other modifications, including modifications to policies, practices and procedures. In postsecondary settings generally, if a student with a disability believes that he needs an academic adjustment and/or other modification, the student has the obligation to identify himself as having a disability and to request the provision of academic adjustments and/or other modifications. A student's request for an academic adjustment and/or modification must be sufficiently direct and specific, identifying the type of academic adjustment and/or modification needed. Postsecondary recipients are not required to provide personal devices and services such as attendants, individually prescribed devices, such as eyeglasses, readers for personal use or study, or other services of a personal nature, such as tutoring. If postsecondary recipients offer tutoring to the general student population, however, they must ensure that tutoring services are also available to students with disabilities.

Although students may request academic adjustments at any time, students needing services should notify the institution as early as possible to ensure that the institution has enough time to review their request and provide an appropriate academic adjustment. If the academic adjustments provided are not meeting a student's needs, it is the student's responsibility to notify the institution as soon as possible.

Housing

The regulation implementing Section 504 at 34 C.F.R. § 104.45(a) provides that a recipient that provides housing to its nondisabled students must provide comparable, convenient and accessible housing to disabled students at the same costs as to others. And subsection (b) provides that a recipient that "assists any agency, organization, or person in making housing available to any of its students shall take such action as may be necessary to assure itself that such housing" is made available in a manner that does not result in disability discrimination.

Analysis of Allegation 1

The Complainant alleges that the University discriminated against the Student on the basis of disability when it failed to provide her with a tutor. The University told OCR that because the Student did not ask for a tutor in her original application for academic adjustments and because

she did not provide documentation suggesting that she needed a tutor, the University did not include the provision of a tutor in her August 22, 2014, Plan.

OCR's review of the evidence shows that the provision of a tutor was never a part of the Student's Individualized Accommodation Plan. The Student did not appeal her August 22, 2014, Plan and she did not inform the Assistant Dean that she was in need of further accommodations. While the Complainant sent an email to the Assistant Dean on January 5, 2015, informing her that the Student had "taken responsibility for not asking for help when needed, i.e. math, she knows she will need a tutor and is prepared to ask for help from her professors when needed" this is insufficient to create an obligation on the part of the University to provide a tutor as a modification to the Student.

OCR considered the totality of the circumstances and evaluated all of the information gathered during its investigation. OCR finds by a preponderance of the evidence that there is insufficient information to conclude that the University discriminated against the Student as alleged. Therefore, OCR is closing allegation 1 effective the date of this letter.

Analysis of Allegation 2

Where, through an individualized, interactive process, a recipient determines that XXXX XXXX XXXX XXXXX XX XXXXXXXX XX, the University will make reasonable modifications to its XXXXXXXX XXXX XXXXXXXX to avoid discrimination on the basis of disability unless doing so would result in a fundamental alteration to the housing program or result in an undue financial burden to the University as a whole in accordance with the regulations implementing Section 504 at 34 C.F.R. §104.43 and 34 C.F.R. §104.45(a) and Title II at 28 C.F.R. §35.130 (a), which were at issue in this complaint.

Prior to the conclusion of OCR's investigation, the University expressed an interest in resolving allegation 2. In accordance with Section 302 of OCR's *Case Processing Manual*, OCR discussed resolution options with the University. The University subsequently signed the enclosed agreement, which, when fully implemented, will resolve allegation 2. The provisions of the Agreement are aligned with this allegation and the information obtained during OCR's investigation and are consistent with the applicable regulations. OCR looks forward to receiving the University's first monitoring report, which is due on April 30, 2016.

This concludes OCR's investigation of the complaint and should not be interpreted to address the College'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. The Complainant may file a private suit in federal court whether or not OCR finds a violation.

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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 Complainant 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, we 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.

If you have any questions, please contact me or Susan Johlle at 312-730-1586 or by email at Susan.Johlle@ed.gov.

Sincerely,

Dawn Matthias
Team Leader

Enclosure