



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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DALLAS, TX 75201-6810

REGION VI
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TEXAS

October 30, 2015

Diane E. Melby, Ed.D., President
Our Lady of the Lake University
411 S.W. 24th St.
San Antonio, Texas 78207

RE: OCR Case No. 06142069
Our Lady of the Lake University

Dear Dr. Melby:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, has completed its investigation of the above-referenced complaint, which was received on February 4, 2014. The complainant (hereinafter the Student) alleged that she was subjected to discrimination on the basis of disability (X---phrase redacted---X) by Our Lady of the Lake University (OLLU), San Antonio, Texas. Specifically, the Student alleged that on XXXX, 2014, she was terminated from her XXXX XXXX degree program at OLLU for allegedly failing to XXXX XXXX because she was not provided with the academic adjustments related to her XXXX XXXX that would have allowed her to XXXX XXXX.

This agency is responsible for determining whether entities that receive or benefit from Federal financial assistance from the Department, or an agency that has delegated investigative authority to the Department, are in compliance with Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulations at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12132, and its implementing regulations at 28 C.F.R. Part 35, which prohibit public entities from discriminating on the basis of disability. OLLU is a recipient of Federal financial assistance from the Department and is a public educational institution. Therefore, OCR had jurisdictional authority to investigate allegations of discrimination filed against OLLU under Section 504 and Title II.

By letter dated March 18, 2014, OCR notified the complainant and OLLU that it was opening for investigation the following issue:

Whether OLLU failed to 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 disabled student, by failing to provide the Student with necessary academic adjustments and/or auxiliary aids in OLLU's XXXX XXXX XXXX program during the XXXX 2014 semester, in violation of Section 504, at 34 C.F.R. § 104.44.

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

In order to reach a determination with regard to the issue in this complaint, OCR reviewed information provided by the Student and the recipient, such as the Student's educational records, emails, correspondence, and OLLU's pertinent policies and procedures, including its notice of nondiscrimination and its grievance procedures. Additionally, OCR obtained information through interviews with the Student, staff at the Student's XXXX XXXX XXXX, and OLLU personnel. Based on a review of this information, OCR has determined that there is insufficient evidence to support a conclusion of noncompliance with Section 504 regarding the issue investigated.

However, during the investigation, OCR determined that OLLU's notice of nondiscrimination was not in compliance with Section 504 and its implementing regulations; Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681 *et seq.*, and its implementing regulations at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex; and the Age Discrimination Act of 1975 (Age Act), 42 U.S.C. § 6101 *et seq.*, and its implementing regulations, at 34 C.F.R. Part 110, which prohibit discrimination on the basis of age. Provided below is an explanation of how this determination was reached.

Legal Standard

Under Section 504, recipients of Federal financial assistance must provide such academic adjustments or auxiliary aids as may be necessary to ensure that their academic requirements do not discriminate or have the effect of discriminating, on the basis of disability, against any "qualified" person with a disability. To establish a violation of this requirement in this case, OCR must determine the following: (1) that the complainant is a "qualified person with a disability;" (2) that the complainant provided adequate notice to OLLU that she believed she needed academic adjustments; (3) that the requested academic adjustments were necessary; and either (4) that OLLU did not provide the academic adjustments; or (5) that the academic adjustments provided were not of adequate quality and effectiveness. For purposes of this letter, the terms *academic adjustments* and *accommodations* are used interchangeably.

Under Section 504, a "qualified person with a disability" is a person who meets the essential eligibility (including academic and technical) requirements for admission to or participation in the recipient's education program or activity, and who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. In the academic adjustments/auxiliary aids context, a "qualified person with a disability" must have an actual impairment that substantially limits one or more major life activities.

OCR policy provides that students with disabilities have the obligation to provide adequate documentation to postsecondary education institutions evidencing the existence of their disabilities and their need for academic adjustments or auxiliary aids. The question whether a student has provided documentation sufficient to evidence the existence of a disability requiring an academic adjustment/auxiliary aid must be decided on a case-by-case basis using a standard of reasonableness.

In accordance with Section 504, once students provide their institutions sufficient notice of their disabilities and their need for academic adjustments or auxiliary aids, the institutions must provide those academic adjustments or auxiliary aids that are necessary. In addition, the academic adjustments and auxiliary aids that are provided must be of adequate quality and effectiveness.

Findings of Fact and Analysis

The Student reported to OCR that because her XXXX professor did not provide her with the accommodation approved for her: 1) she was terminated from her X---phrase redacted---X course; 2) she received a grade of X---phrase redacted---X course; and 3) she was X---phrase redacted---X from the remaining sessions of the X---phrase redacted---X and X---phrase redacted---X. According to the Student, her XXXX XXXX makes her XXXX XXXX and, when X---phrase redacted---X. The Student informed OCR that, when she has X---phrase redacted---X. The Student indicated that it takes her a long time to X---phrase redacted---X and that she had XXXX XXXX during the time she was taking XXXX XXXX XXXX.

OCR reviewed information from OLLU's Student Success Center/Services to Students with Disabilities (SSD)/Tutoring Center, and the website associated with these support services, where students have access to OLLU's policies and procedures for providing academic adjustments and auxiliary aids to students with disabilities. The documentation and the information on the website revealed that the SSD Coordinator is responsible for assisting students with disabilities with their requests for academic adjustments and/or auxiliary aids and services. The documentation and the information on the website indicated that students have the responsibility to make contact with the SSD office to request accommodations; provide documentation of their disabilities that accurately addresses their current abilities and needs; and make contact with the SSD office each semester to request/renew the letters of accommodation for each of their instructors.

During her interview with OCR, the XXXX XXXX stated that she assisted the Student in X---phrase redacted---X for the first time in XXXX 2013, for academic adjustments in her XXXX XXXX XXXX classes. OCR's review of documentation provided by OLLU and the Student showed that the Student provided XXXX XXXX documentation from her physician that met OLLU's criteria to qualify the Student as a student with a disability due to her XXXX XXXX. According to the Student, she also XXXX XXXX; however, in an interview with OCR, the XXXX XXXX indicated that the documentation provided by the Student did not meet OLLU's criteria for the Student to receive accommodations for XXXX XXXX because it did not address X---phrase redacted---X and was otherwise incomplete. The XXXX XXXX informed OCR that she provided information to the Student regarding community resources that might assist the Student in obtaining XXXX XXXX to meet OLLU's criteria to receive accommodations for XXXX XXXX.

The XXXX XXXX informed OCR that the Student requested and received academic adjustments for: 1) two courses in XXXX 2013; 2) two courses in XXXX 2013; and, 3) one course in XXXX 2013, although the complainant was enrolled in XXXX XXXX that semester. According to the Student, and as confirmed by documentation from OLLU, during the XXXX

2013 semester, the Student was enrolled in X---phrase redacted---X, a XXXX seminar taken in conjunction with X---phrase redacted---X. OCR reviewed the Student's "ADA Accommodations Form" dated XXXX, 2013, requesting accommodations for XXXX XXXX. The "ADA Accommodations Form" listed one approved academic adjustment for the Student: "X---phrase redacted---X." By email dated XXXX, 2013, the XXXX XXXX sent the Student's "ADA Accommodations Form" to the professor for XXXX XXXX and also sent a copy (cc) of the email to the professor for XXXX XXXX and to the Student.

Documentation provided by OLLU and information from the XXXX XXXX and the XXXX XXXX professor showed the Student did not request accommodations for XXXX XXXX. The documentation indicated, however, that on XXXX, 2013, the Student sent an email to her XXXX XXXX professor requesting that the professor X---phrase redacted---X. The professor responded to the Student X---phrase redacted---X. On XXXX, 2013, the Student emailed her professor, stating, "X---phrase redacted---X." During her interview with OCR, and as confirmed by documentation provided by OLLU, the XXXX XXXX professor informed OCR that she responded to the Student's email and indicated that the Student's accommodations letter X---phrase redacted---X. The professor indicated to OCR that the Student X---phrase redacted---X.

During her interview with OCR, the XXXX XXXX professor indicated that the Student was having X---phrase redacted---X. The professor informed OCR that X---phrase redacted---X, were a requirement in the course, and the Student was not X---phrase redacted---X in a timely manner and was not X---phrase redacted---X. The professor informed OCR that the Student was also not X---phrase redacted---X. The XXXX XXXX professor revealed that to address these concerns, a X---phrase redacted---X. A X---phrase redacted---X was developed for the Student to rectify these issues X---phrase redacted---X. The XXXX XXXX professor indicated that she agreed, X---phrase redacted---X, to again discuss the Student's performance in the course and to X---phrase redacted---X. The professor informed OCR that the Student's X---phrase redacted---X.

OCR also interviewed the professor for XXXX XXXX, the Student's XXXX course. The professor stated that she has had the Student X---phrase redacted---X the Student used her approved accommodation of XXXX XXXX. The XXXX XXXX professor informed OCR that she did receive a copy of the complainant's "ADA Accommodations Form" for X---phrase redacted---X semester. The professor indicated that the Student did not X---phrase redacted---X because the students in her course received their assignments far in advance of them being due and X---phrase redacted---X. The professor informed OCR that XXXX XXXX is taken in conjunction with XXXX XXXX because the course work in X---phrase redacted---X. The professor also revealed that she was not involved in X---phrase redacted---X.

Additionally, OCR interviewed the Student's X---phrase redacted---X to obtain information regarding the Student's termination from XXXX XXXX. During her interview, the Instructor informed OCR that her responsibilities included X---phrase redacted---X on a weekly basis. She stated that the Student would send X---phrase redacted---X back to the Student, who would in turn send them to XXXX XXXX professor, who was the Student's X---phrase redacted---X. The Instructor indicated to OCR that the X---phrase redacted---X. The Instructor also stated that on

XXXX, 2013, she and X---phrase redacted---X that the Student was having with X---phrase redacted---X and the Student’s attitude that she X---phrase redacted---X.

In her interview with OCR, the XXXX XXXX indicated that she was the individual who assigned X---phrase redacted---X. The XXXX XXXX stated that she did not receive a list of accommodations that the Student needed, but the Student would X---phrase redacted---X and whatever she requested was provided. Additionally, the XXXX XXXX stated to OCR that there were some concerns regarding the Student’s X---phrase redacted---X. The Instructor revealed that she, the XXXX XXXX, and the XXXX XXXX at the site met in XXXX 2014 and decided X---phrase redacted---X. The Instructor and the XXXX XXXX confirmed that they spoke with the XXXX XXXX professor regarding the X---phrase redacted---X. Documentation provided by OLLU showed that the Instructor, the XXXX XXXX, and the XXXX XXXX met on XXXX, 2014, and decided to X---phrase redacted---X. The documentation also revealed that the Student was X---phrase redacted---X. After unsuccessfully attempting to schedule a meeting XXXX XXXX, the OLLU XXXX XXXX XXXX emailed the Student on XXXX, 2014, notifying her that her X---phrase redacted---X.”

OCR reviewed the Student’s X---phrase redacted---X (Assessment), which was completed by the Instructor. The Assessment showed that the Student was X---phrase redacted---X.

OCR also reviewed OLLU’s X---phrase redacted---X (Handbook), which states under *Academic Discipline*, “Continuation in a graduate program is contingent upon: Maintaining a 3.0 GPA in all courses attempted at Our Lady of the Lake University. . . . A grade of “F” in a graduate course results in Enforced Scholastic Withdrawal . . . and discontinuance in the program. . . .” Documentation from OLLU shows the Student’s grade in X---phrase redacted---X because she did not X---phrase redacted---X, she was placed X---phrase redacted---X. On XXXX, 2014, the Student X---phrase redacted---X. On XXXX, 2014, the X---phrase redacted---X, granted the Student X---phrase redacted---X.

Based on information above, OCR’s review indicated that the Student established that she was a qualified person with a disability and that she provided adequate notice to OLLU that she believed she needed academic adjustments for her disability to access OLLU’s programs and activities. As noted above, OCR’s review indicated the following academic adjustments were deemed necessary for Student: “X---phrase redacted---X.” By a preponderance of the evidence, OCR did not find that OLLU failed to provide the above academic adjustments. As noted above, the Student did not request her approved academic adjustment of XXXX XXXX for the XXXX XXXX course. Nor did OCR’s review of the OLLU’s X---phrase redacted---X indicate that the XXXX was a result of any failure by OLLU to provide the approved academic adjustments referenced above. Thus, OCR determined that there is insufficient evidence to support a conclusion of noncompliance with Section 504 and Title II with respect to the issue investigated.

Compliance Concerns Identified During OCR’s Investigation

The regulations implementing Section 504, Title IX, Title VI, and the Age Act require recipients to disseminate a notice of nondiscrimination on the basis of disability, sex, race, color, national origin, and age. Further, Section 504 at 34 C.F.R. §§ 104.7(a) and 104.8(a); Title IX at 34

C.F.R. § 106.8(a); and the Age Act at 34 C.F.R. § 110.25(a)-(b), all require that a recipient designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under these regulations and to provide notice of the contact information to parents, students, and employees.

During the course of the investigation of this complaint, OCR reviewed OLLU's online 2012-2014 XXXX XXXX (Bulletin), OLLU's XXXX XXXX XXXX XXXX, San Antonio, Texas XXXX XXXX XXXX (Manual), and the Handbook, which revealed that OLLU publishes a notice of nondiscrimination prohibiting discrimination on the grounds of disability, sex, race, color, and national origin. But in the three publications referenced above, OLLU does not publish a notice of nondiscrimination on the basis of age.

OCR's investigation also revealed that OLLU has not designated a person to coordinate its efforts to comply with the Age Act or provided any notice regarding the designated coordinator(s). OCR found that OLLU includes the name, title, office address and telephone number of the employee designated to carry out its responsibilities under Title II in the publications associated with the Office of Student Disabilities; however, the designation was not in the Bulletin or Handbook, and the title and telephone number only were in the Manual. Section 504 is not included or mentioned in this designation. The coordinators for Title IX and the Age Act were not listed in any of the publications reviewed during this investigation. Thus, OCR has determined that OLLU is noncompliant with Section 504, Title IX, and the Age Act.

OLLU committed to a written resolution agreement (copy enclosed), signed on August 31, 2015, which addresses the aforementioned compliance concerns. OCR has determined that this agreement, upon full implementation, will satisfactorily resolve the compliance concerns. The provisions of the resolution agreement are aligned with the information obtained during the investigation and are consistent with applicable regulations.

Under the terms of the enclosed voluntary Agreement, OLLU will:

- Submit for OCR's review and approval a revised notice of non-discrimination that informs students, parents, and others that OLLU does not discriminate in its programs and activities on the bases of race, color, national origin, disability, sex, and age, and identifies by name or title, address, and telephone number the individual or individuals responsible for coordinating its non-discrimination compliance efforts.
- Disseminate its revised, OCR-approved notice of non-discrimination to students, parents, OLLU employees and others.
- Review and revise, as necessary, any Board policies to inform students, parents, employees, and others that OLLU does not discriminate in its programs and activities on the bases of race, color, national origin, disability, sex, or age.

OCR will monitor OLLU's progress in the implementation of the agreement. If OLLU fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce the Agreement,

OCR shall give OLLU written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

This concludes OCR's investigation of this complaint and should not be interpreted to address OLLU'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.

Please be advised that OLLU may not threaten, coerce, intimidate, or discriminate against any individual for the purpose of interfering with any right or privilege secured by regulations enforced by OCR, or because the individual made a complaint, testified, assisted or participated in any manner in any investigation, proceeding or hearing held in connection with an OCR complaint. 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 questions or concerns about this letter, please contact Lori Bringas, the attorney assigned to this matter, at (214) 661-9638 or lori.bringas@ed.gov. You may also contact Timothy D. Caum, Supervisory Attorney/Team Leader at (214) 661-9648 or timothy.caum@ed.gov.

Sincerely,

Taylor D. August
Director
Office for Civil Rights
Dallas Office

Encl.