



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

1244 SPEER BLVD, SUITE 310
DENVER, CO 80204-3582

REGION VIII
ARIZONA
COLORADO
NEW MEXICO
UTAH
WYOMING

June 2, 2016

Mr. Brian Mueller
President
Grand Canyon University
3300 W. Camelback Rd.
Phoenix, AZ 85017

Re: Grand Canyon University
OCR Case Number: 08-16-2074

Dear President Mueller:

We received a complaint of discrimination against Grand Canyon University (University) on December 17, 2016. In the complaint, the complainant alleged that the University discriminated against him on the basis of his learning disability. Specifically, the complainant alleged that the University failed to provide him an academic adjustment (extended time) in his courses, and subsequently removed him from the University. We determined that we have the authority to investigate this complaint consistent with our complaint procedures and applicable law.

We are responsible for enforcing Section 504 of the Rehabilitation Act of 1973 and its implementing regulation at 34 Code of Federal Regulations Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department. As a recipient of Federal financial assistance from the Department, the University is subject to these requirements.

In making our determination, we considered information and documents provided by both the complainant and the University, and conducted relevant interviews, including with the complainant. This letter discusses our review of the allegations, facts, and legal requirements considered in making our determination that the University did not discriminate against the complainant on the basis of his learning disability as alleged. Nonetheless, we identified procedural compliance concerns unrelated to the complaint allegations. The University agreed to resolve these concerns through the enclosed voluntary resolution agreement (Agreement), which is discussed in greater detail below.

Academic Adjustments:

The complainant alleged that the University failed to provide him academic adjustments (or accommodations) for his courses. The complainant has a learning disability for which he requires the requested academic adjustments. A recipient of Department funds, like the University, is required to make modifications to its academic requirements that are necessary to ensure that such requirements do not discriminate or have the effect of discriminating, on the basis of disability, against a qualified applicant or 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. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted. 34 C.F.R. § 104.44.

If a student seeks an academic adjustment, the student must self-identify to the postsecondary institution as an individual with a disability, request the academic adjustment, and, upon request, provide the institution with documentation of disability that supports the need for an academic adjustment. Institutions of postsecondary education may establish reasonable procedures for requesting academic adjustments, and students are responsible for knowing and following these procedures. Postsecondary institutions may also require students, who request academic adjustments, to provide documentation of their current disabilities and the need for academic adjustments. The institutions must take steps to inform students of the documentation they require. Determining the appropriate academic adjustments for the requesting student is an interactive process between the student and the institution.

The University provided copies of its procedures for students to request academic adjustments (accommodations) through the Student Disability Services Office. The procedures state, in part, that the requesting student is to complete the Accommodations Request form and provide supporting documentation. The documentation “must be from a medical provider (such as doctor, psychologist, psychiatrist, etc.) or from testing services (such as Wechsler Adult Intelligence Scale and other tests).” The procedures further explain that the documentation should be on letterhead from the provider. The student is required to provide documentation that demonstrates credible assurance of a disability issue and directly supports the student’s request for accommodation, and must state the specific disability. Also, the documentation should include a summary of the student’s functional limitation in order for the University to determine the appropriate accommodations. Once documentation is received by the University, it is reviewed. If the documentation does not meet the University’s requirements, it will not be accepted as the official documentation. If the documentation is insufficient, the student will receive notice and will be asked to provide alternate supporting documentation.

Additionally, the University’s procedures provide for two appeals for students who disagree with the approved accommodations or modifications. A student may appeal the original determination to the ADA Executive Decision Committee. The ADA Executive Decision Committee reviews “requests for accommodations above and beyond the normal scope of Student Disability Services. At such times, the student submits the request for additional accommodations through Student Disability Services who then presents the request to the ADA Executive Committee for their determination.” If the student continues to be dissatisfied, he or she may appeal the ADA Executive Decision Committee’s decision to the Provost or his designee.

According to records provided by both the complainant and the University, on August 12, 2015, the complainant contacted the University’s Student Disability Services Office to request

academic adjustments for his classes, which were to begin August 24, 2015. Initially there was some delay in approving his request for academic adjustments, as the documentation the complainant provided did not meet the University's minimum requirements and the complainant requested as an academic adjustment extra time for exams beyond what the University generally allows for such a request. Specifically, the complainant requested double time for exams and assignments, when typically time and a half is provided. The documentation the complainant provided came from his former school of attendance, and was not from an approved medical provider but from an individual whose title is "Learning Disability Specialist." Initially, the University questioned the sufficiency of the documentation the complainant provided, but based on discussion with the complainant, subsequently approved extended time on individual assignments (two additional weeks from the original due date); a quiet/private testing area; and extended time for exams (time and a half), quizzes, and tests.

The University provided us documentation demonstrating that on September 3, 2015, all of the complainant's instructors were notified of his approved academic adjustments, and provided the University the required acknowledgment of receipt of the information by return email. The instructors were also advised that allowances should be made from the beginning of the courses to address the delay in the approval process. The University also provided a copy of an email dated September 3, 2015, from the complainant's BIO-483 instructor to the Student Disability Services Office requesting that the Office contact the complainant to schedule his upcoming exam in BIO-483. We also received from the University, a September 4, 2015 email from the Disability Services Coordinator. This email states, "We have received an exam from your BIO-483 course in the SDS office. You have 97 minutes to complete the exam. ... You must complete the exam no later than 9/16/2015. Please contact our office to schedule the exam." The complainant was subsequently removed from the University and his enrollment terminated on September 4, 2015. Consequently, the complainant never used the approved academic adjustments.

In evaluating the complainant's allegation, we find that the University followed its identified processes for reviewing the complainant's request for academic adjustments, and in fact, approved adjustments for the complainant even though the information he provided did not come from one of the required medical professionals. Although the complainant requested double time for exams and tests, the University approved time and a half, which is within the Student Disability Services Office's authority to grant without action by the ADA Executive Decision Committee, which due to his removal the complainant did not seek. Based on the materials the University and the complainant provided, the University was willing to and would have provided the approved accommodations had the complainant's attendance continued. Consequently, we find insufficient evidence to conclude the University discriminated in violation of Section 504 as alleged with regard to this issue.

Removal from the University:

The complainant also alleged that the University removed him and terminated his enrollment due to his learning disability. The complainant report that on September 4, 2015, he was contacted by University police who pulled him out of class to question him. The complainant explained that during this contact the University police asked him if they could search his bag and

questioned him about whether he had a weapon with him, which the complainant denied having. The University issued a letter to the complainant on that same date advising him that his enrollment at the University was discontinued. The letter noted the basis for this action was that the complainant failed to disclose his felony conviction.

Section 504's regulation at 34 C.F.R. § 104.4 states that "No qualified disabled person 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." Additionally, in providing any aid, benefit, or service, a recipient may not, directly or through contractual, licensing, or other arrangements, on the basis of disability deny a qualified disabled person the opportunity to participate in or benefit from the aid, benefit, or service. Generally, individuals with disabilities are expected to comply with the same disciplinary requirements as students without disabilities.

The complainant asserts that he was denied participation in the University's educational program when he was removed due to his disability. The University denies that the complainant's disability was the basis for his removal. The University asserts that the complainant was removed from the University because he failed to disclose on his application that he had previously been convicted of a serious felony.

In response to our data request, the University provided us a copy of the complainant's University application. The application asks "Have You ever been convicted or pled 'no contest' for any violation of law other than minor traffic offenses?" The following clarification is also provided immediately following the question, "If either of these events has occurred, this question must be answered 'YES.' Even if the conviction has been set aside, the charges must be disclosed. Please give details on a separate sheet with your signature and date. If subsequent court action sealing the records has occurred, this question may be answered 'NO'."

The application also provides the following information:

Arizona House Bill 2050, effective June 1990, states the following: "The Department of Education shall not issue...certification of a person who has been convicted of any of the criminal offenses prescribed or of a similar offense in another jurisdiction." Those criminal offenses include sexual abuse of a minor, incest, first or second degree murder, kidnapping, arson sexual assault, sexual exploitation of a minor, contributing to the delinquency of a minor, commercial robbery, a dangerous crime against children..., child abuse, sexual conduct with a minor, molestation of a child voluntary manslaughter, and aggravated assault.

Just above the applicant's signature line, the application form states, in part:

All of the information I have provided in this application is true, correct and complete...I agree that if I have provided false or incomplete statements, the College may, at its sole discretion, without further notice or due process procedures, terminate my application. If such an action is taken by the College, the application is deemed void from its inception.

This section of the application form is immediately followed by the complainant's electronic signature. In reviewing his application, we noted that the complainant did not respond to the question regarding prior convictions, instead leaving it blank. A failure to provide available information is not consistent with the University's requirement that an applicant provide true, correct and complete information.

Additionally, the University indicates that during a meeting with a staff member the complainant disclosed that he was currently on supervised probation relating to criminal charges in Tucson. Upon learning of this, the University contacted pertinent staff, who verified the complainant's arrest record, which confirmed the charges in Tucson and an earlier serious felony. Consequently, the complainant was removed from the University. During his interview, the staff member reported that he met with the complainant on the morning in question outside the staff member's office building. The staff member indicated that the complainant told him that he was on probation for some "trouble" in Tucson. In an interview with OCR, the complainant denied that he told the identified staff member that he was on probation, or otherwise mentioned anything that would indicate he had a criminal record. There were no other witnesses to the exchange between the complainant and the staff member.

The University also provided us copies of an arrest record for a [XXXXXXXXXXXX], date of birth [XXXXXX]. The documents provided indicated an arrest for aggravated assault with a deadly weapon, which is a third degree felony in Brazos, Texas, where the arrest occurred on March 6, 1994. The arrest resulted in a conviction on November 21, 1994 (stemming from a plea of no contest). The records also reflect that [XXXXXXXXXXXX] was arrested in Maricopa County, Arizona, which is the county where Tucson is located. In an interview with OCR, the complainant denied that the records the University provided are for him. Rather, the complainant indicates that the University has made a mistake in identity by relating the complainant to the person identified in the arrest record. When we spoke with the complainant, we asked that the complainant provide us his full name, date of birth, and an indication of the geographic locations and addresses where he has previously resided. The information the complainant provided is consistent with the information included in the arrest records. Consequently, we find that even if by some error the complainant is not the individual the University identified in the arrest record, it is reasonable for the University to have believed it is the complainant. Further, the University's reasonable belief that the complainant was convicted of a serious felony coupled with the complainant's failure to respond to the question regarding his prior criminal history on the University application are reasonable bases for his dismissal and consistent with University policy and procedures.

We next considered whether the complainant's dismissal was otherwise a pretext for prohibited discrimination. To complete this evaluation, we compared the complainant's treatment to similarly situated students. In this case, we compared the complainant's treatment to non-disabled students who failed to disclose felony convictions on their applications during the 2014-15 academic year and the 2015-16 academic year to date. This allowed us to evaluate whether the University is selectively enforcing its requirement (disclosure of felony convictions) against individuals with disabilities. The University provided the records of 31 students who were most recently dismissed for failing to disclose a felony on their applications. We reviewed the records

and information provided by the University and found that the complainant was the only student with a disability who was dismissed for failure to disclose a felony. Thus, we cannot conclude that the University is selectively enforcing the requirement against individuals with disabilities. The University followed its procedures for all individuals it reasonably believes failed to disclose a felony conviction on their University applications. We find insufficient evidence that the University discriminated on the basis of disability as alleged.

Additional Issues:

During the course of our investigation we identified potential compliance concerns unrelated to the complainant's allegations. The concerns identified are specific Section 504 requirements that the University identify a Section 504 coordinator and develop and implement procedures that ensure a prompt and equitable resolution to complaints of disability discrimination. Prior to the conclusion of the investigation of the complaint, the University expressed an interest and willingness in resolving the identified issues through a voluntary agreement (Agreement) with OCR. Pursuant to Section 302 of OCR's *Case Processing Manual*, resolution options were discussed with the University. The University has entered into the enclosed Agreement, which, when fully implemented, will resolve the identified concerns. The provisions of the Agreement are aligned with the OCR identified issues and are consistent with the applicable regulations. We will monitor the University's implementation of the Agreement until all provisions have been satisfied. With this letter, we are providing the complainant a copy of the Agreement. We will also keep the complainant apprised of monitoring activities related to this case.

Conclusion:

Based on the information and legal requirements discussed above, we find insufficient evidence to conclude that the University discriminated in violation of Section 504 and its implementing regulations as the complainant alleged. When fully implemented, the enclosed Agreement will address the procedural compliance issues identified during the course of our investigation. Accordingly, we are closing the investigative phase of this complaint effective the date of this letter and initiating the monitoring of the Agreement, which will continue until all terms of the Agreement are met.

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.

OCR routinely advises recipients of Federal funds entities that Federal regulations prohibit intimidation, harassment, or retaliation against those filing complaints with OCR and those participating in a complaint investigation. Complainants and participants who feel that such actions have occurred may file a separate complaint with OCR. Additionally, the complainant has a right to file a private suit in Federal court whether or not OCR finds a violation.

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

Page 7

released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Thank you for your cooperation in this matter. If you have any questions regarding this letter, please contact Sandra Sanchez, Civil Rights Attorney, at (303) 844-6096 or by email at Sandra.Sanchez@ed.gov. I can also be reached at (303) 844-6083 or at Angela.Martinez-Gonzalez@ed.gov.

Sincerely,

/s/

Angela Martinez-Gonzalez
Supervisory General Attorney

Enc. Resolution Agreement

cc: Dan Steimel, Esq.,
Assistant General Counsel
Grand Canyon University