

Resolution Agreement
University of California, Berkeley
OCR Docket #09-14-2251

The University of California, Berkeley (University), without admitting to any violation of federal laws, agrees to take the actions outlined in this Resolution Agreement (Agreement) to resolve compliance issues identified during the Office for Civil Rights' investigation of the above-referenced complaint and to ensure compliance with Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, 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 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35; accordingly, as follows:

1. The University agrees to ensure the timely provision of classnotes to students with disabilities for whom classnotes have been determined to be an appropriate accommodation.
2. The University has submitted to OCR procedures that conform to this Agreement. These procedures are Attached as Exhibit A, and include:
 - A. A statement (a) of the University's duty to comply with Section 504 and Title II, including the duty to ensure that communication with students with disabilities is as effective as communication with students without disabilities, and (b) that the University will give primary consideration to the request of the disabled student in determining which auxiliary aids and services are necessary to provide such effective communication;
 - B. Information regarding the Disabled Students' Program (DSP) staff person to be contacted for answers to students' questions or concerns regarding class notes.
 - C. When the student's DSP Specialist finds that classnotes are an appropriate and necessary accommodation supported by the student's documentation, classnotes will be provided. When other aids such as audio recording, a Livescribe pen, or class presentation materials are determined by the DSP Specialist to be an appropriate accommodation for the student, they will be specifically named in the student's Letter of Accommodation and will not be assumed to be an acceptable substitution for classnotes that are listed in the student's Letter of Accommodation. The DSP Specialist will promptly engage in an interactive process when responding to the student's request for classnotes;
 - D. The University's DSP will provide classnotes in a timely manner for every student for whom it has approved classnotes as an accommodation;
 - E. If a student makes a request for a notetaker 20 business days prior to the start of the semester for specific classes in which he or she is enrolled and is approved by DSP for such notes, the University will ensure that the notetaker will be provided by the student's third class;
 - F. During the period while the University is seeking to obtain a notetaker(s) pursuant to this Agreement, the University will immediately offer students appropriate interim

accommodations (e.g., tape recording device, Live Scribe pen, etc.) for all classes for which a notetaker has not yet been found;

- G. Once a notetaker is assigned to a student, notes will (if available) be provided retroactively to the first class the student attended or the date of the student's request for notetaking (whichever is later);
 - H. If the delay in providing a notetaker (after the student's request or start of classes, whichever is later), is for more than two weeks, the student may withdraw from the class pursuant to University withdrawal procedures, or remain in the class with appropriate interim accommodations;
 - I. If notes from a volunteer student from the class are not being provided to the student within 10 business days of the first day of class (or if later, DSP approval of the student's request for notetaking), the University will take additional steps to ensure that class notes are provided within 4 additional business days; these additional steps may include utilizing a University employee or paying an outside provider;
 - J. Once a notetaker is assigned to a student, notes will be provided to the student within 36 hours of the class lecture.
3. The University has provided the following individual remedies to the Complainant:
- a. The University retained a professional transcription service to transcribe into text all audio-recordings made by Complainant during Fall 2013 Social Work 250M and Spring 2014 Public Policy 190 classes. The University has provided the Complainant a transcription of any audio-recording she provided that was audible/comprehensible. The University could not complete transcriptions for all such recordings, as the transcription service found some of the recordings from Complainant's personal iPad were not audible. Complainant was provided with but did not use the DSP-issued audio recording devices for all recordings.
 - b. The Complainant is allowed one year from the date of this agreement to complete Social Work 250M and Public Policy 190.
 - c. The University waives for one year from the date of this agreement, the library fee normally imposed on students not currently enrolled at UC Berkeley.
 - d. The University has allowed the Complainant to resume the rate of repayment on her debt to the University as set out in the October 8, 2014 letter, and the terms of the October 8, 2014 letter shall remain in effect provided the Complainant makes such payments on a timely basis.
 - e. Upon request from the Complainant, for up to one year from the date of this agreement, in accordance with DSP standards DSP will issue Letters of Accommodation (and provide accommodations listed therein) with respect to the two courses subject of this case.

3. Notifications & Monitoring

- a. The University will distribute via email the revised DSP classnotes procedures to staff involved in the development and implementation of academic aids and services for students with disabilities, and will provide OCR a copy of such email within 14 business days of this agreement.
- b. The University will ensure that all online information and printed informational materials describing DSP notetaking services reflect the revised procedure and will provide OCR with links to and copies of the revised information within 30 days of this agreement.
- c. The University will notify the Complainant of the individual remedies listed above in section 2, and will provide OCR a copy of such notification within 14 business days of this agreement.
- d. For a one year period, the University will provide OCR with data regarding any students with disabilities approved for a notetaker by DSP who did not receive a notetaker within 7 business days of either the student's request or the start of class, whichever is later, with a reason for the delay, the steps taken to address the delay, and the date upon which the notetaker was ultimately provided. Such data can be provided in chart form and will be provided to OCR within 15 working days of the end of each semester.

GENERAL REQUIREMENTS

The University understands that OCR will not close the monitoring of this agreement until OCR determines that the University has fulfilled the terms of this agreement and is in compliance with Section 504 and its implementing regulation at 34 C.F.R. § 104.44 and Title II and its implementing regulation at 28 C.F.R. § 35.160, which were at issue in this case.

The University understands that by signing this agreement it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this agreement. Further, the University understands that during the monitoring of this agreement, if necessary, OCR may visit the University, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the University has fulfilled the terms of this agreement and is in compliance with Section 504 and its implementing regulation at 34 C.F.R. §104.44 and Title II and its implementing regulation at 28 C.F.R. §§ 35.130 and 35.160 with respect to the issues in this case.

The University understands and acknowledges that OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of this Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10, as incorporated in the Section 504 implementing regulation at 34 C.F.R. § 104.61), or judicial proceedings to enforce this Agreement, OCR shall give the University written notice of the alleged breach and sixty (60) days to cure the alleged breach.

On behalf of the University of California, Berkeley

Na'ilah Nasir, Vice Chancellor, Equity & Inclusion

Date:

_____/s/_____

_____12/15/15_____

Chief Campus Counsel Christopher Patti

Date:

_____/s/_____

_____12/15/15_____

EXHIBIT A

DSP Process for Classnotes

The procedures below describe steps taken by the University to fulfill its obligations under Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act, which includes ensuring that:

- 1) communication with students with disabilities is as effective as communication with students without disabilities, and
- 2) primary consideration is given to the request of the student in determining which auxiliary aids and services are necessary to provide such effective communication.

The Purpose and Provision of Classnotes

Class notes are not intended to substitute for class attendance by the student with a disability.

A student's creation of classnotes for personal use or study is more than a form of merely recording classroom information for later review and memorization to assist in recalling information presented to the student while attending class. The process of creating classnotes assists students in analyzing, synthesizing and organizing the information and concepts presented in the classroom into a cognitive framework customized to meet the individual student's unique learning needs.

Therefore, students whose disability interferes with their effectively taking notes may be offered an appropriate accommodation to enable them to create classnotes. When the student's DSP Specialist finds that classnotes are an appropriate and necessary accommodation supported by the student's documentation, classnotes taken by someone else will be provided to a student whose disability precludes effectively creating classnotes.

When other aids such as audio recording, a Livescribe pen, or class presentation materials are determined by the DSP Specialist to be an appropriate accommodation for the student, they will be specifically named in the student's Letter of Accommodation, and will not be assumed to be an acceptable substitution for classnotes that are listed in the student's Letter of Accommodation.

DSP Notetaking Process

The DSP Specialist will promptly engage in an interactive process when responding to the student's request for classnotes, and will provide classnotes in a timely manner for every student for whom it has approved classnotes as an accommodation;

Advantages of Submitting Your Request for Notetaking in Advance

If a student makes a request for a notetaker 20 business days prior to the start of the semester for specific classes in which s/he is enrolled and is approved by DSP for such notes, DSP will ensure that the notetaker will be provided by the student's third class.

If You Must Wait a Short Time for a Notetaker to be Found

During the period while DSP is seeking to obtain a notetaker, DSP will immediately offer students appropriate interim accommodations (e.g., tape recording device, Live Scribe pen, etc.) for all classes for which a notetaker has not yet been found;

If the delay in providing a notetaker (after the student's request or start of classes, whichever is later), is for more than two weeks, the student may withdraw from the class pursuant to University withdrawal procedures, or remain in the class with appropriate interim accommodations;

If notes from a volunteer student from the class are not being provided to the student within 10 business days of the first day of class (or if later, DSP approval of the student's request for notetaking), DSP will take additional steps to ensure that class notes are provided within four (4) additional business days, which may include relying upon someone to take classnotes who is not a student enrolled in the course.

Once a notetaker is assigned to a student:

- notes will begin being provided to the student within 36 hours of the class lecture.
- notes will (if available) be provided retroactively to the first class the student attended or the date of the student's request for notetaking (whichever is later).

Students should direct questions and concerns about class notes to their Disability Specialist, who may be reached by calling the main DSP Office at (510) 642-0518.