



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS, REGION XV

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REGION XV  
MICHIGAN  
OHIO

September 29, 2014

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Office of General Counsel  
Executive Offices  
Second Floor Library  
P.O. Box 5190  
Kent, Ohio 44242-0001

Re: OCR Docket #15-14-2153

Dear Mr. Ochmann and Ms. DeCaprio:

This letter is to notify you of the disposition of the complaints filed on February 26, 2014 and April 2, 2014, with the U.S. Department of Education's Office for Civil Rights (OCR), alleging discrimination against two students (Student A and Student B) on the basis of disability. Specifically, the two complaints—which OCR merged under a single case number, given above—alleged that during the XXXXXXXXXX academic year, Kent State University's (University) College of Podiatric Medicine (College) failed to provide Student A and Student B with appropriate academic adjustments, including extended time for Student A and Student B to complete their program, and failed to maintain appropriate disability-related grievance procedures and to have a Section 504 coordinator.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance from the U.S. Department of Education (the Department). OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 *et seq.*, and its implementing regulation, 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance from the Department and as a public entity, the University is subject to Section 504 and Title II. Accordingly, OCR had jurisdiction to investigate this complaint.

Based on the complaint allegations, OCR investigated the following issues:

1. 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 against a qualified student with a disability on the basis of disability in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.44;
2. whether the University failed to make reasonable modifications in policies, practices, or procedures when the modifications were necessary to avoid discrimination on the basis of disability in violation of the Title II implementing regulation at 28 C.F.R. § 35.130(b)(7);
3. whether the University failed to designate an employee to coordinate its efforts to comply with Section 504 and Title II in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.7(a) and the Title II implementing regulation at 28 C.F.R. § 35.107(a); and
4. whether the University failed to adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504 and Title II in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.7(b) and the Title II implementing regulation at 28 C.F.R. § 35.107(b).

Because the Title II implementing regulation provided no greater protection than the Section 504 implementing regulation with respect to the issues raised in these complaints, OCR applied Section 504 standards in analyzing the complaint allegations.

In its investigation of this complaint to date, OCR interviewed Student A and Student B, another student with a disability in their program, and one of the students' University instructors. OCR also spoke a number of times with University counsel. In addition, OCR reviewed documentation submitted by the University and the students. After a careful review of this information, we have determined that, with respect to the allegations regarding disability-related grievance procedures and a Section 504 coordinator, these matters are currently being addressed in the monitoring of a separate OCR case against the University, case #15-08-2026, and these issues will continue to be handled through that monitoring. With respect to the remaining allegation, prior to the completion of OCR's investigation, the University asked to voluntarily resolve the complaint pursuant to Section 302 of OCR's Complaint Processing Manual (the Manual) and signed the enclosed resolution agreement (the Agreement), which, once implemented, will fully address that allegation. We set forth below a summary of OCR's investigation to date.

**OCR’s Investigation to Date**

**I. Alleged Failure to Provide Appropriate Academic Adjustments**

**A. Background**

Information obtained to date shows that, in 2012, the University acquired what was then known as the Ohio College of Podiatric Medicine (the College). Counsel confirmed that the University has been in the process of integrating the College’s disability-related policies and procedures with those of the broader University. The University’s disability-related policies and procedures for satellite campuses are currently under review in a separate OCR case currently in monitoring (#15-08-2026). Counsel stated in writing that those policies and procedures will apply to the College.

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told them that this was not permitted, because the program was only for students with  
“personal struggles” other than disability issues or those with a low MCAT score or  
undergraduate GPA. On other occasions, staff told them they would not be considered  
for the extended-year program because it no longer existed. Staff also told them that  
students with disabilities are handled in a uniform manner, with certain grants of  
extended time and the ability to take exams in the library as the only available disability-  
related services.

The students said the University’s responses to their individual requests for academic adjustments were vague, confusing, and arbitrary. For example:

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The other student interviewed told OCR about similar situations in which approved academic adjustments were not clearly communicated to her and were given in an inconsistent manner.

All three students also described a range of problems in the administration of their academic adjustments, as best they could determine what those adjustments were. For example:

- Throughout the fall of XXXX, they said that the University prevented them and other students with disabilities from utilizing extended time on quizzes in multiple courses. Although the computers on which they took their quizzes were pre-set to permit them time and a half, once the standard amount of time was up (i.e., the time limit set for the rest of the class), proctors instructed the class to close their computers and, frequently, would begin reviewing the answers. Not wanting to appear to be cheating or to disclose themselves as people with disabilities, the students closed their computers as instructed and did not use the extra time.
- The students said they encountered problems accessing extended time in the laboratory portions of their exams.<sup>1</sup> On those exams (including XXXXXXXX XXXXXX in the fall of XXXX and XXXX XXXXXXXX XXXXXXXX in the spring of XXXX, they did not get full time and a half but rather received only 10-20 minutes extra, depending on instructor preference. All students with disabilities were treated the same in this regard.

The students further explained that during this additional time, students with disabilities were subjected to different rules than those governing the rest of the class. For example, the laboratory exam began with the entire class rotating among a number of stations set up with cadavers. Each student was assigned to a station and had one minute to answer a question about what he or she observed at that station. A buzzer would then sound, signaling that it was time for all students to move on to the next station. A number of rest stations were sprinkled within the area for rotations where students could pause or check their work for a minute. Teaching Assistants (TAs) were present to proctor the exams but mainly sat on stools spaced out throughout the room and supervised students from a distance. Once the initial laboratory exam session concluded, the rest of the class exited while students with disabilities stood to the side.

The students with disabilities then got a set, consistent amount of extra time to complete their exams, with no individual variations based on each student's disability-related needs. In addition, the instructor assigned individual TAs to follow each student around as he or she moved from station to station throughout the laboratory. The students reported that this made it difficult to concentrate, as they felt they were being watched and followed. From each student's assigned starting station, students were permitted to use the extra time however he or she would like. For example, a student could use all 10 minutes on one question or split it between multiple stations to work on a number of questions. However, students could move only forward in the rotation, not backwards, and they could not move to a station occupied by another student. Thus, if a student needed to use extra time on a particular station and another student was occupying that station for the entire 10 minutes, the student had no opportunity to see that station. Additionally, there were no rest stations in use during the extra 10 minutes.

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<sup>1</sup> Most of the first year courses consisted of lecture and laboratory components, each of which had separate exams.

- The students were unsure whether they were entitled to have quizzes in a reduced-distraction environment; sometimes they were permitted to take quizzes in a conference room, but, at other times, they were not, such as in XXXXX XXXXXXXXXXX XXXXXXXX, XXXXXXXXXXXXXXX, and XXXXXXX XXXXXXX XXXXXXX. One student said that, after advocating to take those quizzes in private settings, the students with disabilities were permitted to take XXXXX XXXXXXXXXXX XXXXXXX and physical diagnosis quizzes in a conference room. However, when another student asked if the group could also take their XXXXXXXXXXXXXXX quizzes in the conference room, they were told no. Even when taking exams in the more private setting of the conference room, the students reported that the room—while quieter than the main classroom—was still “noisy and distracting.” Approximately seven students with disabilities took their quizzes around a conference table, in a conference room with glass doors that were never shut. The conference room itself was in a high traffic area between faculty and administrative offices, where other students came frequently to pick up tests or speak with staff.
- The students said that they were told by staff members throughout the year that disability-related services for laboratory exams, as well as certain types of quizzes (such as those that involved case studies or those that the instructor labeled “fun activities”), were not permitted because they were “clinical” in nature.

None of the students reported being able to locate a disability-related grievance procedure for the College, despite asking multiple staff members where to find one. Student A said she attempted to contact the disability services office on the University’s main campus for assistance, but the office’s web site did not list the College as a supported campus. In addition, the students said that, despite asking many times, they obtained no information from staff as to who served as the College’s Section 504 coordinator.

OCR interviewed xxx xxxxxxxxxxx xxxxxxxxxxx xxx xxxxx xxxxxxx xxx xxxxx xxxxxxxxxxx xxxxxxx xxxxxxxxxxxxxxxxxxx xxx xxxx xxxxx xx xxx xxxxxxxxxxx xxxxxxx xxxxx xxx xxxxx xxxxxxxxxxx xxx xxx xxxxx xxxxx xxx xxxxxxx xxx xxxxx xxx xx xxxxxx She said that she had only limited knowledge of the College’s process with respect to students with disabilities, had no training in this area, and had no awareness of who oversees disability-related matters for the College. She said that no student had ever asked her about disability-related needs or concerns.

xxx xxxxxxxxxxx said that she had no involvement with the provision of extended time during lecture exams but that she oversaw the process in connection with laboratory exams. Substantiating the students’ account, she said that students with disabilities are provided 20 extra minutes in XXXXX XXXXXX and 10 extra minutes in XXXXX XXXXXXX XXXXXXX, regardless of the length of the general exam (which could take 60-80 minutes, depending on the number of questions.) She said the amount of extra time students with disabilities could obtain on laboratory exams was determined by the College 10-20 years ago. She said this amount of time was appropriate to the clinical setting and prepared students for real-life practice. She said that providing students with

time and a half would “significantly alter” the curriculum. She confirmed the accuracy of the remainder of the students’ account of those exams; however, she said that the purpose of assigning each student a personal TA during the “extra time” period was to make sure students did not get lost in the room.

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### **B. Legal Standards Concerning Provision of Academic Adjustments**

The Section 504 regulation provides, at 34 C.F.R. § 104.44(a), that a recipient shall make such modifications to its academic requirements as are necessary to ensure that such requirements do not discriminate, or have the effect of discriminating, against a qualified person with a disability on the basis of disability. The Section 504 regulation defines a person with a disability, at 34 C.F.R. § 104.3(j)(1)(i), as any person who has a physical or mental impairment which substantially limits one or more major life activities. With respect to postsecondary education services, pursuant to 34 C.F.R. § 104.3(l)(3), a qualified person with a disability is a person with a disability who meets the academic and technical standards requisite to admission or continued participation in the recipient’s educational program or activity.

With appropriate notice to students, postsecondary institutions such as the University may require students with disabilities to follow reasonable procedures to request academic adjustments. Students are responsible for knowing and following these procedures. Students who want a university to provide such services must let the university know that they need assistance for a reason related to a mental or physical impairment that could constitute a disability.

Furthermore, a university may generally require a student to provide documentation that permits the institution to determine that the student currently has a disability, that is, an impairment that substantially limits a major life activity, and that supports the need for an academic adjustment so that the institution may work with the student to identify appropriate services. Institutions may set their own requirements for documentation so long as they are reasonable and comply with Section 504. A university may, for example, require that a student’s documentation be prepared by an appropriate professional, such as a medical doctor, psychologist, or other qualified diagnostician. The kind of documentation necessary to evidence that a student possesses a disability varies depending on the nature of the disability. A diagnosis of impairment alone does not establish that an individual has a disability within the meaning of Section 504.

A university is not required to conduct or pay for an evaluation to document a student’s disability and to support the need for an academic adjustment. Should a student provide documentation that does not contain information sufficient to establish whether the student currently has a disability and to support the need for services, a university should inform the student in a timely manner specifically what additional documentation is needed.

A university is required to afford people with disabilities an equal opportunity to obtain the same results, gain the same benefits of the university's program, and reach the same levels of achievement as people without disabilities, but a university is not required to guarantee identical results or certain levels of achievement, such as a passing grade.

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. Students should not wait until after completing a course or activity or receiving a poor grade to request services and then expect the grade to be changed or to be able to retake the course.

Under both Section 504 and Title II, postsecondary institutions are not required to make modifications that would fundamentally alter the nature of the service, program, or activity. While a university must accommodate course or other academic requirements to the needs of an individual student with a disability, academic requirements that can be demonstrated by the institution to be essential to the instruction being pursued by such student or to any directly related licensing requirement will not be regarded as discriminatory and need not be changed. With regard to whether a requested academic adjustment or auxiliary aid would fundamentally alter an essential program requirement, courts and OCR give deference to an institution's academic decision-making. However, in order to receive such deference, relevant officials within the institution are required to have engaged in a reasoned deliberation, including a diligent assessment of available options.

An appropriate deliberative process should include a group of people making the decision who are trained, knowledgeable, and experienced in the relevant areas. While it reasonably might be expected that a course instructor would be included in the process of determining what requirements are essential to participation, allowing an individual professor to have ultimate decision-making authority or to unilaterally deny an accommodation is not in keeping with the diligent, well-reasoned, collaborative process that warrants the accordance of deference by OCR to the judgments of academic institutions. The decision makers must consider a series of alternatives, and the decision should be a careful, thoughtful, and rational review of the academic program and its requirements. In addition, a postsecondary institution also does not have to provide an academic adjustment that would result in undue financial or administrative burdens, considering the institution's resources as a whole. The institution should still provide adjustments or services that do not reach that level.

### **C. Voluntary Resolution**

As noted above, before OCR completed its investigation, the University expressed an interest in resolving the allegation regarding the provision of academic adjustments under Section 302 of the Manual. The Manual provides that a complaint may be resolved before the conclusion of an OCR investigation if a recipient asks to resolve the complaint and signs a resolution agreement that addresses the complaint allegations. Such a request

does not constitute an admission of liability on the part of the University, nor does it constitute a determination by OCR that the University has violated any of the laws that OCR enforces. The provisions of the resolution agreement are to be aligned with the complaint allegations or the information obtained during the investigation and consistent with applicable regulations.

The University has signed the enclosed resolution agreement (Agreement), which, once implemented, will fully address the complaint allegations in accordance with Section 504 and Title II. Under the terms of the enclosed Agreement, the University will:

- reimburse Student A for the cost of tuition, books, University-required fees, and University-required supplies she paid for the fall XXXX and spring XXXX semesters;
- reimburse Student B for the cost of tuition, books, University-required fees, and University-required supplies he paid for the spring XXXX semester;
- offer Student A and Student B the opportunity to re-enroll in the College in the fall of XXXX or XXXX, at the same cost as they would have incurred had they participated in and completed their program as scheduled for the semesters specified above, respectively. Should they choose to re-enroll, their needs for academic adjustments based on disability will be handled according to an appropriate process, including policies and procedures approved by OCR;
- offer Student A and Student B the option of having their transcripts modified to reflect withdrawal, rather than failure, in specific courses where provision of academic adjustments was of concern; and
- return Student A and Student B to good standing with the University.

In addition, on July 15, 2014, OCR provided training to relevant College staff on the requirements of Section 504 and Title II, including the prohibition against discrimination on the basis of disability, as well as who is eligible for Section 504 and Title II protection, student and institutional responsibilities relating to disability-related academic adjustments and auxiliary aids and services, limitations on such services, how institution should work with students to determine such services, requirements for grievance procedures, prohibited retaliation, and the need to designate a person or persons to ensure compliance with Section 504 and Title II. In light of the signed agreement and this training, as well as the policy revisions and training currently underway in the monitoring of another case involving the University, as described below, OCR has determined that this complaint allegation is resolved. OCR will monitor the University's implementation of the Agreement. Should the University fail to fully implement the agreement, OCR will reopen the case and resume its investigation of the complaint allegation.

## **II. Alleged Failure to Designate a Section 504/Title II Coordinator and Failure to Have Appropriate Grievance Procedures**

The complaint alleged that the University failed to maintain appropriate disability-related grievance procedures and to have a Section 504 coordinator. As noted above, these matters are currently being addressed in the monitoring of a separate OCR case against



the University, case #15-08-2026, in which those issues will be handled for all of the University's satellite campuses as well as its main campus. OCR did not, therefore, conduct a separate investigation of those allegations.

### **III. Conclusion**

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 he or she has filed a complaint or participated in the complaint resolution process. If this happens, a complainant may file another complaint alleging such treatment.

The complainant may file a private suit in federal court whether or not OCR finds a violation.

We appreciate your cooperation and that of the University during the preliminary investigation and resolution of this complaint. If you have any questions about this letter or OCR's resolution of this case, please contact me at (216) 522-XXXX or at XXXXXXXXXXXX. You may also contact XXX XXXXXXXX XXXXXXX at (216) 522-XXXX or at XXXXXXXXXXXX. For questions about implementation of the Agreement, please contact XXX XXXXXXX, who will be monitoring the University's implementation of the Agreement. We look forward to receiving the University's first monitoring report by January 2, 2015. Should you choose to submit your monitoring reports electronically, please send them to [OCRCleMonitoringReports@ed.gov](mailto:OCRCleMonitoringReports@ed.gov).

Sincerely,

/s/

Karla K. Ussery  
Senior Attorney

Enclosure