



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

REGION IX  
CALIFORNIA

50 UNITED NATIONS PLAZA  
MAIL BOX 1200; ROOM 1545  
SAN FRANCISCO, CA 94102

October 20, 2020

**SENT VIA ELECTRONIC MAIL**

Caroll Ryan, Ph.D.  
President/CEO  
American University of Health Sciences

(In reply, please refer to # 09-20-2413.)

Dear President/CEO Ryan:

The U.S. Department of Education (Department), Office for Civil Rights (OCR) has resolved the above-referenced complaint against the American University of Health Sciences (the University). The Complainant alleged that the University discriminated against her on the basis of disability.<sup>1</sup> Specifically, OCR investigated whether, during the spring 2020 quarter, the University failed to provide the Complainant with her approved academic adjustments or auxiliary aids in her XXXXXXXXXXXX class.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. §794, and its implementing regulation, at 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability in programs and activities operated by recipients of federal financial assistance. As a recipient of federal financial assistance, the University is subject to Section 504 and the implementing regulations.

OCR gathered evidence by reviewing documents and correspondence provided by the Complainant and the University and by interviewing the Complainant. Prior to OCR completing its investigation, the University voluntarily agreed to address the areas of concern identified by OCR with respect to the issue investigated. This letter summarizes the applicable legal standards, the relevant facts obtained during the investigation, and the terms of the resolution reached with the University.

**Legal Standard**

Under the requirements of Section 504, a student with a disability is obligated to notify the University of the nature of the disability and the need for a modification, adjustment, aid or service. Once the University receives such notice it has an obligation to engage the student in an interactive process concerning the student's disability and related needs. As part of this process, the University

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<sup>1</sup> OCR previously provided the University with the identity of the Complainant. We are withholding her name from this letter to protect her privacy.

may request that the student provide documentation, such as medical, psychological or educational assessments, of the impairment and functional limitation.

Additionally, the Section 504 regulations, at 34 C.F.R. § 104.43(a), provide that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any postsecondary education program of the University.

The Section 504 regulations, at 34 C.F.R. § 104.44(a), require the University to make modifications to its academic requirements that are necessary to ensure that such requirements do not discriminate, or have the effect of discriminating, against qualified individuals with disabilities. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific required courses, and adaptation of the manner in which courses are conducted. However, academic requirements that a recipient can demonstrate are essential to the program of instruction being pursued or to any directly related licensing requirement will not be regarded as discriminatory.

### **Facts Gathered Thus Far**

The Complainant stated that she is enrolled in the Bachelor of Science Nursing Science program at the University. The University is on a quarter system. Between March XX, 2020 and June XX, 2020, the Complainant was enrolled in the XXXXXXXXXXXX XXX class with the professor (XXXXXXXXXXXX XXX Professor).

The Complainant is diagnosed with a disability, and she notified the University's Student Services Office of her disability. The Complainant and the University provided OCR a copy of the completed University's Disability Notification and Accommodation form that the Complainant signed on April XX, 2020 requesting 1.5 extra time on tests, that was submitted to the Director of Student Services. The Director of Student Services immediately forwarded it and the Complainant's medical documentation to the Provost, who had the authority to approve the disability accommodations request. On April XX, 2020, the Provost approved the Complainant's accommodation request for 1.5 extra time on tests. On April XX, 2020, the Director of Student Services forwarded a copy of the Complainant's approved disability accommodations to the Complainant's professors, including her XXXXXXXXXXXX XXX Professor.

The Complainant stated that there were weekly quizzes in her XXXXXXXXXXXX XXX class and approximately eight quizzes overall in the class for the quarter. She stated that initially each quiz was 30 minutes long. The first quiz was on April XX, 2020 and the second quiz was on April XX, 2020.

The Complainant provided OCR with an email that she sent to her XXXXXXXXXXXX XXX Professor on April XX, 2020, asking him if she could take the quiz earlier so she would not miss lecture time. The XXXXXXXXXXXX XXX Professor responded that the quiz was adjusted to 45 minutes for every student in the class.

On April XX, 2020, the Complainant sent an email to the Director of Student Services expressing concern that her XXXXXXXXXXXX XXX Professor would not provide her with her approved 1.5 time on an upcoming quiz and requested assistance. On the same day, the Director of Student Services responded and said that she would forward the Complainant's email to the Provost and the Dean to make sure her testing accommodation was implemented.

The Complainant stated that due to the COVID-19 pandemic, the University began virtual instruction in March 2020. On May XX, 2020, the University implemented an online testing program called Proctorio to monitor students while they took tests. According to the Complainant, prior to allowing students to access the test, Proctorio completes a pretest of the student's computer system to make sure the computer camera, video, and microphone are working. The Complainant stated that it took her ten minutes before she could access the test because of problems she experienced at the pretest stage. This caused her more stress and anxiety because this used up test-taking time. The Complainant stated that she spoke to Student Services, the Dean of Nursing, and CEO and copied the Provost, explaining the problems she experienced with Proctorio and requesting a disability accommodation to defer implementation of Proctorio for her until the summer quarter. She stated that the University did not grant her request and she was not provided with any alternatives for online test-taking. The Complainant stated that her problems with Proctorio had negatively impacted her grades in the XXXXXXXXXXXX XXX class in spring 2020. According to the University, all students received general training on Proctorio, and the University provided multiple one-on-one training and assistance sessions to the Complainant on how to utilize Proctorio correctly throughout the XXXXXXXXXXXX XXX course.

The University stated that all the students in the XXXXXXXXXXXX XXX class were experiencing difficulties using the new testing technology so the XXXXXXXXXXXX XXX Professor gave 1.5 extended time on the tests that he provided the Complainant as a disability accommodation to all the other students in the class. The University stated, "The Instructor did not understand at that time that by allotting extra time to everyone, it would invalidate the accommodation already provided to [the Complainant]."

The Complainant provided OCR with an email that she sent to the Director of Student Services on May XX, 2020, stating that her XXXXXXXXXXXX XXX Professor was not providing her with her approved disability testing accommodations and asked for her assistance.

The Complainant provided OCR with an email response that she received on May XX, 2020, from the Director of Student Services. The Director of Student Services informed the Complainant that she would contact the XXXXXXXXXXXX XXX Professor and notify the Provost that day about her concerns.

OCR reviewed a copy of the Provost's May XX, 2020 email response to the Complainant. The Provost stated that he was trying to reach the XXXXXXXXXXXX XXX Professor to discuss this issue with him and he would let the Complainant know the outcome. The Complainant subsequently responded that she had also contacted the Dean and was waiting to hear back from him. She stated that she did poorly on quiz 2 because her testing accommodation request had yet to be approved.

The final was held on June XX, 2020, and it had 50 questions and all students were given 1 hour and 15 minutes to complete it. The Complainant stated that she was not provided 1.5 extended time on the final and failed the final.

On June XX, 2020, the University stated that the Complainant spoke with the Dean of Nursing about her failure in the class and that she was not provided her approved testing accommodations. In response, the University created a makeup remediation exam that the Complainant and other students who failed the course could take. The 80-question makeup remediation exam was held on June XX, 2020. Other students had two hours to complete the remediation exam, and the Complainant had three hours.

### **Analysis**

Based on the facts described above, OCR has concerns that the XXXXXXXXXXXX XXX Professor may have failed to provide the Complainant with her testing accommodations. Specifically, OCR is concerned that the Professor did not provide the Complainant with her approved 1.5 extra time on tests, including quizzes, and instead extended the test time for all students by 1.5 so that everyone, including the Complainant, received 45 minutes. The Complainant also did not receive her extra time accommodation for the final in XXXXXXXXXXXX XXX. Though the Complainant provided notice to University administrators that the Professor was not implementing her approved accommodations, including via email on April XX, 2020 and May XX, 2020, the University was unable to ensure that the Complainant was able to receive her accommodations in XXXXXXXXXXXX XXX in a reasonably prompt manner. The evidence thus far, also raises concerns that once the University went virtual, the Complainant may not have received extra time due to the problems she experienced at the pretest stage on the Proctorio platform.

OCR is also concerned that the University did not engage in an interactive process with the Complainant regarding her request for accommodations in the online context. Based on the evidence gathered thus far, the Complainant requested disability accommodations due to the problems she experienced with Proctorio, and the University provided her training on correct Proctorio use but did not provide her with alternatives for online test-taking. OCR is concerned that the University did not engage in an interactive process with the Complainant concerning her disability and related needs after the XXXXXXXXXXXX XXX course moved online.

Prior to concluding its investigation and to address the issue alleged in the complaint, the University, without admitting to any violation of law, entered into the enclosed Resolution Agreement (Agreement) which is aligned with the complaint allegation and the information obtained by OCR during its investigation.

### **Conclusion**

Based on the commitments made in the enclosed Agreement, OCR is closing the investigation of this complaint as of the date of this letter and notifying the Complainant concurrently. When fully implemented, the Agreement is intended to address the complaint allegations. OCR will monitor the implementation of the Agreement until the University is in compliance with the terms of the Agreement. Upon completion of the obligations under the Agreement, OCR will close the case.

This concludes the investigation of this complaint. OCR's determination in this matter 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. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

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, retaliate, 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, it will seek to protect, to the extent provided by the law, personal information that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact Annie Lee at [annie.lee@ed.gov](mailto:annie.lee@ed.gov) and Danette Ng at [danette.ng@ed.gov](mailto:danette.ng@ed.gov).

Sincerely,

/s/

Zachary Pelchat  
Team Leader

Enclosures (1): Agreement

cc: Marilyn Uvero, Provost, and Ivy Javaluyas, Director of Student Services, (via email only)