



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

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February 12, 2019

Dr. P. Barry Butler
President
Embry Riddle Aeronautical University
600 South Clyde Morris Blvd.
Daytona Beach, FL 32114

Re: OCR Complaint No. 04-18-2311

Dear Dr. Butler:

The Office for Civil Rights (OCR) of the U.S. Department of Education (Department) has completed its investigation of the complaint we received on July 12, 2018 against Embry Riddle Aeronautical University (University). The Complainant alleged that the University discriminated against the Student on the basis of disability. Specifically, the Complainant alleged that the University discriminated against the Student when it:

1. failed to effectively implement Student's accommodations for: (a) (b)(6); (b)(7)(C) and (b) (b)(6); (b)(7)(C) and
2. denied his request for: (a) (b)(6); (b)(7)(C) (b) (b)(6); (b)(7)(C) and (c) (b)(6); (b)(7)(C)

Additionally, the Complainant alleged that the University's Testing Modifications Policies and Procedures discriminate and/or have the effect of discriminating against students with disabilities.

As a recipient of Federal financial assistance from the Department, the University is subject to the provisions of Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. §794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability. Accordingly, OCR has jurisdiction over this complaint.

OCR reviewed documents provided by the Complainant and the University and interviewed the Complainant, Student, and University's Disability Services Director. However, before OCR completed its investigation, on October 11, 2018, the University expressed a willingness to voluntarily resolve the complaint by Section 302 of OCR's *Case Processing Manual* and taking the steps set out in the enclosed Resolution Agreement. The following is a discussion of the relevant legal standards and information obtained by OCR during the investigation that informed the development of the Resolution Agreement.

Background

Testing Modifications Form

The Disability Support Services (DSS) Policies and Procedures state that the “Testing Modifications Form (white form) must be completed for each quiz or exam to be taken with an accommodation.”

The DSS Testing Modifications Form is a one-page form where the student enters basic contact and course information (ex. name, student #, phone #, course, instructor name, exam date, exam time, instructor signature) and check boxes to identify the modifications requested (ex. extended time, reduced distraction environment, and other). The bottom portion of the form is filled out, signed, and dated by the faculty member. It includes check boxes for the faculty member to identify the materials the student may use during the exam and instructions for the DSS office regarding how to provide the completed exam to the faculty member (ex. instructor pick up, student deliver, scan and e-mail, or campus mail).

During an interview with OCR, the Student stated that he was notified of the requirement to complete the Testing Modifications Form two (2) days prior to each test or quiz in order to receive (b)(6); (b)(7)(C)

During an interview with OCR, the DSS Director confirmed that the Testing Modifications Form should be completed for each test or quiz at least 48 hours prior. The Testing Modifications Form is required for each test and quiz for scheduling purposes since some students, although eligible to test in DSS, may elect to test without their approved accommodations. The portion of the form where the faculty member identifies items each student is permitted to have during the test or quiz ensures that DSS is aware of which items the student is allowed to have during the test or quiz, consistent with all others students enrolled in the course. The student completes the top portion of the Testing Modifications Form and takes it to the applicable faculty member for completion. At the time the above referenced OCR complaint was filed, the procedure was that the DSS copy of the Testing Modifications Form and the applicable test or quiz could be returned via the following methods: (1) campus mail, (2) faculty can submit to DSS, or (3) student can return it to DSS. However, the DSS Director stated that the DSS office has modified its procedure to ask faculty to electronically return the test and Testing Modification Form to the DSS office after the student submits the form to the applicable faculty member.

(b)(6); (b)(7)(C) on Testing in (b)(6); (b)(7)(C)

As stated above, the DSS Policies and Procedures state that the “Testing Modifications Form (white form) must be completed for each quiz or exam to be taken with an accommodation.”

On (b)(6); (b)(7)(C) the DSS approved (b)(6); (b)(7)(C) as an accommodation for the Student for the (b)(6); (b)(7)(C) semester.

On (b)(6); (b)(7)(C) the Student sent an e-mail to his (b)(6); (b)(7)(C) Instructor stating, “I am the student with (b)(6); (b)(7)(C) so I am emailing you so you can adjust the (b)(6); (b)(7)(C) accordingly.” The (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C) Instructor requested clarification and the Student replied stating that he wanted (b)(6); (b)(7)(C) on quizzes and tests and that the DSS office told him that the Professor could make the (b)(6); (b)(7)(C) go away. The (b)(6); (b)(7)(C) Instructor replied advising the Student that she could not make any modifications to the course without seeing the Student's official record of accommodations and advising the Student to make an appointment with her after he received official approval of his accommodations so they could discuss his accommodations within the context of the course.¹

On (b)(6); (b)(7)(C) the Disability Support Services Office (DSS) sent an e-mail to the Student's professors advising that the Student was approved for (b)(6); (b)(7)(C) for quizzes, tests, and exams for the semester.

During an interview with OCR, the DSS Director confirmed that the Student was approved for (b)(6); (b)(7)(C) on testing for all courses, including (b)(6); (b)(7)(C). However, she advised that the Student did not receive (b)(6); (b)(7)(C) on his exams for (b)(6); (b)(7)(C) because he did not complete the Testing Modifications Form two days prior to the exam in order to request to take the applicable exam with his approved accommodations. The DSS Director stated that the Student completed the Testing Modifications Form two days prior to exams for exams in other courses that semester.

During an interview with OCR, the Student stated that he was aware of the policy and procedure requiring that he complete the Testing Modifications Form two days prior to each test or quiz in order to request to utilize (b)(6); (b)(7)(C) on the applicable test or quiz in DSS. The Student stated that at the beginning of the course, in (b)(6); (b)(7)(C) he e-mailed his (b)(6); (b)(7)(C) Instructor requesting that she change (b)(6); (b)(7)(C) for all quizzes or tests because he was approved for (b)(6); (b)(7)(C). The Student alleged that he informed DSS of his conversation with the (b)(6); (b)(7)(C) instructor. However, the Student was unable to recall who he spoke to in the DSS office or their response to him. The Student stated that he did not complete the Testing Modifications Form for any test or quiz in his (b)(6); (b)(7)(C) class because it was an online course with numerous tests and quizzes and he was only on campus on Tuesday and Thursday of each week. The Student stated that he completed the Testing Modifications Form for all other courses that semester and received his approved accommodations.

(b)(6); (b)(7)(C)

The University received the Student's Psychological Evaluation dated (b)(6); (b)(7)(C) where the Student was diagnosed with (b)(6); (b)(7)(C)

¹ During the University's investigation of the Student's complaint, the (b)(6); (b)(7)(C) Instructor wrote that the Student's official accommodation was for (b)(6); (b)(7)(C) and she asked him how much (b)(6); (b)(7)(C). The Student responded that he did not want any (b)(6); (b)(7)(C). The (b)(6); (b)(7)(C) Instructor alleged that she told the Student that was not in the approved accommodation and that he would need to provide documentation from DSS reflecting that he was approved for (b)(6); (b)(7)(C) because it would require her to restructure the course. The Instructor never received a modification of the Student's approved accommodations advising that the Student was approved for (b)(6); (b)(7)(C) or (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

On (b)(6); (b)(7)(C) the Student called DSS and requested a (b)(6); (b)(7)(C) accommodation.

On (b)(6); (b)(7)(C) DSS approved the following accommodations for the Student for (b)(6); (b)(7)(C) semester: (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C) However, the handwritten notes indicate that the Student met with DSS and requested (b)(6); (b)(7)(C) as an accommodation on (b)(6); (b)(7)(C) The handwritten notes indicate that in response to the request for (b)(6); (b)(7)(C) as an accommodation, the DSS approved the Student to use a (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) classroom lectures and (b)(6); (b)(7)(C) written on the board and class PowerPoint slides. The Student was supposed to let DSS know the effectiveness of this accommodation during his weekly meetings with DSS.

On (b)(6); (b)(7)(C) the DSS Office sent an e-mail to the Student's professors advising that the Student was approved for the following accommodations for the semester starting (b)(6); (b)(7)(C)

(b)(6);

1. (b)(6); (b)(7)(C)
- 2.
- 3.
- 4.
- 5.

On (b)(6); (b)(7)(C) the Student requested a (b)(6); (b)(7)(C) for (b)(6); (b)(7)(C) On (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) the Student made a second request for a (b)(6); (b)(7)(C) in (b)(6); (b)(7)(C) which was approved.

On (b)(6); (b)(7)(C) DSS wrote an e-mail to the Student stating, "I know you have some concerns in reference to (b)(6); (b)(7)(C) however (b)(6); (b)(7)(C) are on a volunteer basis from within the classroom. In the event that we cannot get a (b)(6); (b)(7)(C) for a class, we can also look into other means of assistance if possible."

On (b)(6); (b)(7)(C) the DSS sent a notice to an instructor advising that the Student was approved for the following accommodations in the College Math for (b)(6); (b)(7)(C) and English (b)(6); (b)(7)(C) courses:

1. (b)(6); (b)(7)(C)
- 2.

On (b)(6); (b)(7)(C) DSS sent an e-mail to the Student's professors regarding (b)(6); (b)(7)(C). The e-mail advised the professors that there is at least one student enrolled in their course who requires the assistance of a (b)(6); (b)(7)(C). It requests that the professors assist DSS in identifying a student in the class who the professor believes will be a dependable (b)(6); (b)(7)(C) and/or asks that the professor announce that DSS is seeking a volunteer (b)(6); (b)(7)(C) for the course and that the volunteer will receive compensation for their services.

On (b)(6); (b)(7)(C) DSS sent an e-mail to the (b)(6); (b)(7)(C) Instructor requesting a referral for a student (b)(6); (b)(7)(C) in the class. The e-mail also stated, "[the Student and the DSS Director] discussed the accommodation for (b)(6); (b)(7)(C) on assignments for summer semesters; [the DSS Director] explained to [him] that he should discuss any (b)(6); (b)(7)(C) on an as needed basis with his Professors. The Student said that he felt it should be an across the board approved accommodation [because] it would prevent him from having to ask each time."

On (b)(6); (b)(7)(C) DSS obtained a (b)(6); (b)(7)(C) for the Student's (b)(6); (b)(7)(C) course.

On (b)(6); (b)(7)(C) DSS spoke to the Student's Math Instructor for Summer A term. The Math Instructor informed DSS that the Student was not making any attempts to (b)(6); (b)(7)(C) had not completed any assignments, had never requested any assistance from her, and did not attend tutoring or lab sessions. The (b)(6); (b)(7)(C) Instructor advised that she stayed in class an extra hour to assist students who are having difficulty and the Student never stayed after class or met with her during her office hours. She stated that she had offered him (b)(6); (b)(7)(C) to turn in assignments but he had not turned in any assignments.

On (b)(6); (b)(7)(C) the DSS approved the following accommodations for the Student for the Summer B semester: (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)
(b)(6); (b)(7)(C) The Student was not approved for (b)(6); (b)(7)(C) on assignments. The handwritten note reads, "please consult with instructor on an [as] needed basis. Disability does not require an [overall] accommodation for (b)(6); (b)(7)(C) on assignments."

On (b)(6); (b)(7)(C) the Student signed a (b)(6); (b)(7)(C) Notice of Acknowledgement regarding stating that DSS is searching for a volunteer (b)(6); (b)(7)(C) for his courses. The document stated that the Student is required to continue to (b)(6); (b)(7)(C) himself and DSS can randomly ask him to provide proof of (b)(6); (b)(7)(C) to verify that he is complying with the requirement.

On (b)(6); (b)(7)(C) DSS called the (b)(6); (b)(7)(C) Instructor to follow-up on the (b)(6); (b)(7)(C) request because they had not received a referral for a volunteer (b)(6); (b)(7)(C) and the Student advised DSS that he was having difficulty keeping up with (b)(6); (b)(7)(C) in the course. The (b)(6); (b)(7)(C) Instructor agreed to provide the Student with (b)(6); (b)(7)(C)

On (b)(6); (b)(7)(C) DSS notified the Student that the (b)(6); (b)(7)(C) Instructor agreed to provide the Student with her (b)(6); (b)(7)(C)

On (b)(6); (b)(7)(C) the Student notified DSS that he would take (b)(6); (b)(7)(C) during the Summer B semester.

On (b)(6); (b)(7)(C) DSS obtained a (b)(6); (b)(7)(C) for the Student's (b)(6); (b)(7)(C) course.

On (b)(6); (b)(7)(C) the Student visited DSS and notified them of an individual he felt would serve as a good (b)(6); (b)(7)(C) for his (b)(6); (b)(7)(C) course.

On (b)(6); (b)(7)(C) the Student e-mailed and visited DSS to express concern regarding not receiving any (b)(6); (b)(7)(C) for (b)(6); (b)(7)(C) or (b)(6); (b)(7)(C) DSS advised that the (b)(6); (b)(7)(C) Professor made a class announcement and forwarded the name of a potential (b)(6); (b)(7)(C) whom DSS had already called. DSS advised that they would follow up with the (b)(6); (b)(7)(C) regarding obtaining the (b)(6); (b)(7)(C) and send them to the Student.

On (b)(6); (b)(7)(C) DSS e-mailed the Student (b)(6); (b)(7)(C) for the (b)(6); (b)(7)(C) course.

On (b)(6); (b)(7)(C) the Student signed a Notice of Acknowledgement regarding (b)(6); (b)(7)(C) stating that DSS is searching for a volunteer (b)(6); (b)(7)(C) for two of his courses: (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C). The document stated that the Student is required to continue to (b)(6); (b)(7)(C) himself and DSS can randomly ask him to provide proof of (b)(6); (b)(7)(C) to verify that he is complying with the requirement.

On (b)(6); (b)(7)(C) the DSS approved the following accommodations for the Student for the (b)(6); (b)(7)(C) semester: (b)(6); (b)(7)(C)
(b)(6); (b)(7)(C)
(b)(6); (b)(7)(C)
an accommodation. There is a handwritten N/A slightly below these requests.

On (b)(6); (b)(7)(C) the Student submitted a written request for (b)(6); (b)(7)(C) in all of his classes to DSS.

On (b)(6); (b)(7)(C) the Student submitted a second written request to DSS for (b)(6); (b)(7)(C) in all of his classes.

During an interview with OCR, the Student stated that during the (b)(6); (b)(7)(C) semester he received (b)(6); (b)(7)(C) for (b)(6); (b)(7)(C) but stopped receiving (b)(6); (b)(7)(C) during the last two weeks of class. He alleged that he advised the DSS office that he had not received (b)(6); (b)(7)(C) and was advised it was due to staffing issues. However, the Student does not recall who he contacted regarding this matter. The Student stated that he did not need (b)(6); (b)(7)(C) for any other courses during the (b)(6); (b)(7)(C) semester.

During the (b)(6); (b)(7)(C) semester, the Student stated that he did not receive (b)(6); (b)(7)(C) but did not alert the DSS office because he did not believe he needed (b)(6); (b)(7)(C) for those courses. The Student alleged that during the Summer A semester he did not receive (b)(6); (b)(7)(C) for (b)(6); (b)(7)(C) or (b)(6); (b)(7)(C) until the last two weeks of class. The Student alleged that the (b)(6); (b)(7)(C) accommodation was properly implemented during the Summer B semester. During the (b)(6); (b)(7)(C) semester the Student submitted a written request for a (b)(6); (b)(7)(C) for all classes and "N/A" was written to the right of this request. The Student alleged that he was verbally advised by DSS that he must (b)(6); (b)(7)(C) his lectures because DSS was not providing a (b)(6); (b)(7)(C) to anyone at the University. The Student

alleged that he filed an appeal to the denial of a (b)(6); (b)(7)(C) as an accommodation and in response to the appeal the University stated that they did not deny his request but asked him to (b)(6); (b)(7)(C) lectures as assistance with (b)(6); (b)(7)(C) to determine whether or not that would be an effective accommodation before receiving a (b)(6); (b)(7)(C) as an accommodation. The Student alleged that he notified the DSS office that (b)(6); (b)(7)(C) lectures is not effective for him based on his (b)(6); (b)(7)(C) (b)(6); (b)(7)(C)

During an interview with OCR, the DSS Director stated that on (b)(6); (b)(7)(C) the Student requested a (b)(6); (b)(7)(C) as an accommodation. The DSS Director instructed the Student to go to class at least once and come back to let her know what he needs. On (b)(6); (b)(7)(C) the Student returned to the DSS office and submitted a written request for a (b)(6); (b)(7)(C) On (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) the DSS Director wrote on the Student's accommodations approval form (b)(6); (b)(7)(C) "if necessary" but did not select whether the requested accommodation was approved or denied. During the same conversation, the DSS Director alleged that she provided the Student with a (b)(6); (b)(7)(C) and discussed using the (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) of the board before receiving a (b)(6); (b)(7)(C) Within a few weeks the Student notified DSS that the (b)(6); (b)(7)(C) was not an effective accommodation, returned the (b)(6); (b)(7)(C) and stated that he wanted a (b)(6); (b)(7)(C) During the conversation, the Student notified DSS that the (b)(6); (b)(7)(C) was not (b)(6); (b)(7)(C) in (b)(6); (b)(7)(C) which was a lecture class in an auditorium and DSS requested a volunteer (b)(6); (b)(7)(C) for the Student's (b)(6); (b)(7)(C) course after the Student articulated why the (b)(6); (b)(7)(C) was an ineffective accommodation.

Student's request for a (b)(6); (b)(7)(C)

On (b)(6); (b)(7)(C) the Student notified DSS during his weekly meeting that he has having difficulty obtaining (b)(6); (b)(7)(C) assistance for (b)(6); (b)(7)(C) advised that they would research a possible DSS (b)(6); (b)(7)(C) but did not give the Student a guarantee that a DSS (b)(6); (b)(7)(C) would be provided.

On (b)(6); (b)(7)(C) a Medical Doctor prepared a letter stating that the Student was diagnosed with (b)(6); (b)(7)(C) and was on medication for (b)(6); (b)(7)(C) for two months in (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C)

On (b)(6); (b)(7)(C) a Licensed Clinical Psychologist determined that in the college environment, the Student would require: (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) The

Psychologist determined that the Student may also require the assistance of a (b)(6); (b)(7)(C) due to the culmination of his mental health and learning disabilities.

On (b)(6); (b)(7)(C) the Vice-Provost of Academic Support e-mailed the Complainant regarding the status of his appeals dated (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) regarding DSS denial of a (b)(6); (b)(7)(C) A committee upheld the DSS decision. Also, the Vice-Provost of Academic Support advised the Student that he heard second-hand that the Student desired to re-take the (b)(6); (b)(7)(C) course at University expense and notified the Student that the request would need to be submitted to him via e-mail.

During an interview with OCR, the Student stated that he verbally requested (b)(6); (b)(7)(C) assistance from DSS during his weekly check-ins. In response, the DSS Director told him there was a (b)(6); (b)(7)(C) lab that he could attend. He went to the lab and there was one person in the lab that was able to help him, but their schedules did not always coincide. Therefore, the Student asked DSS if they could provide the (b)(6); (b)(7)(C) as his personal (b)(6); (b)(7)(C) and they denied the request.

(b)(6); (b)(7)(C) on assignments

The University received the Student's Summary of Performance dated (b)(6); (b)(7)(C) from Brevard County School District states he had an Individualized Education Plan (IEP) since (b)(6); (b)(7)(C) for a (b)(6); (b)(7)(C). The document states the Student input that he used (b)(6); (b)(7)(C) and that the Student wears (b)(6); (b)(7)(C).

On (b)(6); (b)(7)(C) a Licensed Clinical Psychologist determined that in the college environment, the Student would require: (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

On (b)(6); (b)(7)(C) the Student submitted a written request for (b)(6); (b)(7)(C) which was denied. Later that day, the Student requested a written explanation from DSS regarding the denial of his request for (b)(6); (b)(7)(C)

On (b)(6); (b)(7)(C) DSS sent an e-mail to the (b)(6); (b)(7)(C) Instructor stating, "[the Student and the DSS Director] discussed the accommodation for (b)(6); (b)(7)(C) for summer semesters; [the DSS Director] explained to [him] that he should discuss any (b)(6); (b)(7)(C) on an as needed basis with his Professors. The Student said that he felt it should be an across the board approved accommodation [because] it would prevent him from having to ask each time."

On (b)(6); (b)(7)(C) the DSS provided an accommodations form stating the Student was approved for (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

However the Student was not approved for (b)(6); (b)(7)(C). Specifically, the note reads "not approved. Please work with your instructor regarding assignment concerns on a case by case basis. Your disability does not meet a requirement to grant (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

On (b)(6); (b)(7)(C) DSS wrote in a letter to the Dean: DSS has determined that the purpose of granting (b)(6); (b)(7)(C) should be determined by the instructor on a case by case basis excluding unexpected medical and clinical situation(s) which interfered with the student's ability to complete the work in the expected timeframe. DSS will not grant a general accommodation for (b)(6); (b)(7)(C) however, we will research and provide other reasonable accommodations to assist when necessary.

On (b)(6); (b)(7)(C) the Vice-Provost of Academic Support e-mailed the Complainant regarding the status of his appeals dated (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) regarding DSS denial of

requested accommodation of (b)(6); (b)(7)(C) A committee upheld the DSS decision.

On (b)(6); (b)(7)(C) the DSS approved the following accommodations for the Student for the (b)(6); (b)(7)(C)

an accommodation. There is a handwritten N/A slightly below these requests.

Request for (b)(6); (b)(7)(C) during the (b)(6); (b)(7)(C) school year

On (b)(6); (b)(7)(C) the Student provided a copy of a letter from the Medical Doctor dated (b)(6); (b)(7)(C) stating that the Student had been a patient since (b)(6); (b)(7)(C) and has very significant (b)(6); (b)(7)(C) to (b)(6); (b)(7)(C) therefore, it would be preferable for him to receive (b)(6); (b)(7)(C) On (b)(6); (b)(7)(C) there is a handwritten note reading “Spoke [with DSS Director]. No (b)(6); (b)(7)(C) to be approved by DSS.”

On (b)(6); (b)(7)(C) the Student contacted DSS and advised that the housing department advised that once he obtained medical documentation supporting (b)(6); (b)(7)(C) she could move him up on the list for a (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) On (b)(6); (b)(7)(C) DSS contacted the (b)(6); (b)(7)(C) department and verified the Student’s (b)(6); (b)(7)(C) However, DSS advised that it was not requiring a (b)(6); (b)(7)(C) On (b)(6); (b)(7)(C) the Student’s mother contacted DSS regarding the housing request and DSS advised the Student’s mother that DSS would not approve a (b)(6); (b)(7)(C) as an accommodation because his request did not meet the requirements.

On December (b)(6); (b)(7)(C) a Licensed Clinical Psychologist determined that the Student may benefit from (b)(6); (b)(7)(C) to (b)(6); (b)(7)(C) and increase study time in a more controlled environment.

During an interview with OCR, the DSS Director stated that the Student advised DSS that he needed to be in a (b)(6); (b)(7)(C) in a (b)(6); (b)(7)(C) because he had allergies. The DSS Director offered to place the Student in a (b)(6); (b)(7)(C) but advised the Student that he would have a (b)(6); (b)(7)(C) Thereafter, the Student advised DSS that he needed a (b)(6); (b)(7)(C) for purposes of studying in a (b)(6); (b)(7)(C) DSS denied the Student’s request for a (b)(6); (b)(7)(C)

During an interview with OCR, the Student confirmed that the DSS Director offered to place him in a (b)(6); (b)(7)(C) to address his (b)(6); (b)(7)(C) but denied his request for a (b)(6); (b)(7)(C) The Student alleged that he needed a (b)(6); (b)(7)(C) based on his disabilities to (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C)

The Student alleged that the DSS Director advised him that DSS does not approve (b)(6); (b)(7)(C) unless you have a physical disability. The DSS Director advised OCR that students with physical or medical needs for (b)(6); (b)(7)(C) are more likely to be approved but that is based on DSS’s review of the medical documentation to determine whether or not the request is reasonable.

During an interview with OCR, the DSS Director stated that the University offers (b)(6); (b)(7)(C) areas to all students in the library and that DSS also had (b)(6); (b)(7)(C) available to DSS students.

Legal Standards

The regulation implementing Section 504 at 34 C.F.R. § 104.44(a) states that a recipient to which the regulation applies 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, on the basis of disability, against a qualified 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 within the meaning of Section 504. 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.

The regulation implementing Section 504 at 34 C.F.R. § 104.44(d) states that a recipient to which this subpart applies shall take such steps as necessary to ensure that no student with a disability is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination because of the absence of educational auxiliary aids for students with impaired sensory, manual, or speaking skills. Auxiliary aids may include taped texts, interpreters or other effective methods of making orally delivered materials available to students with hearing impairments, readers in libraries for students with visual impairments, classroom equipment adapted for use by students with manual impairments, and other similar services and actions. However, recipients need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

Under Section 504, postsecondary institutions do not have a duty to identify students with disabilities. Students in institutions of postsecondary education are responsible for notifying institution staff of their disability should they need academic adjustments. The disclosure of the disability is voluntary; however, if the student wants an institution to provide an academic adjustment or auxiliary aids the student must follow the institution's published procedures and identify himself or herself as having a disability and request academic modifications or auxiliary aids as needed by providing required medical documentation to the institution's disability services office. The postsecondary institution may require that the student follow reasonable procedures and students are responsible for knowing these procedures and following them. Also, universities may set reasonable standards for documentation and must inform students of the documentation required. However, the process for determining what aids and services are reasonable should be an interactive process between the student and the appropriate disability services staff.

Once a student has identified him or herself as an individual with a disability, requested an academic adjustment and provided appropriate documentation upon request in accordance with the institution's published procedures, institution staff should discuss with the student what academic adjustments are appropriate in light of the student's individual needs and the nature of

the institution's program. Students with disabilities possess unique knowledge of their individual disabilities and should be prepared to discuss the functional challenges they face and, if applicable, what has or has not worked for them in the past. Institution staff should be prepared to describe the barriers students may face in individual classes that may affect their full participation, as well as to discuss academic adjustments that might enable students to overcome those barriers.

Finally, the regulation implementing Section 504 at 34 C.F.R. §104.7 (a) and (b) states a recipient that employs fifteen or more persons shall designate at least one person to coordinate its efforts to comply with this part. This section also states that a recipient that employs fifteen or more persons shall 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 this part.

Fundamental Alteration

Institutions of postsecondary education must provide appropriate academic adjustments based on students' disabilities and individual needs when necessary to avoid discrimination. In providing an academic adjustment, a postsecondary institution does not have to eliminate or lower essential requirements, or make modifications that would result in a fundamental alteration of the programs or activities being offered or impose an undue burden on the institution.

Although a postsecondary institution is required to modify nonessential academic requirements to ensure they do not discriminate against qualified individuals with disabilities, there is no similar requirement to change academic requirements or technical standards that can be demonstrated by the institution to be essential to its program of instruction. To demonstrate that a requirement is essential to its programs, a postsecondary institution must first: 1) conduct reasoned deliberations; 2) consider and reject alternatives; and 3) come to a rationally justified conclusion based on professional academic judgment that changing or waiving the requirement would either lower academic standards or require substantial program alteration. In determining whether deliberations are reasoned, OCR considers three factors: 1) whether the deliberative bodies were composed of persons who are trained, knowledgeable and experienced in relevant areas; 2) whether they articulated the importance of the disputed requirement; and 3) whether they made an individualized determination concerning the application of the requirement to the person challenging it.

The deliberative body should ensure that the determination is not based solely on the past tradition of the institution, such as an assertion that we have "always" done this or required this, without a valid basis for the determination. When making the individualized determination concerning the application of the requirement to a specific individual, the deliberative body should consider whether effective alternatives to the requirement exist which could allow the student with a disability to participate without waiving or lowering essential requirements. The institution should focus on the underlying reason for the requirement, and whether an appropriate alternative is available that meets the underlying reason for the requirement. If the process does not identify such alternatives, the institution is not required to modify those requirements demonstrated to be essential.

Analysis

(b)(6); (b)(7)(C)

The University's Testing Modifications Policy required that students complete the Testing Modifications Form through DSS for each test or quiz in order to receive their approved accommodations on tests or quizzes. During an interview with OCR, the DSS Director stated that the Testing Modifications Form must be submitted 48 hours prior to each test or quiz and that all DSS students are notified of this policy during intake. During an interview with OCR, the Student stated that he was notified of the Testing Modifications Form policy, but alleged that he was unaware that this requirement applied to online courses, such as (b)(6); (b)(7)(C).

The Student asked the (b)(6); (b)(7)(C) Instructor to change the (b)(6); (b)(7)(C) to (b)(6); (b)(7)(C) since he was approved for (b)(6); (b)(7)(C) as an accommodation. During the University's investigation, the (b)(6); (b)(7)(C) Instructor alleged that she asked the Student how much (b)(6); (b)(7)(C) he was approved to receive and he advised her that he was approved to have (b)(6); (b)(7)(C). The (b)(6); (b)(7)(C) Instructor alleged that she told the Student that he would need to obtain documentation from DSS stating that he was approved for (b)(6); (b)(7)(C) because it would require her to restructure the course. The (b)(6); (b)(7)(C) Instructor alleged that neither DSS nor the Student provided any additional documentation.

There is no evidence that the Student requested the (b)(6); (b)(7)(C) on testing by submitting the Testing Modifications Form to DSS for tests in his (b)(6); (b)(7)(C) course. However, the Student completed the Testing Modifications Form for tests in other courses during the (b)(6); (b)(7)(C) semester and received his approved accommodation of (b)(6); (b)(7)(C) on testing. Based on the foregoing, OCR concludes that the evidence is insufficient to establish that the University discriminated against the Student when it failed to effectively implement Student's accommodations for (b)(6); (b)(7)(C) in his (b)(6); (b)(7)(C) course, in noncompliance with Section 504.

Testing Modifications Policies and Procedures

The Testing Modifications Form must be completed within 48 hours prior to each test or quiz for scheduling purposes and to ensure that DSS students are tested with the identical instruments as their non-disabled peers. However, OCR is concerned that the burden rests on the student to facilitate transporting the Testing Modifications Form to the applicable Instructor and in some cases returning the form along with the test or quiz back to the DSS office.

Prior to the completion of OCR's investigation, the University requested to voluntarily resolve this allegation. Pursuant to Section 302 of OCR's Case Processing Manual, a complaint may be resolved, before the conclusion of an investigation, when the recipient or public entity expresses an interest in resolving the complaint.

The attached Resolution Agreement (Agreement) will require the University to take actions to remedy any compliance concerns regarding the University's Testing Modifications Policies and Procedures.

(b)(6); [redacted] in all classes

The evidence obtained so far shows that the Student first requested (b)(6); (b)(7)(C) as an accommodation on (b)(6); (b)(7)(C). In response to the request, the DSS office instructed the Student to wait until after he completed his first day of class to determine whether or not the requested accommodation was necessary. On (b)(6); (b)(7)(C) the Student submitted a second request for (b)(6); (b)(7)(C) as an accommodation and DSS did not approve or deny the request, but wrote “if necessary” on the paperwork. Evidence suggests that during this (b)(6); (b)(7)(C) meeting, the DSS Director instructed the Student to attempt utilizing a (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) on the board in order to provide assistance with (b)(6); (b)(7)(C) as an accommodation. On (b)(6); (b)(7)(C) the Student requested a (b)(6); [redacted] for (b)(6); (b)(7)(C). On (b)(6); (b)(7)(C) the Student made a second request for a (b)(6); [redacted] in (b)(6); (b)(7)(C) which was approved. During an interview with OCR, the Student alleged that after this point the (b)(6); (b)(7)(C) accommodation was properly implemented until the last two weeks of class when he stopped receiving (b)(6); (b)(7)(C).

On (b)(6); (b)(7)(C) DSS wrote an e-mail to the Student stating, “I know you have some concerns in reference to (b)(6); (b)(7)(C) and advised the Student that (b)(6); (b)(7)(C) are classroom volunteers, so if the DSS office was unable to obtain a (b)(6); (b)(7)(C) they could, “look into other means of assistance.” On (b)(6); (b)(7)(C) the DSS office sent the Student’s professors a notice requesting assistance with obtaining a (b)(6); [redacted] for the Student’s courses. On (b)(6); (b)(7)(C) DSS obtained a (b)(6); [redacted] for the Student’s (b)(6); [redacted] course. On (b)(6); (b)(7)(C) the (b)(6); (b)(7)(C) instructor agreed to provide the Student with her (b)(6); [redacted] in the course. During an interview with OCR, the Student alleged that he did not receive (b)(6); [redacted] for (b)(6); (b)(7)(C) until approximately four (4) weeks into a six (6) week semester.

During an interview with OCR, the Student stated that his (b)(6); (b)(7)(C) accommodation was properly implemented for all courses during the Summer B semester. He stated that he did not receive (b)(6); [redacted] during the (b)(6); (b)(7)(C) semester, but did feel the format of those courses made (b)(6); [redacted] necessary. The Student ultimately identified issues with the implementation of the (b)(6); [redacted] accommodation during (b)(6); (b)(7)(C) and all courses during the Summer A and (b)(6); (b)(7)(C) semester.

Prior to the completion of OCR’s investigation, the University requested to voluntarily resolve this allegation. Pursuant to Section 302 of OCR’s Case Processing Manual, a complaint may be resolved, before the conclusion of an investigation, when the recipient or public entity expresses an interest in resolving the complaint.

The attached Agreement will require the University to take actions to remedy any compliance concerns regarding proper implementation of the (b)(6); (b)(7)(C) accommodation for the (b)(6); (b)(7)(C) (b)(6); [redacted] course during the (b)(6); (b)(7)(C) semester and all courses during the Summer A and (b)(6); (b)(7)(C) semesters.

Denied the Student's request for a (b)(6); (b)(7)(C)

The Student requested a (b)(6); (b)(7)(C) as an accommodation through the DSS office because the (b)(6); (b)(7)(C) who was available to all students in the computer lab, did not have a schedule that was convenient to the Student's schedule. DSS denied the request. OCR did not complete its investigation regarding this allegation. However, evidence obtained thus far suggests that the request would be considered a (b)(6); (b)(7)(C) which is not required by Section 504 at the postsecondary level. Based on the foregoing, OCR concludes that the evidence is insufficient to establish that the University discriminated against the Student on the basis of disability when denied his request for a (b)(6); (b)(7)(C) in noncompliance with Section 504.

(b)(6); (b)(7)(C)

Based on the evidence obtained, the Student requested (b)(6); (b)(7)(C) each semester since the Summer A term of (b)(6); (b)(7)(C). The DSS office denied the request because they have a blanket policy that granting (b)(6); (b)(7)(C) should be determined by the instructor on a case by case basis excluding unexpected medical and clinical situation(s) which interfered with the student's ability to (b)(6); (b)(7)(C). Based on this information, OCR is concerned that DSS made the determination to deny the Student's request without engaging in the interactive process under Section 504.

Prior to the completion of OCR's investigation, the University requested to voluntarily resolve this allegation. Pursuant to Section 302 of OCR's Case Processing Manual, a complaint may be resolved, before the conclusion of an investigation, when the recipient or public entity expresses an interest in resolving the complaint.

The attached Agreement will require the University to take actions to remedy any compliance concerns regarding giving the Student (b)(6); (b)(7)(C) on assignments.

(b)(6); (b)(7)(C)

Based on the evidence obtained, the Student requested (b)(6); (b)(7)(C) on two bases: (1) allergies to (b)(6); (b)(7)(C) and (2) (b)(6); (b)(7)(C)

It is uncontested that the DSS Director offered to place the student in a (b)(6); (b)(7)(C) to address the Student's (b)(6); (b)(7)(C). However, the DSS Director denied the Student's request to be placed in a (b)(6); (b)(7)(C) as an accommodation for his disabilities to provide (b)(6); (b)(7)(C) to study. The DSS Director stated that the University provides various (b)(6); (b)(7)(C) for students to study, such as the library and DSS study rooms.

Based on the foregoing, OCR concludes that the evidence is insufficient to establish that the University discriminated against the Student on the basis of disability when denied his request for (b)(6); (b)(7)(C) during the 2017-2018 school year, in noncompliance with Section 504.

Conclusion

Pursuant to Section 302 of OCR's *Case Processing Manual*, the University signed the enclosed Resolution Agreement on February 8, 2019 which, when fully implemented, will resolve the allegations in this complaint. The provisions of the Agreement are aligned with the allegations and issues raised by the Complainant and the information discussed above that was obtained during OCR's investigation, and are consistent with applicable law and regulation. OCR will monitor the University's implementation of the Agreement until the University is in compliance with the statute and regulation at issue in the case. Failure to implement the Agreement could result in OCR reopening the complaint.

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

The complainant has a right to appeal OCR's determination within 60 calendar days of the date indicated on this letter. In the appeal, the complainant must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal. If the complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the recipient. The recipient has the option to submit to OCR a response to the appeal. The recipient must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

Please be advised that the University must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

We appreciate the University's cooperation in the resolution of this complaint. If you have any questions regarding this letter, please contact Adrienne Harris, the OCR attorney assigned to this complaint, at 404-974-9370 or adrienne.harris@ed.gov.

Sincerely,

(b)(6); (b)(7)(C)

Andrea de Vries
Compliance Team Leader

Enclosure

cc: via e-mail only: Vanessa Lloyd - lloydv@erau.edu

RESOLUTION AGREEMENT
Embry Riddle Aeronautical University
OCR Case No. 04-18-2311

The U.S. Department of Education, Office for Civil Rights (OCR) and Embry Riddle Aeronautical University (University) enter into this Resolution Agreement (Agreement) to resolve the allegations in the above-referenced complaint. The University assures OCR, that it will take the following actions to comply with the requirements of Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. §794, and its implementing regulation, 34 C.F.R. Part 104.

This Agreement does not constitute an admission of wrongdoing or liability by the University pursuant to Section 504.

Prior to the completion of OCR's investigation, University asked to resolve the issues of this investigation pursuant to Section 302 of OCR's Case Processing Manual. Accordingly, to ensure compliance with Section 504, and to resolve the issues of this investigation, the University voluntarily agrees to take the following actions:

Student-focused Remedy

1. **Within sixty (60) days of the execution of this agreement**, the University will send a notice to the Student in writing (certified mail, return-receipt requested) and via e-mail offering him the opportunity to re-take the following courses without a tuition charge, with a (b)(6); (b)(7)(C) as an approved academic adjustment:
 - (b)(6); (b)(7)(C)
 - All courses during Summer A semester
 - All courses during (b)(6); (b)(7)(C) semester

The notice will advise the Student that he must notify the University of the applicable courses he would like to re-take, if any, in writing within fifteen (15) calendar days after date of the University's letter to the Student. The University's offer will expire fifteen (15) calendar days after the date of the University's letter to the Student.

Reporting Requirements

Within sixty (60) days of the execution of this agreement, the University will provide OCR with a copy of the notices sent to the Student pursuant to item #1, above.

Within ninety (90) days of the execution of this agreement, the University will provide OCR with a report stating whether the Student notified the University of his election and, if so, the actions taken by the University to implement the student-focused remedy, as required in item # 2 above.

2. **Within forty-five (45) days of the execution of this agreement**, the University will convene a committee (Committee) to engage in a deliberative process for determining what academic requirements are “essential” to the instruction pursued by the Complainant in the Summer A (b)(6); (b)(7)(C) Summer B (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) semesters or to any directly related accreditation requirement and whether the academic adjustment of (b)(6); (b)(7)(C) requested by the Complainant would fundamentally alter the academic program or impose an undue burden on the institution. This process will include the following: (i) the decision is made by a group of people who are trained, knowledgeable and experienced in the area; (ii) the decision makers consider a series of alternatives as essential requirements; and (iii) the decision involves a careful, thoughtful and rational review of the academic program/course requirements. The decisions and the reasons supporting them will be fully documented in writing by the Committee, with a copy provided to the Student.

Within fifteen (15) days of the Committee’s meeting:

If the Committee determines that the Complainant’s requested academic adjustments would not constitute a fundamental alteration or an undue burden the University will send a notice to the Student in writing (certified mail, return-receipt requested) and via e-mail offering him the opportunity to re-take the applicable courses without a tuition charge with the academic adjustment of (b)(6); (b)(7)(C). The notice will advise the Student that he must identify which courses he would like to re-take, if any, and notify the University in writing within fifteen (15) days after date of the University’s letter to the Student. The University’s offer will expire fifteen (15) days after the date of the University’s letter to the Student.

If the Committee determines that the Complainant’s requested academic adjustments would constitute a fundamental alteration or an undue burden, the University will provide a copy of the Committee’s report to both OCR and the Student including: (a) documentation of the names, titles, and qualifications of the Committee members; (b) a report of the Committee’s final decisions and the reasons supporting them; (c) consideration of whether any available alternative academic adjustments would not constitute a fundamental alteration or undue burden.

If the Committee determines that alternative academic adjustments would not constitute a fundamental alteration of an applicable course or an undue burden, the University will send a notice to the Student in writing (certified mail, return-receipt requested) and via e-mail offering him the opportunity to re-take the applicable courses without a tuition charge with the alternative academic adjustment. The notice will advise the Student that he must identify which courses he would like to re-take, if any, and notify the University in writing within fifteen (15) days after date of the University’s letter to the Student. The University’s offer will expire fifteen (15) days after the date of the University’s letter to the Student.

Reporting Requirements:

Within sixty (60) days of the execution of this agreement, the University will notify OCR of the actions taken pursuant to item #1, above, and submit: (a) documentation of the names, titles, and qualifications of the Committee members; (b) a report of the Committee's final decisions and the reasons supporting them; and (c) evidence that the notice and/or report of the Committee's final decisions was sent to the Student.

Within ninety (90) days of the execution of this agreement, the University will provide OCR with a report stating whether the Student notified the University of his election and, if so, the actions taken by the College to implement the student-focused remedy, as required in item # 2 above.

Testing Modifications Form

3. **On or before the first day of the Summer A semester 2019**, the University will modify the Testing Modifications procedure to eliminate student involvement after the student portion of the Testing Modifications Form is completed (i.e. the student will bear no responsibility for taking the Testing Modification Form to their instructor or retrieving the applicable test from their instructor).

Reporting Requirement:

Within 15 days after the first day of the Summer A semester 2019, the University will submit to OCR documentation showing that it has implemented and published the revised procedure. The documentation will include a copy of the final published procedures and a list of sources where the revised procedure is published.

Training

4. **Within ninety (90) days of the execution of this agreement**, the University will provide training to ODS professional staff regarding Section 504 regulation at 34 C.F.R. § 104.44 at the post-secondary level, including but not limited to provision of academic adjustments, determining what academic requirements are "essential," whether a modification requested by a student with a disability who has complied with the University's procedures for requesting an academic adjustment would fundamentally alter a course or academic program or impose an undue burden on the institution. The training must be conducted by someone knowledgeable about Section 504 at the post-secondary level and must not be a member of ODS.

Reporting Requirement:

Within one hundred (100) days of the execution of this agreement, the University will provide OCR with documentation demonstrating that the University has initiated training pursuant item #4 of the Agreement. The documentation shall include: (1) the date of the training session; (2) a list of names and job titles of University employees who

participated in the training session; (3) a description of the presenter's background and qualifications with respect to knowledge of Section 504; and (4) a copy of the agenda and the training materials disseminated.

The University understands that by signing this Agreement, it agrees to provide the 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, 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 the regulation implementing Section 504, which was at issue in this case. Upon completion of the obligations under this Agreement, OCR shall close 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) or judicial proceedings to enforce this Agreement, OCR shall give the University written notice of the alleged breach and a minimum of sixty (60) calendar days to cure the alleged breach.

This Agreement will become effective immediately upon the signature of the University's representative below.

By: (b)(6); (b)(7)(C)
President *Provost Land*
Senior VP for
Academic Affairs

Date: 2-8-19