



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

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REGION IV  
ALABAMA  
FLORIDA  
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TENNESSEE

September 29, 2015

Mr. G. P. Peterson, President  
Georgia Institute of Technology  
225 North Ave. NW  
Atlanta, Georgia 30332

Re: Complaint #04-15-2320

Dear Mr. Peterson:

On April 13, 2015, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received the above-referenced complaint filed by XXXX (Complainant) against the Georgia Institute of Technology (University) alleging discrimination on the basis of disability. The Complainant alleged that since at least January 2015, the University's Office of Disability Services has maintained policies which discriminate against students with disabilities.

The Complainant alleged that the University's Office of Disability Services discriminates against students with disabilities that are granted extended testing time academic adjustments by subjecting them to different testing policies than those applicable to students without extended testing time academic adjustments. Specifically, the Complainant alleged that:

- a. Students with extended testing time adjustments are not permitted to wear "coats, sweatshirts, or jackets" or to bring beverages other than water into testing rooms. The Complainant alleged that these prohibitions are not placed on students without extended testing time adjustments;
- b. Students with extended testing time adjustments are not permitted to use the restroom during testing while students without extended testing time adjustments are not necessarily subjected to this restriction;
- c. The practice for confirming approved testing materials, when in dispute, can result in a loss of testing time for students with extended testing time adjustments while students without extended testing time adjustments are not subject to this practice.
- d. For students without extended testing time adjustments, if three final exams are scheduled for one day, the second (middle) exam is automatically rescheduled. However, for students with extended testing adjustments to have a final exam

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rescheduled, the student must make a request to his or her professor for rescheduling. The professor has the authority to approve or deny the request.

- e. Students without extended testing time adjustments may only test for a maximum of 5 hours and 40 minutes during final exams, with breaks of up to 40 minutes between exams; but, students with extended testing adjustments could be subjected to up to 11 hours and 20 minutes of testing for final exams with breaks of 20 minutes or less between exams.

As a recipient of Federal financial assistance from the Department, the University is subject to 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. As a public entity, the District is subject to the provisions of Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 et seq., and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability. Accordingly, OCR has jurisdiction over this complaint.

OCR began an investigation of the following legal issues:

Whether the University discriminated against the Complainant, who has the academic adjustment of extended testing time, on the basis of disability when it treated the Complainant differently than students without extended testing time adjustments by prohibiting the Complainant from wearing a coat, sweatshirt, or jacket during testing, prohibiting the Complainant from bringing beverages other than water into testing rooms, preventing the Complainant from using the bathroom during testing, and subjecting the Complainant to testing practices (approved testing materials) and final exam scheduling policies (total testing time per day, break time, and rescheduling) that differed from the policies applicable to students without the extended testing time academic adjustments, in noncompliance with the Section 504 implementing regulation at 34 C.F.R § 104.4(a).

During the investigation, in order to resolve complaint allegations a, and b, the University revised its policies. The University sent OCR a copy of the revised policies, which no longer include the regulations pertaining to food, water, restroom breaks, or clothing. The University provided OCR with evidence that it disseminated its new testing policies to all students registered with the Testing Center. Accordingly, OCR considers allegations a and b resolved. OCR is closing allegations a and b as of the date of this letter.

In addition, during the course of the investigation and prior to a full review of the available evidence regarding allegations c, d, and e, the University voluntarily offered to resolve the remaining issues raised by the Complainant. Pursuant to OCR's procedures, allegations may be resolved when, before the conclusion of an investigation, the recipient requests to resolve the allegations and OCR determines that it is appropriate to resolve the allegations with an agreement during the course of the investigation. OCR accepted the University's request to resolve these additional allegations, and the University entered into the enclosed Resolution

Agreement (Agreement), further described below, which when fully implemented, will resolve these allegations.

### **Standard of Review**

The Section 504 implementing regulation at 34 C.F.R § 104.4(a) provides that no qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance. Further, among other prohibited conduct, 34 C.F.R. § 104.4(a)(ii) states that a recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap: (i) deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service; (ii) afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others; (iii) provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others; (iv) provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others.

OCR evaluates evidence obtained during an investigation under a preponderance of the evidence standard to determine whether the greater weight of the evidence is sufficient to support a conclusion that a recipient, such as the University, failed to comply with a law or regulation enforced by OCR or whether the evidence is insufficient to support such a conclusion.

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On September 18, 2015, the University provided OCR with the signed Agreement, the terms of which are provided below.

### Summary of Terms

The University will implement a policy which will require professors to notify the University's Office of Disability Services within the first two weeks of the semester, or in the alternative, within one week of notification of a student's intended use of testing accommodations about what items are approved and what items are prohibited during the administration of assessments. The policy will also provide students with an opportunity to review, and if necessary, re-confirm the professor's list of approved and prohibited items during testing within a reasonable time frame in advance of the first course assessment or, if not applicable to the first assessment, within a reasonable time frame in advance of the assessment during which a student intends to utilize testing accommodations.

The University will create and adopt a policy which states that students entitled to extended time testing accommodations (double-time and time- and-a half) will not be

required to take more than one extended time final exam in one day. The policy created should be consistent with the College's current "EXAM GUIDELINES" provision entitled "THREE EXAMS IN ONE DAY", which states: "No student is to take more than two examinations in one day. If three examinations are scheduled in one day, the examination for the middle period will be rescheduled to the conflict period or to another period mutually agreed on by the instructor and student. Should the exam period be changed to the period for the other days, then it will be the responsibility of the instructor making the change to accommodate all conflicts created."

The processes for rescheduling for rescheduling a second extended timed test during the final exam period shall be consistent with the process applicable to the University's current "THREE EXAMS IN ONE DAY" provision.

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This concludes OCR's investigation of this complaint and should not be interpreted to address the University's compliance with any regulatory provision or to address any issues other than those addressed in this letter.

OCR will monitor the University's implementation of this Agreement to ensure that it is fully implemented. If the University fails to fully implement the Agreement, OCR will reopen the case and take appropriate action to ensure compliance with Section 504 and Title II.

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 duly authorized OCR officials 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, the Complainant may file another complaint alleging such treatment. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

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

This concludes OCR's consideration of this complaint, which we are closing effective the date of this letter. If you have any questions regarding this matter, please contact Cerrone G. Coker at (404) 974-9318.

Sincerely,

Andrea de Vries  
Compliance Team Leader