



OFFICE FOR CIVIL RIGHTS

## U.S. DEPARTMENT OF EDUCATION

THE WANAMAKER BUILDING, SUITE 515  
100 PENN SQUARE EAST  
PHILADELPHIA, PENNSYLVANIA 19107

WENDELLA P. FOX, DIRECTOR  
PHILADELPHIA OFFICE

**August 10, 2011**

***In Response, Please Refer to: 03112055***

Robert L. Bogomolny  
President  
The University of Baltimore  
1420 N. Charles St.  
Baltimore, MD 21201

Dear Mr. Bogomolny:

This letter is to notify you of the resolution of the above-referenced complaint filed with the U.S. Department of Education, Office for Civil Rights (OCR), against the University of Baltimore (the University). The Complainant, (b)(7)(C) alleges that the University discriminated against her on the basis of disability by denying her request for a substitution or waiver of a math course.

OCR enforces:

- 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.
- Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131, and its implementing regulation, 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities.

Because the University receives Federal financial assistance from the Department and it is a public entity, the University is subject to Section 504, Title II, and their implementing regulations.

Under OCR procedures, a complaint may be resolved before the conclusion of an investigation if a recipient asks to resolve the complaint by signing a resolution agreement. The provisions of the agreement must be aligned with the complaint allegations and be consistent with applicable regulations. Such a request does not constitute an admission of liability on the part of the University, nor does it constitute a determination by OCR of any violation of our regulations.

Consistent with our procedures, the University requested to resolve the complaint through an agreement, and on August 9, 2011, the District provided written commitments to OCR in order

to resolve the matter. As is our standard practice, we will monitor the University's implementation of the commitments. Accordingly, we are concluding our investigation of this complaint. A copy of the signed resolution agreement is enclosed.

This letter is not intended, nor should it be construed, to cover any other issues regarding the University's compliance with Section 504 or the ADA and their implementing regulations that may exist and are not discussed herein.

Please be aware that Federal regulations prohibit the harassment or intimidation of individuals who file complaints with OCR, and those who cooperate with our investigations. If any such actions occur, the individuals may file a 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, to the extent provided by law, personal information that, if released, could constitute an unwarranted invasion of privacy.

We would like to thank you and your legal counsel for the cooperation extended to OCR. If you have any questions regarding this matter, please contact Equal Opportunity Specialist, Paul Mimless, at (215) 656-8570.

Very Truly Yours,

Judith O'Boyle  
Chief Attorney  
Philadelphia Office

## Voluntary Resolution Agreement

### University of Baltimore

OCR #03112055

In order to resolve the allegations in the above-referenced complaint filed with the U.S. Department of Education, Office for Civil Rights (OCR) under Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C 794 and its implementing regulations at 34 C.F.R. Part 104, and Title II of the Americans with Disabilities Act (Title II), 42 U.S.C 12131 and its implementing regulations at 28 C.F.R. Part 35, the University of Baltimore (the University) commits to implement the provisions set forth in this Resolution Agreement. This Agreement does not constitute an admission by the University that any violation of Section 504, Title II or their implementing regulations has occurred.

The University agrees to comply with the terms of this Agreement until OCR has released it from monitoring. OCR will not close the monitoring until it determines that the University has fulfilled the terms of this Agreement and is in compliance with the provisions of Section 504 and Title II which are applicable to this complaint.

The University understands that by signing this Agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this Agreement. Further, the University understands that during the monitoring of this Agreement, 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 complied with the terms of this Agreement and the provisions of Section 504 and Title II.

The University recognizes and affirms its responsibility to comply with the following provisions of the Section 504 and Title II implementing regulations that apply to the allegations raised in this complaint:

34 C.F.R. § 104.44(a) - A recipient to which this subpart 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 handicap, against a qualified handicapped applicant or student. 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 this section. 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.

28 C.F.R. § 35.130(7) A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

## Action Steps

1. By November 1, 2011, the University will modify its policy and process for making determinations about whether qualified students with disabilities are entitled to course waivers or course substitutions as academic adjustments and will submit this policy to OCR for its review and approval. The University agrees to modify its policy and process in accordance with the above-cited provisions of Section 504 and Title II. The University agrees to revise its current policy, titled, "Course Substitution Policy and Process," (the Policy) as described below:
  - a. The University will expand its Policy to specifically include course waivers, in addition to course substitutions, to cover instances in which no course substitution is available, and will apply the same procedures to course substitutions and waivers.
  - b. The University's Policy will outline the bases for which course substitutions or waivers may be granted and will include the following elements and components in its Policy for course waivers and substitutions:
    - An interactive process with the applicant or student;
    - A consideration of any recommended reasonable modification or adjustment that would enable the applicant or student to meet essential program requirements;
    - An assurance that any determination regarding essential course/program requirements is made after a reasoned deliberation by an individual(s) with relevant training, knowledge and experience in the subject area/course of study that includes a careful, thoughtful and rational review of the academic program and its requirements and available options/alternatives as essential requirements. The person(s) making such decisions will be knowledgeable and informed about (or will make the decision based upon documentation received from a person who is knowledgeable and informed about) the nature of the applicant's/student's disability, the effect of that disability on the applicant's/student's performance in the program, including the consideration of academic requirements, and the existence of any modifications or auxiliary aids to assist the applicant/student in completing the program. This process will ensure that only after conducting an appropriate and specific inquiry into the applicant's/student's ability to perform essential elements of the program will the University deny the waiver of a course or a course substitution;
    - The University agrees to eliminate all provisions in its current Policy which require that prior to, and as a condition for obtaining a course substitution or waiver, the student must have attempted the course at least twice and receive a grade of D or F; that the student must have

accessed all reasonable and appropriate accommodation based on the specific disability and that the student must have accessed use of all appropriate services that would support his/her success in the course (tutoring, learning consultation, etc).

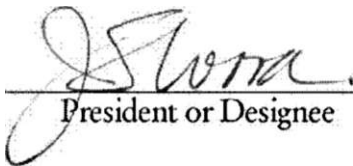
2. By August 15, 2011, the University will send the Complainant a letter inviting her to reapply to the University for a course waiver or course substitution for the math requirement(s) for her program. The Complainant will have until September 15, 2011 to respond to this offer. In the event that the Complainant requests the waiver or substitution of a course requirement for math, the University will utilize its revised Policy to reconsider her request, including engaging in an interactive process with her and making an individualized determination.
3. By November 1, 2011, the University will review and revise its existing Disability Services publications and its Notice of Nondiscrimination to ensure that they identify the employee responsible for assuring compliance with Section 504 at the University by title, address and telephone number and that this information is consistent throughout its publications. The University may use an insert with this information pending any reprinting of these publications. The University will also revise this information on its website.
4. By December 30, 2011, the University agrees to provide training on its revised Policy to ensure that relevant staff and faculty are aware of the revised Policy. This training will be provided to all Admissions and Disability Services staff, including all personnel who are involved in implementing the procedures for requesting a waiver or a substitution of a course requirement, and other academic adjustments or modifications, as well as faculty members who serve on committee(s) which determine essential eligibility requirements for academic programs. The training will focus on the University's procedures for providing academic adjustments/auxiliary aids to students with disabilities and its process for determining what academic and technical requirements are "essential" to the University's courses and programs.

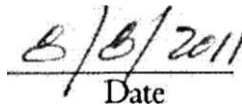
**Reporting Requirements:**

1. By September 15, 2011, the University will provide OCR with a copy of the letter sent to the Complainant as outlined in Action Step # 2 above.
2. By November 1, 2011, the University will submit its Policy to OCR for its review and approval, as revised consistent with Action Step # 1 above.
3. Within 30 days of OCR's approval of the University's Policy, the University will provide OCR with certification that the University has adopted and implemented the Policy required by Action Step # 1 above, as well as a copy of the Policy.
4. If the Complainant has sought a waiver or substitution of one of the University's math course requirements on or before September 15, 2011, the University will

provide OCR with the following documentation within 30 days of its decision to grant or deny the request:

- a) Documentation establishing that the Complainant's application for a waiver or substitution of a course requirement was evaluated consistent with the procedures developed pursuant to Action Step # 1 above, and an explanation of the outcome of the decision, including the factors that the University considered in making this determination; and,
  - b) A copy of the letter sent to the Complainant notifying her of the University's determination, which includes the details described in Action Steps # 1 and # 2 above, and in the event that the Complainant's request is denied, provides information about how to appeal the University's determination.
  - c) In the alternative, if the Complainant has not reapplied for the waiver or substitution of the math course requirement on or before September 15, 2011, the University will notify OCR of this status by September 15, 2011 and the University will have no further obligations under Action Step # 2.
5. By November 15, 2011, the University will provide OCR with copies of all documents and inserts containing the information regarding its Section 504 Coordinator as required pursuant to Action Step # 3 above. This documentation shall include printed publications as well as any references to links on its Intranet site where this information is published.
  6. By January 30 2011, the University will submit to OCR copies of individually signed sheets by the University's relevant staff and faculty which acknowledge that they received training materials and understand such materials relative to the training outlined in Action Step #4 above, along with copies of all materials distributed at the training.

  
\_\_\_\_\_  
President or Designee

  
\_\_\_\_\_  
Date