



UNITED STATES DEPARTMENT OF EDUCATION
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December 21, 2016

Dr. Garrey Carruthers
Chancellor and President
New Mexico State University
1780 E University Ave.
Las Cruces, NM 88003

Re: New Mexico State University
OCR Case Number: 08-16-2206

Dear Dr. Carruthers:

On August 9, 2016, we opened for investigation a complaint to determine whether the University failed to engage in the interactive process regarding accommodations for the Complainant's application to the Masters in Social Work program.

We initiated an investigation under the authority of Section 504 and its implementing regulation, at 34 C.F.R. Part 104, and Title II of the Americans with Disabilities Act of 1990 and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability, in programs or activities that receive Federal financial assistance from the Department and, respectively, public entities. As a recipient of Federal financial assistance and a public entity, the University is subject to these laws and regulations.

During the investigation, we carefully reviewed documentation provided by the University and the Complainant. We interviewed the Complainant and relevant University staff.

Findings of Fact

During the 2015-16 academic year, the Complainant was enrolled at the University in the undergraduate program for social work and the Complainant applied for the Masters in Social Work (MSW). While he was working on his application for the MSW, he asked the MSW Coordinator for information regarding the references requirements. The MSW application requires students to submit three reference letters and suggests one academic reference, one employment supervisor reference, and one community or volunteer program reference. The MSW Coordinator reports that the Complainant approached her in the hallway regarding his references and that she responded to his question by inviting him to meet with her and informing him that he may submit additional academic references or volunteer references if he did not have an employment supervisor reference. The MSW Coordinator reports that this is the same information she shares with all students who ask about the required references. The MSW Coordinator states that the Complainant did not discuss his reasons why he could not obtain an

employment supervisor reference or discuss a disability.¹ The Complainant's Graduate School (GS) Academic Advisor states that the Complainant raised the issue of not having an employment supervisor reference during one of her classroom presentations on the graduate program. The GS Academic Advisor also stated that she made a mental note of the Complainant so that she remembered to allow an additional academic reference and no employment supervisor reference.

The Complainant submitted his application with three references, including references from two professors and one volunteer program supervisor. The University accepted his application and did not reject it because he did not have an employment supervisor reference. The Complainant was denied admission to the MSW program. The Complainant appealed the decision and the decision to deny admission was upheld.²

Discussion

The Complainant alleged that he informed the University that he had not been able to work due to a foot injury in his previous job, so he was unable to provide a supervisor recommendation and requested an accommodation regarding the employment supervisor reference requirement. The Complainant stated that he was informed that he should be creative regarding the employment supervisor reference by his undergraduate program professor. In a postsecondary setting, the responsibility is with the Complainant to identify a disabling condition and to request academic adjustments. Once a student has notified a postsecondary institution that he or she needs certain academic adjustments due to a disability, the postsecondary institution is to engage the student in an interactive process to determine the appropriate academic adjustments to be provided.

First, we reviewed whether the Complainant notified the University of his disability and requested accommodations. We found no evidence to support that the Complainant informed the University that the reason he could not obtain an employment supervisor reference was related to a disability. We also found no evidence that the Complainant requested accommodations regarding his application or triggered the University's obligation to engage in the interactive process to discuss reasonable accommodations. The Complainant stated that he informed his undergraduate program professor of his disability and emailed the graduate program Academic Advisor about his disability and requested an accommodation. The Complainant could not provide and we found no email communication informing the University of the Complainant's disability and request for an accommodation. The MSW Coordinator and the Academic Advisor were aware that the Complainant was on Social Security and had not worked for several

¹ The MSW Coordinator states that during one of the classes the Complainant participated in with her during his undergraduate program, he discussed that he had not had a job recently because he was caring for his children.

² The University's stated reason for denying admission is unrelated to the references submitted by the Complainant. The appeal committee required the MSW program to provide the Complainant with an explanation for the denial of admission and the MSW program states that the "reviewers could not determine the connection between your personal statement, including your work and volunteer experiences, and the social work profession." Additionally, the Complainant submitted an internal grievance alleging the denial of admission was retaliation, sex discrimination, and age discrimination. The University reviewed the internal grievance and determined there was not enough information to infer that discrimination occurred.

years. However, they stated that the Complainant did not request accommodations or discuss his disability in relation to his MSW application. Additionally, there is no evidence that the Complainant requested an academic adjustment from the University when he was enrolled for undergraduate studies in the 2015-16 academic year. While we found no evidence the Complainant requested an accommodation for a disability, we note that the University accepted the Complainant's application without an employment supervisor reference. We find that the Complainant did not identify himself as a person with a disability and did not request accommodations. Therefore, the University did not fail to engage in the interactive process with the Complainant for accommodations.

Therefore, we find that the District did not discriminate against the Student as alleged. Specifically, we did not find that the Complainant identified himself as a person with a disability who requested accommodations with respect to the Graduate program application and admissions process.

Graduate School Application Accommodations

We note that the University does not provide sufficient information to prospective students regarding how to request accommodations during the application process for graduate programs. At the University, students applying for graduate programs complete the University graduate program application and additional application items required by the specific graduate program. Students work directly with the graduate program they are interested in to complete the additional application items. The Complainant worked with staff at the School of Social Work to complete the additional requirements of the MSW program application, resume, three reference letters, and a personal statement. The School of Social Work graduate application does not contain a notice of non-discrimination or information on how to request accommodations.

The University's Office of Student Accessibility Services (OAS) provides minimal information regarding requests for accommodations on its website and mainly focuses on classroom accommodations. The OAS Director stated that she was not very familiar with the graduate program admissions process, and while she has worked with the Dean of the Graduate School, she has not had any referrals for accommodations in the graduate admission process. The OAS Director stated that she has an established process for working with the undergraduate admissions office and regularly receives requests for accommodations for undergraduate applicants who have self-disclosed a disability and requested accommodations. Additionally, the MSW Coordinator stated that she would help any student that requested assistance with their application, but was unsure that applicants were eligible for services from the OAS. The GS Academic Advisor stated that because applicants are not yet connected to the University they are not eligible to receive services from OAS. Therefore, we found that the University's staff did not know Section 504 and Title II requires the University to provide accommodations to persons with disabilities during the application process. The University entered into an agreement to resolve this compliance concern.

The University representatives that we interviewed did not know they could and should refer an applicant to OAS for assistance if the student discloses a disability and requests assistance during the graduate program application process. The University has entered into an Agreement that

requires training of the program's staff on providing accommodations to persons with disabilities during the admissions process.

Notice of Non-Discrimination

Section 504 and Title II require the University to state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its program or activity. The notification shall also include identification of the responsible employee designated to coordinate the University's efforts to comply with Section 504 and Title II, pursuant to 34 C.F.R. § 104.7(a) and 28 C.F.R. § 35.107. Additionally, if a University uses publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it shall include in those materials or publications a statement of non-discrimination and notice of its compliance officer. 34 C.F.R. § 104.7(b) and 28 C.F.R. § 35.106.

In the University's Student handbook, the notice of non-discrimination states it does not discriminate on the basis of disability and identifies the Office of Institutional Equity/EEO Director as the individual responsible for addressing student concerns, but does not provide any contact information. Further, the University does not provide its notice of non-discrimination or notice of its Section 504/Title II compliance officer on the graduate program application. Regent Policy 3.25 provides a notice of non-discrimination, but no specific person is identified as the compliance officer in section E or F regarding disability discrimination. Also, the Policy's Section B for the reporting and complaint process identifies the Office of Institutional Equity (OIE) as the location accepting discrimination complaints but does not provide contact information. Administrative Rules and Procedures 3.25 includes a notice of non-discrimination and identifies the OIE as the place to file complaints and provides a website, but does not provide the contact information for the OIE.

We find that the University's notices of non-discrimination are insufficient since these do not consistently include notice of its Section 504/Title II compliance officer and contact information, and this information is not included in all materials for applicants.

The University stated it was in the process of revising its policies and procedures and entered into an agreement to ensure compliance with Section 504 and Title II.

Conclusion

While we did not find the Complainant identified himself as a person with a disability and did not request accommodations, the University's representatives that OCR interviewed did not know they could and should refer an applicant to OAS for assistance if the student discloses a disability and requests assistance during the graduate program application process. We requested that the University provide training to the School of Social Work staff regarding the requirements of Section 504 and Title II for providing students and applicants with accommodations. The University also agreed to revise its notice of non-discrimination and notice of Section 504/Title II compliance officer. The University entered into an Agreement to resolve the compliance concerns.

We will monitor the University's implementation of the Agreement until all provisions have been satisfied. OCR has notified the Complainant that the University has entered into this Agreement, and we provided the Complainant a copy of the Agreement. We will also keep the Complainant apprised of monitoring activities related to this case.

This letter addresses only the issues raised in this complaint and should not be interpreted as a determination of 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 regardless of whether OCR finds a violation.

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 individual 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, 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 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.

We are committed to prompt and effective service. If you have any questions, please contact Ms. Heidi Kutcher at 303-844-4572 or by email at heidi.kutcher@ed.gov.

Sincerely,

/s/

Angela Martinez-Gonzalez
Supervisory General Attorney

cc (w/o enclosures): Lauri Millot, Director, Office of Institutional Equity/EEO (via email)