



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION I
5 POST OFFICE SQUARE, 8th FLOOR
BOSTON, MASSACHUSETTS 02109-3921

February 27, 2018

Frederick W. Clark Jr., Esq.
President
Bridgewater State University
131 Summer Street
Bridgewater, MA 02325
By email only: fclark@bridgew.edu

Re: Complaint No. 01-15-2166
Bridgewater State University

Dear President Clark:

The U.S. Department of Education (Department), Office for Civil Rights (OCR) has completed its investigation of the complaint we received on April 15, 2015 against Bridgewater State University (the University). The Complainant alleged that the University failed to respond appropriately to her April 2015 complaint that the University discriminated against her daughter (Student) based on disability.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive Federal financial assistance from the Department. Because the University receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

In reaching a determination, OCR reviewed documents provided by the University; interviewed the Complainant and University staff; and conducted a site visit on August 2, 2017. After carefully considering all of the information obtained during the investigation, OCR found sufficient evidence of a violation of Section 504 and Title II, which the University agreed to resolve through the enclosed resolution agreement. OCR's findings and conclusions are discussed below.

Relevant Facts

The Student enrolled in the University in September of 2014, and according to the Complainant, had been diagnosed with a mental health disability. She was assigned a single accommodation

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

dorm room as an accommodation for her disability. Over the next several months, the Student actively sought out Resident Advisors in her dormitory in order to XXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXX. As a result of those conversations, on at least four occasions during the fall and winter of her first year at the University, a Resident Advisor or Resident Director contacted the University's police department out of concern the Student might self-harm.

On Tuesday, March 31, 2015, a Resident Advisor (RA) in the Student's dorm called the University Police to evaluate whether the Student should be transported to a hospital for a psychiatric evaluation. According to both the Resident Director (RD) Duty Log produced by the University and the police report from that night, the RA reported that the Student said she was not sure if she was going to harm herself. The University police interviewed the Student. Rather than requiring her to go to the hospital for an evaluation, the police permitted the Student's family to pick her up from the police station.

That evening, the Student was informed that she would not be allowed to reenter her dorm room until she was cleared by a psychiatrist to return, though she was allowed to retrieve some personal items from her room. The Student also received an email that night from the RD telling her to "make sure to call the Counseling Center¹ in the morning so that [she could] be cleared to come back to campus." The Student met with someone in the Counseling Center on Wednesday, April 1, 2015.

The following day, Thursday, April 2, 2015, the then-Associate Vice President for Student Affairs (AVP for Student Affairs) wrote a letter to the Student regarding her return to campus. In the letter, he "recommend[ed] that [the Student] be allowed to continue [her] academic programs" but also imposed a number of conditions:

1. Keep your appointment with your [outside mental health provider] on Friday, April 3, 2015.
2. Obtain documentation from [your outside provider] or his associate or designee for specific recommendations about your ability to live safely in an unsupervised independent living format (single room) in a resident hall.
3. Obtain from [your outside provider] specific recommendation of how you will manage severe emotional concerns, especially at night, weekends, and other periods of unstructured, unsupervised time.
4. Sign any additional release of information forms for the Counseling Center as needed.

The letter explained that once the University received documentation concerning these conditions, "a review [would] be conducted to determine if [the Student was] eligible to return to residency. The Counseling clinical team will review the material and a recommendation [will] be made to the Assistant Vice President of Student Affairs."

The April 2, 2015 letter also included the following notice: "You have the right to appeal the conditions of this mandate letter, by contacting the Director of the Nondiscrimination and Equal

¹ OCR notes that the counseling services at the University's Wellness Center appears to be commonly referred to as the Counseling Center.

Opportunity Office, Bridgewater State University, Boyden Hall, Room 206, Bridgewater, MA 02325, 508-531-1241.”

By letter dated April 7, 2015, the Student’s outside provider (Provider) reported to the AVP that the Student had assured the Provider and her family that “she is not actively suicidal or having urges to harm herself or others in any way.” According to her Provider, while the Student “admits voicing/expressing statements at times, XXXXXXXXXXXXXXXXXXXX, that have seemed unsafe and provocative in nature, she denies that she has ever been close to actually harming herself while on campus.” The letter acknowledged that she was in need of additional coping mechanisms, and specified some she was currently using. Finally, the letter concluded that the Student, her parents, and the Provider agreed the Student would benefit from a safety plan which could be referenced if an RA or other school official had a question about her safety. The Provider noted that the Student, her mother, and the Provider agreed that the first step on such a plan should be to call the Student’s mother, prior to calling the police, unless the Student was acutely agitated or seemingly unsafe. The Provider wrote: “I am unsure whether or not [the University’s] policies would permit the use of an unofficial document such as this type of safety plan, but if so, I believe it can be helpful to [the Student] as well as to the school and her resident advisors.” While the letter suggested that such a plan would be helpful to the Student, it did not say that she could not live safely without one.

In response, by letter dated April 9, 2015, the AVP for Student Affairs wrote to the Student, stating that a safety plan was not a reasonable accommodation because “it suggests that student [RAs] would be contracting with you for safety” and “RAs are students and as such lack the skill or emotional experience to be responsible for such a safety plan.” The letter also noted that XXXXXXXXXXXXXXXXXXXX had offered the Student residency “in a group environment designed around the specific needs of each individual and other students who are attending college.” The letter concluded by recommending that the Student not be allowed to live on campus for the remainder of the academic year, while noting that the Student had the right to have this determination reconsidered for future years. Finally, the letter stated that the Student had “the right to appeal the conditions of this mandate letter, by contacting the Director of the Nondiscrimination and Equal Opportunity Office, Bridgewater State University, Boyden Hall, Room 206, Bridgewater, MA 02325, 508-531-1241.”

Typically, the Equal Opportunity Office (EOO) receives first-level discrimination complaints and applies the University’s Equal Opportunity, Diversity and Affirmative Action Plan (EOO Plan). The EOO Plan outlines investigation and resolution procedures for complaints of discrimination, including both informal and formal resolutions. Appeals officers are then assigned based on the responding party, with staff appeals going to the human resources department, faculty appeals going to Academic Affairs, and student appeals going to Student Affairs.

The Director of Equal Opportunity (Director) met with the Student’s parents on April 9, 2015, the same day they received notice that the Student was not being allowed to return to the dorms. It was an unscheduled meeting; the Director had not yet received any materials from the Student, her parents, or anyone else. The Director reported that, during this meeting, she was not formally interviewing them as part of the investigation. Rather, she was trying to get an

understanding, from their perspective, as to what was going on. She was also trying to assure them that she would look at their information fairly.

On April 15 and April 17, 2015, the Student and her parents sent letters seeking to appeal the April 9 decision (Appeal Letters). The Appeal Letters contended that the situation on March 31 had been exaggerated, that Counseling Services had never done a proper evaluation of the Student, that the Student and her parents had complied with the conditions in the April 2 letter, and that the Student was being unfairly excluded from the community. After receiving these letters, the Director also received documents from the Wellness Center that provided background information on the Student's mental health and the decision to exclude her from campus housing. In addition, the Director spoke briefly with the head of the Wellness Center.

The Director reported that the Student's appeal was the first appeal of the conditions in a mandate letter that she had processed. She acknowledged that there was no policy governing the appeal of the mandate letter. In addition, this sort of appeal did not fit within the University's existing procedural framework. It was not a typical appeal, because it was directed to her office, an office not designated in the EOO Plan to handle appeals; it was not a typical housing decision because there were concerns about discrimination; and it was not a typical initial, or first-level, complaint of discrimination because it concerned reviewing a University decision.

Because no policy applied directly, the Director was forced to improvise. She reported that she used the discrimination concepts that she typically employed in adjudicating initial complaints. She assessed whether there was different treatment, whether the decision was reasonable and fair, and whether there was subjectivity. Because there was no policy governing how this appeal should be addressed, there was also no timeline for processing the appeal and no directives regarding what information must be provided to the Student. The Director reported that she strove to move quickly and did not issue written findings. She communicated the decision in person as soon as she reached a decision and moved quickly to allow the Student to return to University housing.

On April 29, 2015, the Director met with the Student and her parents. The Director told them that her goal was to talk to the Student as the appealing party and to understand her perspective. At the end of the discussion, the Director informed the Student that the appeal would be granted and she could return to her dormitory housing. The Director reported that she was not confident that the Student had been formally charged with anything that would justify removal, or that the Student understood the policies and procedures regarding expectations in the residence hall such that she could understand how her behavior may have violated those policies. The following morning the Director emailed Residence Life and Housing and informed them that the Student should have full access to on campus housing; the Administrative Assistant in the EOO emailed the Student that same day to confirm that she could access the dormitories and that her housing for the fall semester was secure.

On June 10, 2015, the Student wrote the Student Accounts Office and others, including the Director and the AVP for Student Affairs, asking for a refund of \$865, representing the prorated cost of dormitory housing for the days during which she was not permitted to live in campus

housing. She also requested \$XXX compensation for her mileage as a commuter student.² On July 15, 2015, the Administrative Assistant of the EOO emailed the Student saying that the refund request should be handled by the Office of Residence Life and Housing, however on July 21, 2015, the Student was informed that the EOO would in fact be processing the request. On August 13, 2015, the Student's parent wrote the Director asking for an update; the Director responded that she was reviewing the matter and would be in touch.

Finally, by email dated August 26, 2015, the Director informed the Student that she would be refunded \$865. The Student was not given the requested \$XXX to cover her commuting costs. The Director explained that all students either live on campus or pay the cost of commuting. Because the Student had been reimbursed her room charges, she was considered a commuter student during the period of her exclusion and would not be reimbursed her commuting costs. When interviewed, the Director explained that she considered what remedy would make the Student whole. In her view, the Student had lost time in the dormitories, so the appropriate remedy was to refund those costs; reimbursing her for the commuting costs would have been making her more than whole.

The AVP for Student Affairs was not involved in the appeals process. He stated that, generally, if a student were to ask him about the appeals process, he would refer the student to the EOO and possibly to the non-discrimination policy. In this instance, while the appeal letters were addressed to him, he forwarded them to the EOO and was not involved in the process. He did not discuss the decision with the Director and did not learn the appeal was granted until he received the letter from the Student regarding reimbursing the housing costs. When interviewed, he reported he still did not know why the appeal had been granted.

Legal Standards and Analysis

The Section 504 regulation, at 34 C.F.R. § 104.7(b), requires universities that employ 15 or more people to adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints of Section 504 violations. The Title II regulation, at 28 C.F.R. § 35.107(b), requires public universities that employ 50 or more people to adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints of Title II violations.

In this instance, the University did not adopt and publish a grievance procedure; rather, the Director formulated the appeals process in real time. She acknowledged that she had never processed this type of appeal before and no procedure applied directly. Accordingly, she attempted to use the policy she felt most analogous, the EOO Plan, but was forced to improvise at times because the EOO Plan was not meant for this situation.³ This *ad hoc* formulation of a grievance procedure does not establish compliance with Section 504 or Title II.

² The Student calculated her commuting expenses based on the Massachusetts mileage reimbursement rate (\$0.45/mile), the number of days she commuted (20), and the miles she drove per day (XX).

³ While there were some components of the final process that suggested the process was prompt and equitable (e.g., potential appellants had notice of whom to contact if they wished to file an appeal, the Director appeared to apply non-discrimination principles accurately and in good faith, and the Student was promptly allowed to return to the dormitories after the appeal was granted), there were additional factors that may suggest the process was not

Conclusion

On February 9, 2018, the University agreed to implement the enclosed Resolution Agreement (Agreement), which commits the University to take certain steps to address the identified areas of noncompliance. The Agreement entered into by the University is designed to resolve the issues of noncompliance. Under Section 303(b) of OCR's *Case Processing Manual*, a complaint will be considered resolved and the University deemed compliant if the University enters into an agreement that, fully performed, will remedy the identified areas of noncompliance (pursuant to Section 303(b)). OCR will monitor closely the University's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively. OCR may conduct additional visits and may request additional information as necessary to determine whether the University has fulfilled the terms of the Agreement and is in compliance with Section 504 and Title II with regard to the issues raised. As stated in the Agreement entered into by the University on February 9, 2018, if the University fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings, including to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10) or judicial proceedings, including to enforce the Agreement, OCR shall give the University written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

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.

Please be advised that the University may 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. In the event that OCR receives such a request, it 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.

equitable. For example, there was no notice of the expected time frame for the appeal or consideration after the initial determination of what would constitute a complete remedy. While the Student was allowed to return to her dormitory promptly, the housing costs were not returned until 133 days after she filed her appeal and 77 days after she explicitly sought reimbursement in light of her successful appeal. There was also no notice given to the AVP of Student Affairs regarding the outcome of the appeal, indicating no effort to prevent the recurrence of any discrimination.

If you have any questions, you may contact Civil Rights Attorney Catherine Deneke at (617) 289-0080 or by e-mail at Catherine.Deneke@ed.gov.

Sincerely,

Meena Morey Chandra *w/p AMM*
Acting Regional Director

Enclosure

cc: XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX