

Mark W. Huddleston
President
University of New Hampshire
Thompson Hall
105 Main Street
Durham, New Hampshire 03824

Re: Case No. 01-15-2201
University of New Hampshire

Dear President Huddleston:

This letter is to inform you that the U.S. Department of Education (Department), Office for Civil Rights (OCR) is closing its investigation of the above-referenced case that was filed against the University of New Hampshire (University). The Complainant alleged that the University discriminated against her, on the basis of disability, by failing to provide her with academic adjustments for her XXXXXX Project in the Master of Education in Counseling program during academic year 2014-2015. As explained below, prior to OCR completing its investigation, the University requested to resolve the complaint by entering into the enclosed voluntary resolution agreement (Agreement).

OCR accepted this complaint for investigation pursuant to our authority under Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities operated by recipients of Federal financial assistance. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. The University is subject to the requirements of Section 504 because it is a recipient of Federal financial assistance from the Department, and it is subject to the requirements of Title II because it is a public entity operating a higher education program.

OCR investigated the following legal issue:

Whether the University discriminated against the Complainant, on the basis of her disability, by failing to provide her with necessary academic adjustments, in violation of 34 C.F.R. §§ 104.4(a) and (b)(1)(i), and 104.44(a); and 28 C.F.R. § 35.130.

The regulation implementing Section 504, at 34 C.F.R. § 104.4(a), provides that no qualified individual shall, on the basis of disability, be excluded from participation in, be denied benefits

of, or otherwise be subjected to discrimination under any program or activity of a recipient receiving Federal financial assistance from the Department. The regulation implementing Section 504, at 34 C.F.R. § 104.4(b)(1)(i), further provides that a recipient providing any aid, benefit, or service, may not deny an individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service.

The regulation implementing Section 504, at 34 C.F.R. § 104.44(a), requires recipients, such as postsecondary institutions, to modify academic requirements when necessary to ensure that the requirements are not discriminatory on the basis of disability because of the absence of educational academic adjustments or auxiliary aids. At the post-secondary level, it is the student's responsibility to disclose a disabling condition and to request academic adjustments or auxiliary aids. In reviewing allegations regarding the provision of academic adjustments or auxiliary aids, OCR considers whether: (1) the student provided adequate notice to the recipient that the academic adjustments or auxiliary aids were required; (2) the academic adjustments or auxiliary aids were necessary; (3) the appropriate academic adjustments or auxiliary aids were provided; and (4) the academic adjustments or auxiliary aids were of adequate quality and effectiveness.

During the course of OCR's investigation, OCR interviewed the Complainant and University staff, including the Associate Dean of the Graduate Program (Associate Dean) and Director of Disability Services for Students (DSS), and reviewed documentation provided by the University. OCR made the following determinations.

OCR determined that during academic year 2014-2015, students applied for auxiliary adjustments and/or auxiliary aids by the following process: advise DSS of their disability; provide requested documentation of their disability; meet with DSS staff to discuss the request; provide faculty with a copy of the academic accommodation(s) letter; and collaborate with faculty for each class to create a working agreement concerning the implementation of the academic adjustment(s) and/or auxiliary aid(s).

The Complainant enrolled in the University's Master in Mental Health Counseling program in 2004. The Complainant took a leave of absence from 2011-2014 after she was diagnosed with XXXX disease in April of 2009, and developed symptoms including memory loss, decreased cognition, and chronic fatigue. In June 2014, when the Complainant attempted to register with the DSS office, she was told that her request would not be reviewed until she reenrolled at the University. On August 18, 2014, the Complainant sought permission to return to the University to complete the remaining coursework for the Master in Mental Health Counseling program. However, because the University had discontinued the Master in Mental Health Counseling program, the University reenrolled the Complainant as a continuing enrollment student in its Master of Education in Counseling program. The University also advised the Complainant that she needed to fulfill one remaining program requirement to graduate; namely, an XXXXXX Project, consisting of a written reflective paper about a problem or issue of counseling interest that emerged from her internship experiences.

On or about October 27, 2014, DSS reviewed the Complainant's June 2014 request and informed her that she should schedule an appointment to finalize her registration with the DSS office and

activate her accommodations. The Complainant stated that on October 29, 2014, when she contacted DSS to register for disability services, a DSS staff person informed her that she could not register because she was not enrolled in a course. According to the Associate Dean, DSS did not believe the Complainant was eligible to register because she was completing her XXXXXX Project as a “continuing enrollment” student and therefore, was not enrolled as a “matriculated full time student with credits.”

On March 19, 2015, the Complainant submitted a medical letter to DSS in support of a request for “a 504 plan” that would provide: increased time for her to complete the XXXXXX Project; a clearly written rubric explaining the assignment and evaluation criteria; access to DSS, the Connors Writing Center, and any other available support; and an alternative assignment to the XXXXXX Project. On April 3, 2015, DSS approved the Complainant’s request for the following academic accommodations: notification [to faculty] that she had “a chronic diagnosis that may impact attendance”; and “[f]lexibility with assignment due dates when reasonable.” However, on April 14, 2015, DSS advised the Complainant, after consulting with the Associate Dean and Faculty Advisor, that academic accommodations may not apply to her situation.

The Associate Dean asserted that the University never denied the Complainant’s request for academic accommodations; rather, she stated that she continued informally working to assist the Complainant, as if she was registered with DSS. On April 30, 2015, the Associate Dean informed the Complainant that her XXXXXX Project advisor was willing to extend the deadline from the first week of May to June 30, 2015; the Associate Dean informed OCR that the University granted the extension because of “confusion” occurring in fall 2014 when the Complainant initially contacted DSS, which “took away some time.” On June 22, 2015, the Complainant submitted her XXXXXX Project and was subsequently advised that it did not meet expectations for approval; as a result, the Complainant was not eligible to graduate from the Master of Education in Counseling program. On December 4, 2015, the University provided the Complainant the opportunity to resubmit her XXXXXX Project. On December 29, 2015, the University informed the Complainant that it had determined that the resubmitted XXXXXX Project met the program requirement for completing the Master of Education in Counseling degree, and that it would determine an appropriate graduation date.

On November 16, 2015, the University requested to resolve the complaint pursuant to Section 302 of OCR’s *Case Processing Manual*. Therefore, OCR did not proceed to conduct a full investigation and negotiated the attached Agreement with the University, in accordance with its case processing procedures.

OCR has determined that the Agreement is aligned with the allegation and is consistent with the laws and regulations OCR enforces. Accordingly, OCR is closing its investigation as of the date of this letter, and will monitor the University’s implementation of the Agreement, and will notify the parties in writing of the monitoring closure, once it determines that the University has fulfilled the terms of the Agreement.

The matters addressed in this letter are not intended and should not be construed to cover any other issues regarding the University’s compliance with the regulations implementing Section 504/Title II, or other laws enforced by OCR, that may exist but are not discussed here. The

Complainant may have the right to file a private law suit in federal court, whether or not 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 Complainant 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, OCR 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 privacy.

OCR thanks the University for its assistance in resolving this matter. If you have any questions regarding this letter and/or OCR's investigative process, please feel free to contact Civil Rights Investigator Ms. Carol Kennedy-Merrill by telephone at (617) 289-0048 or by e-mail at Carol.Merrill@ed.gov, or Attorney Abra Francois at (617) 289-0142 or by email at Abra.Mason@ed.gov. Please refer to the complaint number noted above (01-15-2201) in any future telephone or written contact with OCR.

Sincerely,

Diane M. Henson
Regional Director

Enclosure

cc: Karyl R. Martin
University System of New Hampshire