



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

January 29, 2021

Interim President and Dean Beth McCormack
By email: bmccormack@vermontlaw.edu

Re: Complaint No. 01-20-2248
Vermont Law School

Dear President McCormack:

The U.S. Department of Education (Department), Office for Civil Rights (OCR) has completed its investigation of the complaint we received on August 5, 2020 against Vermont Law School (School). The Complainant alleged that following his acceptance of the School's offer of admission, the School denied his request to defer his enrollment as a reasonable modification of its policies, practices, or procedures when such a modification was necessary to avoid discrimination on the basis of his disabilities.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 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 any program or activity receiving federal financial assistance from the Department. Because the School receives federal financial assistance from the Department, OCR has jurisdiction over it pursuant to Section 504.

In reaching a determination, OCR reviewed documents provided by the Complainant and the School, and interviewed School personnel. After carefully considering all of the information obtained during the investigation, OCR found sufficient evidence of a violation of Section 504, which the School agreed to resolve through the enclosed Resolution Agreement (Agreement). OCR's findings and conclusions are discussed below. Hereinafter, you will be referred to as "the President."

Legal Standard

The Section 504 regulation, at 34 C.F.R. § 104.4, provides that no qualified individual with a disability shall, on the basis of disability, 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. The Section 504 regulation, at 34 C.F.R. § 104.42(a), provides that qualified individuals with disabilities may not, on the basis of disability, be denied admission or be subjected to discrimination in admission or recruitment by a recipient.

OCR interprets the Section 504 regulation, at 34 C.F.R. §§ 104.4 and 104.42, to require recipients to make reasonable modifications to policies, procedures, or practices when necessary to avoid discrimination on the basis of disability, unless the modification would fundamentally alter the nature of the service, program, or activity or impose an undue financial or

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disabilities” at length in his personal statement and had provided the School medical documentation regarding those disabilities.

XXX days later, the new Assistant Director for XXX XXX and XXX (Second Assistant Director) responded that the Complainant’s application would be activated and considered for enrollment in the XXX of XXX. She informed the Complainant that he would hear directly from the admissions committee once his application was reviewed and emphasized that her correspondence was “not an official admission.”

On XXX, the Complainant informed the Admissions Director that XXX had been denied admission for the XXX of XXX without explanation, despite “nothing ha[ving] changed in [his] application particulars.” The Admissions Director responded that the School was unable to offer him admission because its “admissions standards change each year”⁴ and “offers of admission are valid only for the application cycle in which the offer was made.” She reiterated that the “School does not offer a deferral option.”

The School’s former president, who was in office at the time of the events in question, informed OCR that the School last allowed admitted applicants to defer their enrollment date in 2014, and the Admissions Director confirmed that neither she nor any other School employee had allowed an applicant to defer his or her enrollment date since that time. The Admissions Director explained that under no circumstances would the School ever grant a deferral request. She noted that the admissions office refers applicants who request disability-based “accommodations” to the Law School Admission Council if the request relates to the applicant’s application and to the President, in her role as the School’s Section 504 Coordinator, if the request relates to anything else.⁵ The Admissions Director did not think it was appropriate to make such a referral in this case because the “School does not offer a deferral option.” She informed OCR that she was not aware of any written policy governing how the School would respond to an applicant’s request for a disability-based modification of the School’s typical admissions and enrollment practices.

The School’s former president informed OCR that “[a]ny disabilities that [the Complainant] may have played absolutely no role in the decisions made by [the School], decisions which were in compliance with [the School’s] own internal policies and procedures.” He noted that the School “has a well-defined process for *students* who request accommodations due to a disability” (emphasis added). He emphasized that “[t]his process is entirely independent of the admissions process and cycle,” the Complainant “did not request any accommodations,” and any such request would “have played [no] role in the admission process and decision.”

The President informed OCR that she had reviewed the email correspondence referenced above and was not aware of any consideration that the School had given to the Complainant’s request for a deferral of his enrollment date. She stated that she was not aware of any School employee

⁴ The School’s former president, who was in office at the time of the events in question, informed OCR that the School tightened its admission standards for the XXX entering JD class because of, among other factors, concerns about bar passage arising from the summer XXX bar results. He noted that the School had enrolled a smaller, higher credentialed class.

⁵ The President informed OCR that, while she was not familiar with anyone requesting an accommodation relating directly to the School’s admissions and enrollment practices, it had been her practice to routinely speak with prospective students about the accommodations they may request if they were to enroll.

referring the Complainant to her or to the School’s “Disability Policy and Reasonable Accommodation Request Form” (Disability Policy), which she administers. She also noted that the Complainant never contacted her. The President asserted that an individual’s reference to a medical issue, alone, would not necessarily indicate that he or she had a disability. On the other hand, she stated that it would be appropriate for the admissions office to refer the Complainant to her if he had requested a modification of the School’s policies due to his disabilities.

While the President informed OCR that the Disability Policy also applies to applicants, at the time of the events referenced above, neither the website nor any of its linked webpages referenced how an *applicant* to the School – as opposed to a *student* – should request a disability-based modification, and the School’s online disability-based modification request form required a requestor to provide certain information that an applicant would not possess, such as a School email address.⁶

Analysis

OCR found sufficient evidence that the School did not process the Complainant’s request for deferral consistent with the Section 504 regulation. The evidence indicates that in announcing its decision regarding the request, the School did not explore potential modifications, exercise professional judgment, engage in a meaningful and informed process with respect to the provision of modifications, communicate any reasons for the School’s denial of the Complainant’s request (other than a statement that the School “do[es] not offer deferrals”), or otherwise consider the applicability of Section 504 to the request. The President and the School’s Admissions Director conceded as much to OCR when they stated that the School’s sole rationale for denying the request was the School’s policy of “not offer[ing] deferrals.” They each noted that they were not aware of any further deliberation regarding the request. Furthermore, the records that OCR reviewed provide no indication of any deliberation regarding the Complainant’s request or recognition of the School’s obligation to make reasonable modifications to policies, procedures, or practices when necessary to avoid discrimination on the basis of disability.

While it is true that the Complainant did not request a modification of any policy, procedure, or practice through the School’s written process for requesting such disability-based modifications, no such written process existed for applicants to the School at the time of the events referenced above. The School’s former president indicated that the School “has a well-defined process for *students* who request accommodations due to a disability” (emphasis added); however, nothing in the Disability Policy would have led a reasonable admitted applicant to understand that a pre-matriculation request for a disability-based modification of the School’s admissions, enrollment, or matriculation policies, practices, or procedures should be made through the Disability Policy. Therefore, in the absence of any pre-established reasonable requirements and procedures for applicants to request such modifications, the Complainant’s XXX email to the School’s admissions office was sufficient to place the School on notice that the Complainant was requesting a deferral of his enrollment date as a reasonable modification of the School’s typical

⁶ See <https://www.vermontlaw.edu/community/students/academic-success/accommodations>; <https://secure.vermontlaw.edu/students/accom2.cfm>. The School has since updated the website and form to clarify that both apply to applicants and to allow applicants to enter non-School email addresses.

admissions and enrollment procedures to avoid discrimination on the basis of disability. Consequently, OCR finds that the School's response to the Complainant's request did not comport with the requirements of Section 504.

Conclusion

On January 29, 2021, the School agreed to implement the enclosed Agreement, which commits the School to take specific steps to address the identified areas of noncompliance. The Agreement entered into by the School is designed to resolve the issues of noncompliance. Under Section 304 of OCR's *Case Processing Manual*, a complaint will be considered resolved and the School deemed compliant when the School enters into an agreement that, fully performed, will remedy the identified areas of noncompliance.⁷ OCR will monitor closely the School'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 if necessary to determine whether the School has fulfilled the terms of the Agreement. Once the School has satisfied the commitments under the Agreement, OCR will close the case. As stated in the Agreement entered into by the School on January 29, 2021, if the School fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings 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 School 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 School'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 School 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.

⁷ The *Case Processing Manual* is available at <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.

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.

Sincerely,

/s/

Thomas Rodrigues
Regional Director

Enclosure