



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
32 OLD SLIP, 26TH FLOOR
NEW YORK, NEW YORK 10005

TIMOTHY C. J. BLANCHARD
DIRECTOR
NEW YORK OFFICE

September 29, 2020

Via email only to: president@yu.edu

Rabbi Dr. Ari Berman
President
Yeshiva University
500 West 185th Street
New York, New York 10033

Re: Case No. 02-15-2077
Yeshiva University

Dear Dr. Berman:

This letter is to notify you of the determination made by the U.S. Department of Education, Office for Civil Rights (OCR), regarding the above-referenced complaint filed against Yeshiva University (the University). The Complainant alleged that the University discriminated against his daughter (the Student), on the basis of her disability, by failing to respond appropriately to his complaint, filed on November 19, 2014, alleging that University staff subjected the Student to harassment and discrimination because of her disability (Allegation 1). The Complainant also alleged that the Dean of the University's social work program (the Dean) subjected the Student to harassment, because of her disability, by telling the Student that she was "not cut out for social work," on or about November 7, 2014 (Allegation 2).

OCR is responsible for enforcing 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 or activities receiving financial assistance from U.S. Department of Education (the Department). The University is a recipient of financial assistance from the Department. Therefore, OCR has jurisdictional authority to investigate this complaint under Section 504.

The regulation implementing Section 504, at 34 C.F.R. § 104.4(a), states 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 or benefits from federal financial assistance. Disability harassment that creates a hostile environment is a form of discrimination prohibited by Section 504 and its implementing regulation. Harassing conduct can include verbal, written, graphic, physical, or other conduct by an employee, a student, or a third party; as well as conduct that is physically threatening, harmful,

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

or humiliating. Harassment can create a hostile environment if it is sufficiently serious so as to interfere with or deny a student's participation in or receipt of benefits, services, or opportunities in the recipient's program. If OCR determines that harassing conduct occurred and that the recipient had actual or constructive notice of the harassment, OCR will examine additional factors to make a determination as to whether a hostile environment existed and whether the recipient took prompt and effective action that was reasonably calculated to stop the harassment, prevent its recurrence, and as appropriate, remedy its effects.

The regulation implementing Section 504, at 34 C.F.R § 104.7(b), requires that a recipient adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504 and its implementing regulation.

In its investigation, OCR interviewed the Complainant and University staff. OCR also reviewed documentation that the Complainant and the University submitted. OCR made the following determinations.

OCR determined that the Student was enrolled in the University's School of Social Work (the School) to pursue a Master of Social Work. During the fall 2014 semester, the Student was placed in a field work assignment at a nursing home, xxxxxxxx xxxxxxxx Care Center (the Center).

On October 2, 2014, the Student sent an email to her Faculty Advisor, stating her desire to switch to a different field placement because she was unhappy with the Field Instructor, and suggesting another field placement for the University to consider. Subsequently, on October 8, 2014, the Student sent another email to the Faculty Advisor, stating that she had changed her mind and decided she wanted to stay in her assigned field placement, and described it as a positive experience.

The Student was scheduled to have surgery on October 20, 2014. On that date, the Student's Faculty Advisor informed the Student by email that the Center would need a letter from the Student's doctor/hospital in order for the Student to continue working in her field placement.

On October 28, 2014, the Student obtained a doctor's note that stated she was "medically clear to return to school without restrictions." On October 31, 2014, the Student arrived at her field placement for the first time since her surgery. At that time, the Field Instructor told her that her medical note was insufficient for her to return to the field placement, since it did not include a specific medical clearance for the Student to return to field work.

The College's Director of Field Instruction (the Director) advised OCR that while the School only required a general medical clearance letter upon the Student's return from surgery, the Center required a more specific letter about her mobility. The Faculty Advisor stated that the Center required this documentation because of liability concerns on its part. The Faculty Advisor and the Director both explained that social workers in nursing homes must be able to move around and assist patients from room to room because it is a medical setting, and the Center required a medical note specifically confirming that the Student could function in such a setting. The Director also stated that if the Student had any restrictions upon her return from the surgery, the more detailed

medical documentation would allow her doctor to explain those restrictions to the Center, and would also enable the Faculty Advisor to consult with the Center's Human Resources department about accommodating any such restrictions.

OCR determined that the Student had initially informed the University that she had no restrictions upon her return from surgery. On November 3, 2014, the Student scheduled a meeting with the School's Associate Dean and the Director to complain about the Field Instructor and to express her objections to providing a medical letter that stated that she had "no restrictions." OCR determined that, at the meeting with the Associate Dean and Director on November 3, 2014, she acknowledged that she had some restrictions. The Director stated that, at the meeting, she informed the Student that the Center would consider allowing her to continue in her placement if she provided a note from her doctor detailing her exact restrictions. The Director also informed the Student that the Field Instructor would allow her to return to the field placement with restrictions, given the proper documentation and approval from the Center's Human Resources Office. The Complainant and the Student asserted that, during the Student's meeting with the Associate Dean and Director on November 3, 2014, the Student expressed how uncomfortable she was returning to the field placement with the Field Instructor; and the Student asked to be switched to a different field placement. The Director stated that she advised the Student that it was too late in the semester to switch to a different field placement.

On November 3, 2014, the Complainant sent an email to the Dean, stating that he planned to file a formal grievance with the University alleging that the University's policy of requiring students "to have a letter stating 'no restrictions' for return to work" is unreasonable under the law. The Dean responded by email dated November 4, 2014; and informed the Complainant that because the Student was a graduate student, the School could not discuss her educational issues with her parents.

On November 5, 2014, the Student sent an email to the University President's office, detailing her complaints about the Center's requirement for a medical note, and alleging a violation of the Americans with Disability Act (ADA). In her email, the Student stated that: ". . . preventing an employee, or anyone, to return to work, or anywhere, due to restrictions is a violation of the ADA, unless of course those restrictions keep the person from doing their specified duties. Being a social work student, lifting is not a normal part of the work, but I was still told I couldn't return with ANY restrictions." She also detailed her meetings and conversations with the administrators and faculty, whom she alleged "yelled at and intimidated" her. The Deputy to the President (the Deputy) forwarded her email to the Dean and Associate Dean, asking "how, if at all, we should respond." The Dean informed the Deputy that the Associate Dean had a meeting with the Student scheduled for the upcoming Friday, November 7, 2014, to discuss her concerns. Based on the Dean's response, the Deputy replied that he would not respond.

On November 13, 2014, the Student forwarded to the University Provost the email she had sent to the University President's office. On the same date, the Provost forwarded this email to the Dean, who then forwarded it to the Associate Dean.

On November 17, 2014, the Complainant spoke with the Executive Administrator in the Office of the Provost; and exchanged emails and voicemails with the Deputy. The Deputy advised the

Complainant by email dated November 17, 2014, that he should follow the University's grievance procedures, and not involve the President until lower levels of the grievance process had been exhausted. The Complainant acknowledged this email and agreed to follow the prescribed procedures.

OCR determined that, during academic year 2014-2015, the University's "Non-Discrimination and Anti-Harassment Policy and Complaint Procedures" (the Policy) addressed complaints of discrimination and harassment based on disability, among other bases. The Equity Compliance Officer was responsible for overseeing all complaints covered by the Policy.

On or about November 17, 2014, the Student spoke with the Equity Compliance Officer by phone and described her complaints about the University administrators' and faculty's responses to her attempts to return to her field placement. During this phone call, the Equity Compliance Officer informed the Student that the incidents she described did not constitute a violation of University policy. After this phone call, the Student forwarded the email she had sent to the Provost's office, dated November 5, 2014, to the Equity Compliance Officer. The Equity Compliance Officer forwarded this email to her supervisor, the University's Chief Human Resources Officer. OCR determined that neither the Equity Compliance Officer nor the Chief Human Resources Officer replied to the Student's email.

On November 18, 2014, the Complainant sent an email to the Executive Administrator and the Equity Compliance Officer stating that the response he received from the Provost about his and the Student's complaints indicated a "misunderstanding," and that the Student was "attempting to file a formal grievance of alleged faculty misconduct"; specifically, that "the behavior described by [the Student] violates the University's non-discrimination and anti-harassment policy." The Complainant asked in his email, "What do we need to do to initiate an investigation?" The Equity Compliance Officer did not reply to the Complainant, but forwarded the email to her supervisor, the Chief Human Resources Officer.

On November 19, 2014, the Complainant sent another email to the Deputy, stating that the Equity Compliance Officer would not allow the Student to file a complaint, and asking how the Student could actually file a complaint with the University. The Deputy replied, "As per our previous conversation, neither I nor the President, or any other university official, can discuss this situation with you further."

On or about November 19, 2014, the Chief Human Resources Officer spoke with the Complainant by telephone, after which the Complainant sent an email to the Chief Human Resources Officer in which he thanked her for offering to help him and the Student to file a formal complaint. In response, the Chief Human Resources Officer emailed to the Complainant links to the University's policies and guidelines for filing complaints. She also noted that the Equity Compliance Officer had shared with her the Student's email, detailing her complaints. She stated that she would review it in more detail and determine if she could be of further assistance to the Student.

On the evening of November 19, 2014, the Complainant filed a formal grievance with the Chief Human Resources Officer via email. Specifically, the Complainant alleged that University staff (a) harassed the Student, on or about November 3, 2014, for seeking an accommodation for a

temporary physical disability during her fall 2014 field work assignment; and (b) discriminated against the Student, on the basis of her disability, by declining the Student's request, made on or about November 3, 2014, that the University change her fall 2014 field work assignment in order to accommodate her disability. Upon receiving that information, the Chief Human Resources Officer reviewed the formal complaint, and met with the Dean. After that discussion, as well as having reviewed the prior communications between the Student and other University personnel, the Chief Human Resources Officer concluded that there was no basis to the Complainant's allegations, and closed the investigation.

On November 21, 2014, the Complainant emailed the Chief Human Resources Officer again, forwarding a copy of an email from the Student detailing her account of the events. The Complainant then asked the Chief Human Resources Officer to keep him informed about the status of his complaint. On November 23, 2014, the Complainant sent another email to the Chief Human Resources Officer, asking her to acknowledge receipt of his complaint and inform him of its outcome. OCR determined that the Chief Human Resources Officer did not reply to the Complainant's emails. The Student withdrew from the University on December 5, 2014.

With respect to Allegation 1, the Complainant alleged that the University discriminated against the Student, on the basis of her disability, by failing to respond appropriately to his complaint, filed on November 19, 2014, alleging that University staff subjected the Student to harassment and discrimination because of her disability.

The University informed OCR that the Chief Human Resources Officer met with the Dean in person to discuss the Complainant's complaint. After this discussion, the Chief Human Resources Officer concluded that the Complainant's allegations lacked any basis and closed her investigation. The Chief Human Resources Officer did not notify the Complainant or the Student of her determination. The University also asserted that the President's Office and the Provost's Office did not investigate the complaints that the Complainant filed there, because they were informed that the Chief Human Resources Officer was already conducting an investigation.

Based on the foregoing, OCR determined that, with respect to the Complainant's complaint filed with the Chief Human Resources Officer on November 19, 2014, the Chief Human Resources Officer did not contact the Complainant or the Student after the Complainant filed the formal complaint, either to respond to the Complainant's emails requesting updates, or to notify him of her decision not to pursue an investigation. On September 29, 2020, the University signed the enclosed resolution agreement (the Agreement) which addresses the compliance concerns identified with respect to Allegation 1.

With respect to Allegation 2, the Complainant alleged that the Dean subjected the Student to harassment, because of her disability, by telling the Student she was "not cut out for social work," on or about November 7, 2014. OCR determined that at a meeting on November 7, 2014, the Student and the Dean discussed the events that transpired at the Student's field placement on October 31, 2014, as well as the Student's meeting with the Associate Dean and the Director on November 3, 2014. The Student referred to the ADA several times, and also stated that she should not be yelled at as a student. The Dean expressed concerns about how the Student had left a field placement early the prior year and was doing the same thing during the fall 2014 semester as well.

The Dean explained to the Student that the Field Instructor would allow the Student to complete her field hours at the Center over an extended period of time to compensate for the hours she had missed; however, the Student stated that she wanted to transfer to a different field placement. The Dean explained that a transfer was not possible, particularly given that the University had no assurance that the Student would not leave another field placement early.

The Dean asserted to OCR that her meeting with the Student on November 7, 2014 was “cordial.” She asserted that she and the Student discussed the Field Instructor’s behavior and the reasons for it, and she acknowledged that she advised the Student to continue working with the Field Instructor rather than losing a year of her education. She asserted that she further advised the student that withdrawing from the University at that point in the semester would result in two F grades on her transcript. The Dean asserted that the Student subsequently withdrew anyway, and that the Complainant thereafter tried to seek a tuition reimbursement and removal of the two F grades. The Dean denied telling the Student she was not cut out for social work.

On November 17, 2014, when the Student emailed the Office of the Provost to complain about the events that had transpired since her surgery, she included a detailed account of the meeting she had with the Dean on November 7, 2014. In her summary to the Provost, the Student described specific statements that the Dean allegedly made during their meeting, including that the Dean: recommended that the Student return to her field placement; stated that the Student would need to learn how to deal with people yelling at her as a social worker; stated that the Student should have contacted her Faculty Advisor before meeting with the Associate Dean; and stated that because of the Student’s withdrawal from field work during the prior academic year, she was concerned about the Student’s showing a pattern of leaving field placements. The Student also wrote that the Dean told her that if she withdrew from the School without complaining to anyone else, the Dean would attempt to refund her tuition for the semester. The Student did not state that the Dean told her she was “not cut out for social work.”

OCR must often weigh conflicting evidence in light of the facts and circumstances of each case and determine whether the preponderance of the evidence substantiates the allegation. Here, OCR did not find that the Complainant’s assertion that the Dean told the Student she was “not cut out for social work” on or about November 7, 2014, was supported by a preponderance of the evidence; or that the Dean’s conduct at the meeting on November 7, 2014, constituted harassment because of the Student’s disability. Based on the foregoing, OCR determined there was insufficient evidence to substantiate the Complainant’s allegation that the Dean subjected the Student to harassment, because of her disability, by telling the Student she was “not cut out for social work,” on or about November 7, 2014. Accordingly, OCR will take no further action with respect to Allegation 2.

As stated previously, on September 29, 2020, the University signed the enclosed Agreement, which addresses the compliance concerns identified in this letter. OCR will monitor implementation of the Agreement.

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, or discriminate against any individual because the individual has filed a complaint or participated in the complaint resolution process. If this happens, the individual may file a 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, it will seek to protect, to the extent provided by law, personally identifiable information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

The Complainant has a right to appeal OCR's determination with respect to Allegation 2 within 60 calendar days of the date indicated on this letter. In the appeal, the Complainant must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect, or the appropriate legal standard was not applied; and, how correction of any error(s) would change the outcome of the case. Failure to do so may result in dismissal of the appeal. If the Complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the recipient. The recipient has the option to submit, to OCR, a response to the appeal. The recipient must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

If you have any questions, please contact Eric Bueide, Senior Attorney, at (646) 428-3851 or eric.bueide@ed.gov; or Natasha Fitzsimmons, Compliance Team Attorney, at (646) 428-3899 or natasha.fitzsimmons@ed.gov.

Sincerely,

/s/

Timothy C.J. Blanchard

Encl.

cc: Dov Kesselman, Esq.