



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

October 7, 2016

David Lenahan
President and Chief Executive Officer
Ponce Health Sciences University
388 Zona Ind. Reparada 2
Ponce, Puerto Rico 00716-2347

Re: Case No. 02-16-2195
Ponce Health Sciences University

Dear President Lenahan:

This letter is to notify you of the determination made by the U.S. Department of Education, New York Office for Civil Rights (OCR), in the above-referenced complaint filed against Ponce Health Sciences University (the University). The complainant alleged that the University discriminated against him on the basis of his disabilities, by: failing to provide him with the academic adjustment of an extension of time to fulfill the requirements for the US Medical Licensure Exam (USMLE) Step 2 CK (the 2CK Exam)¹ in or around February 2016 (Allegation 1); and barring him from the campus, during the spring 2016 semester (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 the 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. § 104.44, requires recipients to modify academic requirements when necessary to ensure that the requirements are not discriminatory on

¹ The 2CK Exam is one component of Step 2 of the USMLE, which assesses whether a student can apply medical knowledge, skills, and understanding of clinical science essential for the provision of patient care under supervision and includes emphasis on health promotion and disease prevention. For additional information on the 2CK Exam see <http://www.usmle.org/step-2-ck/>.

the basis of disability, and to take steps to ensure that no qualified individual with a disability is subjected to discrimination because of the absence of educational auxiliary aids and/or services.

The imposition of academic requirements that the recipient can demonstrate are essential to the instruction being pursued by such student or to any directly related licensing requirement will not be regarded as discriminatory within the meaning of this section. Modifications may include changes in the length of time permitted for the completion of degree requirements. At the postsecondary level, it is the student's responsibility to disclose a disabling condition and to request academic adjustments or auxiliary aids. It is also the student's responsibility to know and follow a postsecondary school's procedures for requesting an academic adjustment or auxiliary aids and services. In reviewing allegations regarding the provision of academic adjustments or auxiliary aids and services, OCR considers whether: (1) the student provided adequate notice to the recipient that the academic adjustments or auxiliary aids and services were required; (2) the academic adjustments or auxiliary aids and services were necessary; (3) the appropriate academic adjustments or auxiliary aids and services were provided; and (4) the academic adjustments or auxiliary aids and services were of adequate quality and effectiveness. See also the ADA, at 28 C.F.R. § 35.130(b)(7).

In its investigation, OCR interviewed the complainant and reviewed information and documentation that the complainant and the University provided.

OCR determined that the University's "Reasonable Accommodation Policy"² (the policy) states, *inter alia*, that students with disabilities must submit written requests for special accommodations to the Office of Academic Affairs. The policy further states that a request should be accompanied by a report from a licensed professional (e.g., a physician or psychologist), establishing the specific condition for which the accommodation is necessary, and that the determination will be done on a case by case basis. The policy also states, "accommodations that are not considered reasonable because they impose extraordinary difficulty or burden for the institution or require fundamental changes of academic standards or coursework may be declined. Determinations may be appealed to the corresponding program's Dean."

The University's Student Policy Manual 2013 – 2018 (manual)³ provides that a medical student will be allowed a maximum timeframe of two semesters of enrollment beyond the standard required to complete the medical program; students enrolled in the four-year or five-year program receive a maximum of 5 or 6 years, respectively, to complete the medical program, with summer enrollment considered a part of the academic year. The manual further states that the last opportunity to take and pass the 2CK Exam to complete the requirement with the student's graduating class will be the first week of April of the corresponding graduation year.

²See the University Catalog 2013 - 2018 (the Catalog) at http://www.psm.edu/doc/media-manager/Ponce_Health_Sciences_University-General_Catalog_2015-2018.pdf.

³See the Manual at <http://www.psm.edu/doc/media-manager/PONCE%20HEALTH%20SCIENCES%20UNIVERSITY%20STUDENT%20POLICY%20MANUAL.pdf>.

The complainant enrolled in the University's five-year doctor of medicine (MD) program in or around July 2009, with an expected graduation date of in or around June 2014. OCR determined that the complainant did not register with the University as a student with a disability when he enrolled in the medical program in or around July 2009. OCR determined that the complainant's last date of attendance at the University was on or about XXXXX; and that the University determined that in order to graduate, the complainant had to pass the 2CK Exam and submit a score report to the University no later than May 24, 2016.

With respect to Allegation 1, the complainant alleged that the University discriminated against him on the basis of his disabilities, by failing to provide him with the academic adjustment of an extension of time to fulfill the requirements for the 2CK Exam, in or around February 2016. The complainant asserted that following the XXXXX of XXX XXXXXXXXXXXX in or around XXXXXXXX 2015, who had been a XXXXXXXX XX the University, and his ensuing use of XXXXXXXX XXXXXXXX to address his disabilities, it was nearly impossible for him to study, sit for the 2CK exam, and submit the results within the University's specified timeframes for graduation. The complainant asserted that he repeatedly requested that University staff grant him additional time to take and submit the results of the 2CK Exam as an academic adjustment, during the period from September 3, 2015, through May 16, 2016.⁴

OCR reviewed documentation that the complainant submitted to University staff during the period from on or about September 3, 2015, through May 16, 2016. In the documentation, the complainant stated that he would not be able to timely take the 2CK Exam because he was grieving the XXX XXXXXXXXXXXX; disclosed that he suffered from XXXXXXXX XXXXXXXX, had been XXXXXXXX XXXX XXXXXXXXXXXX XXXXXXXX, had been XXXXXXXX in the United States for XXXXXXXX XXXXX XXX XXXXXXXXXXXX and had been XXXXXXXXXXXXXXXX, had XXXX XXXXXXXXXXXX with the use of XXXXXXXX, and a XXXXX XXX XXXXXXXXXXXXXXXX his XXXXXXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXX and restricted the complainant from XXXXXXXXXXXX; and inquired about his status at the University, graduation requirements and deadlines, and whether he could obtain a medical leave of absence and/or an extension to take the 2CK Exam as an academic adjustment. The University acknowledged that on May 16, 2016, the complainant requested an extension of time to take the 2CK Exam as an academic adjustment. The University stated, however, that its determination is pending because the complainant failed to submit the requisite medical documentation in support of his request.

On October 6, 2016, the University voluntarily entered into the attached resolution agreement, to resolve Allegation 1, in accordance with Section 302 of OCR's Case Processing Manual.

With respect to Allegation 2, the complainant alleged that the University discriminated against him on the basis of his disabilities, by barring him from the campus, during the spring 2016 semester.

In a statement, dated February 2, 2016, the University's XXX XXXX XXX XXXX stated that the complainant orally informed her of his XXXXXXXX XXX XXXX and XXXXXXXXXXX

⁴ The complainant stated that he has XXXXXXX XXXX XXXX XX X XXXXXXX XXXXXXX.

XXXXXX, XXXXXXXXXXXX, and XXXXXXXXXXX XXXXXXXXXXX due to XXX XXXXXXXXXXX XXXXXXX and medical school academics; requested that the University back date paperwork stating that he was under XXXXXXX XXXXXXX to help with his XXXX XXXXX; and requested that she agree to provide a XXXX evaluation and extend the deadline for the complainant to take the 2CK Exam while he was trying to XXXX his XXXX XXXXX. The XXXX further stated that based on the conversation and history, she believed it was best to ban the complainant from campus for safety and security reasons. In an electronic mail message dated February 11, 2016, the XXXXX advised the complainant that his academic standing was “XXXXX XXXXXXX” and that he was “not permitted on the campus during this time.”

On October 6, 2016, the University voluntarily entered into the attached resolution agreement to resolve Allegation 2, in accordance with Section 302 of OCR’s Case Processing Manual. OCR will monitor implementation of the resolution agreement. If the University fails to comply with the terms of the resolution agreement, OCR will resume its investigation.

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 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 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, 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.

If you have any questions regarding OCR’s determination, please contact Jane Tobey Momo, Senior Compliance Team Attorney, at (646) 428-3763 or jane.momo@ed.gov; or, Nadja Allen Gill, Compliance Team Leader, at (646) 428-3801 or nadja.r.allen.gill@ed.gov.

Sincerely,

/s/

Timothy C.J. Blanchard

Encl.

cc: XXXXX X XXXXX, Esq.