

April 27, 2018

Robert Barchi, M.D., Ph.D.
President
Rutgers University
83 Somerset Street
New Brunswick, New Jersey 08901-1281

Re: Case No. 02-18-2006
Rutgers University – New Brunswick

Dear Dr. Barchi:

This letter is to advise you of the resolution of the above-referenced complaint filed with the U.S. Department of Education, Office for Civil Rights (OCR), against Rutgers University (the University). The complainant alleged that the University discriminated against her, on the basis of her disability, by involuntarily withdrawing her from the University on XXXX, 2017 (Allegation 1); not permitting her to make up coursework that she missed in her XXXX and XXXX courses due to XXXX during the XXXX 2017 (Allegation 2); and, denying her appeal of the involuntary withdrawal on XXXX, 2017 (Allegation 3).

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 and activities receiving financial assistance from the U.S. Department of Education (the Department). OCR also is responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (the ADA), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35. Under the ADA, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The University is a recipient of financial assistance from the Department, and is a post-secondary education system. Therefore, OCR has jurisdictional authority to investigate this complaint under both Section 504 and the ADA.

The regulation implementing Section 504, at 34 C.F.R. § 104.4(a), provides that no qualified person with a disability shall, on the basis of a disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives federal financial assistance. Further, the regulation implementing Section 504, at 34 C.F.R. § 104.4(b)(1)(i),(ii),(iv), and (vii), states that a recipient may not, on the basis of disability, deny a qualified person with a disability the opportunity to participate in or benefit

from an aid, benefit or service; afford them an opportunity to participate or benefit from an aid, benefit or service that is not equal to that afforded others; provide a different or separate aid, benefit, or service; or, otherwise limit a qualified person with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit or service. Additionally, the regulation implementing Section 504, at 34 C.F.R. § 104.4(b)(4), prohibits a recipient from utilizing criteria or methods of administration that have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability. The regulation implementing the ADA, at 28 C.F.R. § 35.130(a), provides that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity. The regulation implementing the ADA, at 28 C.F.R. § 35.130(b)(1)(i), provides that a public entity, in providing any aid, benefit, or service, may not deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service.

In its investigation, OCR reviewed information submitted by the complainant and policies submitted by the University.

For academic year 2016-2017, the complainant was enrolled in the University's XXXX (the school). OCR determined that during the XXXX 2017 semester, the complainant was enrolled in several courses, including XXXX (the course) and XXXX XXXXX. The complainant advised OCR that she was XXXX on the following dates during the XXXX 2017 semester: XXXX, 2017; XXXX, 2017. Additionally, the complainant advised OCR that she was XXXX from in or around XXXX 2017 until XXXX, 2017.

OCR determined that in an electronic mail (email) message to the School's Undergraduate Program Director, dated XXXX, 2017, the complainant inquired about having her grades changed to reflect xxxxxxxxxxxx after XXXX. In a letter dated XXXX, 2017, the University informed the complainant that she would be involuntarily withdrawn from the University, and outlined the complainant's right to seek an appeal of the Threat Assessment and Safety Committee's (TASC) decision.

OCR determined that the University has a Safety Intervention policy (the policy) that sets forth a process for safety intervention and involuntary withdrawal of students who pose a credible substantial risk of harm to individuals within the University or to the University community; or substantially impede the lawful activities, the educational process, or the proper activities or functions of other members of the University community. The policy establishes a procedure for an interim safety intervention or involuntary withdrawal where safety is an immediate concern; the TASC, which assists in evaluating whether students meet the criteria for a safety intervention and/or involuntary withdrawal; a process for a safety intervention and involuntary withdrawal; an appeal procedure; and, guidelines for a student's return to campus or readmission.

The policy provides that any member of the University community who has reason to believe that a student poses a credible substantial risk of harm to the University community and thus may meet the criteria for safety intervention and/or involuntary withdrawal may contact the Chancellor or designee for their campus who will conduct an informal review of the information

presented. Upon completion of the informal review, the Chancellor or designee for the campus may recommend that a student be subject to an intervention or involuntary withdrawal. In determining whether the student presents a credible substantial risk of harm to the University community, the Chancellor or designee for the campus is required to make an individualized assessment based on a reasonable judgement that relies upon current medical or other specialized knowledge or the best available evidence to ascertain: the nature, duration, and severity of the risk; the probability that potential injury and/or harm will occur; whether the student substantially impeded the educational process or functions of other members of the University community; and, whether reasonable modifications of policies, practices, or procedures significantly mitigate the risk. In making this individualized assessment, the Chancellor or designee for the campus may consult with the TASC. As part of the individualized assessment, the student may be required to undergo an evaluation, including a medical or psychological evaluation, by an independent and objective health professional. In addition, the Chancellor or designee for the campus will consider any medical or other relevant information the students submits.

Further, the policy provides that a student who is subject to an intervention or involuntarily withdrawn may appeal the determination by making a written request to the University Chancellor, or designee for an informal proceeding to review the determination. The policy sets forth the timeframes for the appeal process, and the rights of the student for participation in the process, including an informal hearing, the opportunity to receive a written statement, detailing the reasons for the intervention and/or involuntary withdrawal and review the evaluations relied upon by the University; the right to be assisted by appropriate counsel and/or legal counsel; and, the right to present witnesses and information.

OCR determined that the University's policy is neutral on its face, as it applies in the same manner regardless of whether a student has a disability; and, allows for individualized assessments. Further, nothing in the regulations implementing Section 504 or the ADA prohibit the University from imposing a temporary suspension and establishing guidelines, including requiring medical documentation, to determine fitness for return to campus.

OCR determined that on XXXX, 2017, the complainant requested that the University permit her to make up missed assignments in the course and XXXXXX. The complainant advised OCR that the University ultimately permitted her to make up coursework in the course and XXXXXX; however, the professor imposed restrictions on the specific work that she could make up.

OCR determined that on XXXX, 2017, the complainant met with the Vice Chancellor for Student Affairs to appeal her involuntary withdrawal. By letter dated XXXX, 2017, the University informed the complainant that the appeal of her involuntary withdrawal was denied.

During the course of OCR's investigation, the University expressed its interest in entering into an agreement with OCR to voluntarily resolve the complainant's allegations under Section 302 of OCR's Case Processing Manual. On April 24, 2018, the University signed the attached resolution agreement (Agreement) to voluntarily resolve the complainant's allegations. OCR will monitor the implementation of the Agreement. Upon the University's satisfaction of the commitments made under the Agreement, OCR will close the case.

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 a 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 he or she 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.

If you have any questions regarding OCR's determination, please contact Jocelyn Panicali, Compliance Team Attorney, at (646) 428-3796 or jocelyn.panicali@ed.gov; Lisa Khandhar, Compliance Team Attorney, at (646) 428-3778 or lisa.khandhar@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: xxxxxxxxxxxxxxxxxxxxxxxx