



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION III
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KENTUCKY
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September 30, 2014

IN RESPONSE, PLEASE REFER TO: 03132287

Dr. Suzanne Shipley
Office of the President
Shepherd University
P.O. Box 5000
Shepherdstown, West Virginia 25443-5000

Dear Dr. Shipley:

This is to notify you of the resolution of the complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Shepherd University (the University). The Complainant alleged that the University discriminated against xxx xxxxxxxx (the Student) on the basis of xxx disability by:

X—paragraph deleted--X

OCR enforces:

- Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance. Section 504 also prohibits retaliation.
- Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131, and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. Title II also prohibits retaliation.

As a recipient of Federal financial assistance from the Department and a public entity, the University is subject to the provisions of Section 504, Title II, and their implementing regulations.

OCR applies a preponderance of the evidence standard to determine whether the evidence is sufficient to support a particular conclusion. Specifically, OCR examines the evidence in support of and against a particular conclusion to determine whether the greater weight of the evidence supports the conclusion or whether the evidence is insufficient to support the conclusion.

During our investigation, we reviewed documents submitted by the Complainant and the University and also conducted interviews with the Student and University staff members. OCR finds insufficient evidence to support allegation 1. With regard to allegations 2 and 3, the University has resolved these allegations by signing a voluntary resolution agreement.

Allegation 1 – Legal Standards

Under Section 504, at 34 C.F.R. Section 104.3(j)(1), an individual with a disability is any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. Section 504, at 34 C.F.R. Section 104.4(a), further states that no qualified person 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. With regard to post-secondary students, a “qualified” individual with a disability is one who meets the institution’s academic and technical standards for admission or participation in the academic program. (34 C.F.R. Section 104.3(l)(3)). Under the regulation implementing Title II at 28 C.F.R. § 35.130(h), a public entity may impose legitimate safety requirements necessary for the safe operation of its services, programs, or activities. When a student with a disability fails to meet a recipient’s technical standards and the student makes a request to alter essential eligibility criteria, the recipient must provide the student the opportunity to meet the essential criteria through the provision of reasonable accommodations. However, a postsecondary institution is not required to provide a particular accommodation if doing so would fundamentally alter the nature of the program or would amount to undue financial or administrative burden.

The Section 504 regulation, at 34 C.F.R. § 104.43(a), provides that no qualified student 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 academic, research, occupational training, housing, health insurance, counseling, financial aid, physical education, athletics, recreation, transportation, other extracurricular, or other postsecondary education aid, benefits, or services to which this subpart applies. Title II includes similar requirements.

In determining whether a student has been subjected to discrimination on the basis of disability, OCR applies a different treatment analysis. This analysis requires OCR to examine whether an individual was treated differently from similarly situated, non-disabled individuals. OCR will also consider whether the individual was treated in a manner that is inconsistent with the recipient’s established policies or practices, or if there is other evidence of disability animus. If OCR determines that different treatment did occur, we examine the recipient’s reason for the difference in treatment to determine whether it is a legitimate nondiscriminatory justification for the difference in treatment. OCR then examines whether the justification offered by the recipient is a pretext for discrimination. If the evidence fails to establish one of the components of this analysis, OCR will find that there is insufficient evidence to support a finding of noncompliance.

Facts regarding Allegation 1

X—paragraph deleted--X

Analysis

In analyzing a disability discrimination complaint under Section 504, OCR first determines if the student is a qualified individual with a disability. The Student met the University’s standards for admission and during xxx xxxxxxxxxxx xxx xxx xxxxxxxxxxx xxx xxxxxxxxxxx xxx xxx xxx xxxxxxxxxxx xxxxxxxx. The Student remained a qualified student with a disability at the University until such time as xxx xx xxxxxx xxx xxx xxxxxxxxxxx xxxxxxxxxxx xxxxxxxxxxx xx xxxxxxxxxxx xxxxxxx.

Allegation 1

Based on the objective evidence as well as information shared in meetings with the Student and University, the University requested that the Student xxx xx xxxxxx xxxxx xxxxxxxxxxx. xxx xxxxxxxxxxx xxxxxxxxxxx xxxxxxx xxxxxxxxxxx xxxxx xxx xxxxxxx xxx xx xxx xxxxxxx xxx xxxxx xx xxxxxxxxxxx xxxxx xxx xxxxxxxx. X—sentence deleted--X. x—sentence deleted--x.

xx—paragraph deleted--xx. Accordingly, OCR has determined that there is insufficient evidence to support a conclusion of noncompliance with Section 504 and Title II with regard to the Complainant’s allegation 1.

Allegations 2 and 3

Regarding allegations 2 and 3, under OCR procedures, complaint allegations may be resolved before the conclusion of an investigation if a recipient asks to resolve the allegations by signing a Voluntary Resolution Agreement. The provisions of the agreement must be aligned with the complaint allegations or the information obtained during the investigation, and be consistent with applicable regulations. Such a request does not constitute an admission of liability on the part of a recipient, nor does it constitute a determination by OCR of any violation of our regulations.

Consistent with OCR’s procedures, the University requested to resolve allegations 2 and 3 through a Voluntary Resolution Agreement (the Agreement), which was executed by the University on September 26, 2014. A copy of the signed Agreement is enclosed. As is our standard practice, OCR will monitor the University’s implementation of the Agreement. Accordingly, OCR is concluding its investigation of these allegations.

This letter is a letter of findings issued by OCR to address an individual OCR case. Letters of findings contain fact-specific investigative findings and dispositions of individual cases. Letters of findings are not formal statements of OCR policy and they 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. This letter is not intended nor should it be construed to cover any other issues regarding the University’s compliance with Section or Title II of the ADA, which may exist and are not discussed herein. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

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, we 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. 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.

Thank you for your cooperation in this matter. If you have any questions, please feel free to contact Equal Opportunity Specialist Beth Cavallucci, or by email at elizabeth.cavallucci@ed.gov or Team Attorney Andrea DelMonte, at (215) 656-8554, or by email at andrea.delmonte@ed.gov.

Sincerely,

/s/

Melissa M. Corbin
Team Leader

Enclosure