



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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March 28, 2019

Via email only: hmanderson@umes.edu

Dr. Heidi M. Anderson
President
University of Maryland Eastern Shore
J.T. Williams Hall, Suite 2107
11868 Academic Oval
Princess Anne, MD 21853-1299

RE: OCR Complaint No. 03-19-2003

Dear Dr. Anderson:

This letter is to advise you of the resolution of the complaint that the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) received against the University of Maryland Eastern Shore (the University). The Complainant filed the complaint on behalf of XXXXXXXXXXXX (the Student). The Complainant alleges that the University discriminated against the Student on the basis of disability when:

1. The University suspended the Student from campus for 10 days; and
2. The University administratively withdrew the Student from enrollment.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive Federal financial assistance from the Department. Because the University receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

Before OCR completed its investigation, the University expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement. The following is a discussion of the relevant legal standards and information obtained by OCR during the investigation that informed the development of the Resolution Agreement.

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

XX – Paragraph Redacted – XX

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. See 34 C.F.R. Section 104.3(l)(3).

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 prohibits the same form of discrimination by public entities. Therefore, OCR applies the Section 504 standard when analyzing the same claims under Title II.

To make the determination that a person poses a “direct threat,” an institution must make an individualized assessment based on reasonable judgment relying on the most current medical knowledge of the individual or the best available objective evidence. This assessment must determine the nature, duration, and severity of the risk, the probability that the potentially threatening injury will actually occur, and whether reasonable modifications of policies, practices, or procedures will significantly mitigate the risk without fundamentally altering the nature of the service, program, or activity. The student must not be subject to adverse action on the basis of unfounded fear, prejudice and stereotypes.

Under OCR policy, nothing in Section 504 prevents educational institutions from addressing the dangers posed by an individual who represents a “direct threat” to the health and safety of others, even if such an individual is a person with a disability, as that individual may no longer be qualified for a particular educational program or activity. Following a proper determination of direct threat, an educational institution may require as a precondition to a student’s return that the student provide documentation that the student has taken steps to reduce the previous threat (e.g., followed a treatment plan, submitted periodic reports, granted permission for the institution to talk to the treating professional).

XX – Paragraphs Redacted - XX

Conclusion

Pursuant to Section 302 of OCR's *Case Processing Manual*, the University signed the enclosed Resolution Agreement on March 26, 2019, which, when fully implemented, will resolve the allegations raised in this complaint. The provisions of the Agreement are aligned with the allegations and issues raised by the Complainant and the information discussed above that was obtained during OCR's investigation, and are consistent with applicable law and regulation. OCR will monitor the University's implementation of the Agreement until the University is in compliance with the statutes and regulations at issue in the case. Failure to implement the Agreement could result in OCR reopening the complaint.

This concludes OCR's investigation of the complaint. 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 must 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, or participates in an OCR proceeding. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

We appreciate the University's cooperation in the resolution of this complaint. If you have any questions, please contact Christina Haviland, the attorney assigned to this complaint, at 215-656-5805, or Christina.Haviland@ed.gov.

Sincerely,
/s/

Melissa M. Corbin
Team Leader
Philadelphia Office
Office for Civil Rights

Enclosure

cc: Kristin McFarlane, kmcfarlane@oag.state.md.us