



**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION IV**

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May 23, 2016

Mr. George L. Hanbury, II
President
Nova Southeastern University
3301 College Avenue
Fort Lauderdale, Florida 33314

Re: Complaint #04-14-2350

Dear Mr. Hanbury:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint which XXXXXXXXX (Complainant) filed on April 1, 2014, against Nova Southeastern University (University). The Complainant alleged discrimination on the bases of disability and national origin, and also alleged retaliation.

Specifically, the Complainant alleged that the University discriminated against him on the basis of disability when:

1. In January 2014, the University failed to (a) provide extra time for all exams, (b) provide an extension of four months for completion of incomplete prior exams, (c) provide written examinations in reasonably appropriate testing conditions, (d) provide an extension of the time required to complete his educational program, and (e) provide an aide during a committee meeting of? on February 26, 2014;
2. In October 2013, the University subjected the Complainant to a hostile environment by isolating him and subjecting him to a tougher academic standard by turning more lenient staff against him;
3. In February 2014, the University retaliated against the Complainant when two faculty members came into the immunology classroom during final exam and spoke loudly towards the Complainant; and,
4. In December 2013, the University discriminated against the Complainant on the basis of national origin when a Professor stated that the Complainant "should go back to where he came from."

OCR investigated the complaint pursuant to Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of Federal

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financial assistance and Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d, and its implementing regulation, 34 C.F.R. Part 100. Title VI prohibits discrimination on the basis of race, color or national origin. As a recipient of Federal financial assistance from the Department, the University is subject to Section 504 and Title VI.

OCR investigated the following legal issues:

1. Whether the University, beginning on January 13, 2014, discriminated against the Complainant on the basis of disability when it failed to (a) provide extra time for all exams, (b) provide an extension of four months for completion of incomplete prior exams, (c) provide written examinations in reasonably appropriate testing conditions, (d) provide an extension of the time required to complete his educational program, and (e) provide an aide during a committee meeting on February 26, 2014, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. §104.44(a).
2. Whether the University subjected the Complainant to a hostile environment on the basis of disability by isolating him and subjecting him to a tougher academic standard by turning more lenient staff against him in noncompliance with Section 504 implementing regulation at 34 C.F.R. §§ 104.4 and 104.43(a).
3. Whether the University retaliated against the Complainant in February 2014 when two faculty members came into immunology classroom during a final exam and spoke loudly towards the Complainant in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.61.
4. Whether the University discriminated against the Complainant on the basis of national origin in December 2013, when a Professor stated that the Complainant “should go back to where he came from,” in noncompliance with the Title VI regulation at 34 C.F.R. § 100.3.

In reaching a determination regarding the complaint allegations, OCR obtained and reviewed extensive documents provided by both the Complainant and the University, including [brief description]. OCR also conducted x# interviews, including interviews of University staff. In reaching a determination, OCR reviews evidence under the “preponderance of the evidence” standard. Under a preponderance of the evidence standard, OCR evaluates the evidence obtained during an investigation to determine whether the greater weight of the evidence is sufficient to support a conclusion that the University failed to comply with Section 504 as it relates to the complaint issues.

After a thorough review of all of the available evidence, OCR has determined by a preponderance of the evidence that there is insufficient evidence to find the University has failed to comply with Section 504 with respect to issues 1-4. However, OCR has determined that the University’s grievance procedures fail to comply with Section 504. The University has agreed to a Resolution Agreement (Agreement) to address the deficiencies of their procedures. Set forth below is a summary of OCR’s legal standards, findings in this matter, and the Agreement in this matter.

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Legal Standards

Academic Adjustments

The Section 504 implementing regulation at 34 C.F.R. § 104.44(a) states that recipients shall make such modifications to their academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating, on the basis of disability, against a qualified applicant or student with a disability. Academic requirements that the recipient can demonstrate are essential to the instruction being pursued by such student to any directly related licensing requirement will not be regarded as discriminatory within the meaning of Section 504. Modifications may include changes in the length of time permitted for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted.

Under Section 504, postsecondary institutions do not have a duty to identify students with disabilities. Students in institutions of postsecondary education are responsible for notifying institution staff of their disability should they need academic adjustments. The disclosure of the disability is voluntary; however, if the student wants an institution to provide an academic adjustment or auxiliary aids, the student must identify himself or herself as having a disability and request academic modifications or auxiliary aids as needed by providing required medical documentation to the institution's disability services office. The postsecondary institution may require that the student follow reasonable procedures, and students are responsible for knowing these procedures and following them. Also, universities may set reasonable standards for documentation and must inform students of the documentation required.

Different Treatment and Disability Harassment

The regulation implementing Section 504 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. The regulation implementing Section 504 at 34 C.F.R. § 104.4(a) 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 Federal financial assistance.

The Title VI implementing regulation at 34 C.F.R. § 100.3(a) provides that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which Title VI applies. The regulation implementing Title VI at 34 C.F.R. § 100.3(b)(1)(i)-(vi) states that a recipient under any program to which Title VI applies may not, directly or through contractual or other arrangements, on ground of race, color, or national

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origin, deny an individual any service, financial aid, or other benefit provided under the program; provide any service, financial aid, or other benefit of an individual which is different, or is provided in a different manner, from that provided to others under the program; subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program; restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program; treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition which individuals must meet in order to be provided by any service, financial aid, or other benefit provided under the program; or deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program.

The regulation implementing Section 504 at 34 C.F.R. § 104.4(a) and (b)(1)(i) 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.

Disability harassment under Section 504 is defined as intimidation or abusive behavior toward a student based on disability that creates a hostile environment by interfering with or limiting a student's participation in or receipt of benefits, services, or opportunities in the institution's program. Harassing conduct may take many forms, including verbal acts and name-calling, as well as nonverbal behavior, such as graphic and written statements, or conduct that is physically threatening, harmful, or humiliating. When harassing conduct is sufficiently serious that it creates a hostile environment, it can violate a student's rights under the Section 504 regulation.

Upon notice of possible harassment based on disability a recipient must conduct an investigation or otherwise determine what occurred. In responding to alleged incidents of harassment, a recipient has an obligation to take prompt steps that are reasonably calculated to both end the harassment and prevent its recurrence and where appropriate, remedy the effects on the student who was harassed. OCR policy describes several measures a recipient may take to prevent and eliminate harassment, including publicizing anti-harassment statements and procedures for handling complaints, providing training to staff and students, and counseling both persons who have been harmed by, and who have been responsible for, harassment.

The Section 504 regulation at 34 C.F.R. § 104.7(b) requires a recipient that employs 15 or more people to 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. In evaluating whether a recipient's grievance procedures satisfy the foregoing requirements, OCR reviews all aspects of a recipient's policies and practices, including the following elements that are necessary to achieve compliance with Section 504:

1. notice to students and employees of the grievance procedures, including where complaints may be filed;
2. application of the grievance procedures to complaints filed by students or on their behalf alleging harassment carried out by employees, other student, or third parties;

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3. provision for adequate, reliable and impartial investigation of complaints, including the opportunity for both the complainant and alleged perpetrator to present witnesses and evidence;
4. designated and reasonably prompt time frames for the major stages of the complaint process;
5. written notice to the complainant and alleged perpetrator of the outcome of the complaint; and
6. assurance that the school will take steps to prevent recurrence of any disability-based harassment and remedy discriminatory effects on the complainant and others, if appropriate.

Retaliation

Retaliation is prohibited under the Section 504 implementing regulation at 34 C.F.R. § 104.61, which incorporates by reference the procedural provisions of Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §§ 2000d *et seq.*, and its implementing regulation at 34 C.F.R. § 100.7(e). The Title VI regulation provides that no recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by a law enforced by OCR, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under Section 504. The Title II implementing regulation at 28 C.F.R. § 35.134, similarly prohibits retaliation by public entities.

To establish a *prima facie* case of retaliation, OCR uses a four step analysis: (1) whether the complainant engaged in an activity protected by the laws OCR enforces; (2) whether the University was aware of the protected activity; (3) whether the University took adverse action against the Complainant contemporaneous with or subsequent to the participation in a protected activity; and (4) whether there is a causal connection between the protected activity and the adverse action. If one of the elements cannot be established, OCR finds insufficient evidence of a violation. If all of the above elements are established, OCR then determines whether the recipient has a legitimate, non-discriminatory explanation for the adverse action. If such an explanation is proffered, OCR examines whether the reason given is merely a pretext for retaliation.

Harassment based on National Origin

Title VI and its implementing regulations at 34 C.F.R. § 100.3, prohibit harassment based on national origin and/or race that creates a hostile environment. In addition, discrimination against a student who is a member of a religious group violates Title VI when that discrimination is based on the group's actual or perceived shared ancestry or ethnic characteristics, rather than solely on its members' religious practices.¹

¹ 34 C.F.R. § 100.3(a): "No person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this part applies."

34 C.F.R. § 100.3(b): "A recipient under any program to which this part applies may not . . . on the ground of race, color, or national origin: (i) Deny an individual any service, financial aid, or other benefit provided under the

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Harassing conduct may take many forms, including verbal acts and name-calling, as well as nonverbal behavior, such as graphic and written statements, or conduct that is physically threatening, harmful, or humiliating. Harassment does not have to include intent to harm, be directed at a specific target, or involve repeated incidents.

Harassment creates a hostile environment when the conduct is sufficiently severe, pervasive or persistent that it interferes with or limits a student's ability to participate in or benefit from the services, activities or privileges offered by a school. OCR considers a variety of related factors to determine if a hostile environment based on race, national origin, or shared ancestry has been created and also considers the conduct in question from both an objective and subjective perspective. OCR examines the context, nature, scope, frequency, duration, and location of the incidents of discrimination, as well as the identity, number, and relationships of the persons involved. The harassment must in most cases consist of more than casual or isolated incidents to establish a violation.

In evaluating the severity of harassment, the unique setting and mission of an educational institution must be taken into account. An educational institution has a duty to provide a nondiscriminatory environment that is conducive to learning. OCR also takes into account the relevant particularized characteristics and circumstances of the victim, including the victim's national origin, age and shared ethnic characteristics, when evaluating the severity of harassment at an educational institution. If OCR determines that the harassment was sufficiently severe that it would have adversely affected the enjoyment of some aspect of the recipient's educational program by a reasonable person, of the same age, national origin and shared ethnic characteristics as the victim, under similar circumstances, OCR will find that a hostile environment existed. OCR also considers the identity, number, and relationships of the individuals involved. For example, harassing conduct by a teacher may have a greater impact on a student than the same conduct by another student. The effect of conduct may be greater if perpetrated by a group of students rather than by an individual student.

If a recipient has actual or constructive notice of a hostile environment, the recipient is required to take appropriate responsive action to investigate or otherwise determine what occurred. If an investigation reveals that the harassment created a hostile environment, the recipient must then take prompt and effective steps reasonably calculated to end the harassment, eliminate the hostile environment, prevent its recurrence, and remedy its effects, by ensuring that participants are not restricted in their participation or benefits as a result of a hostile environment.

OCR evaluates the appropriateness of a recipient's responsive action by examining its reasonableness, timeliness, and effectiveness. The appropriate response to a hostile environment based on race or national origin must be tailored to redress fully the specific problems

program; (ii) Provide any service, financial aid or benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program; (iii) Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program.

See also OCR's *Racial Incidents and Harassment Against Students at Educational Institutions: Investigative Guidance*, 59 Fed. Reg. 11,448 (Mar. 10, 1994) and OCR's *Dear Colleague Letter* concerning discrimination on the basis of shared ancestry and ethnic characteristics (Sept. 13, 2004).

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experienced at the school as a result of the harassment. Examples of appropriate responses include such actions as separating the accused harasser and the target of the harassment, providing counseling for the harasser and target of the harassment, taking disciplinary measures against the harasser, implementation of racial awareness training, not only for the accused harasser, but for the larger school community, development and dissemination of a policy prohibiting racial harassment, and provision of grievance or complaint procedures.

Background

The Complainant enrolled at the University in August 2012, as a student in the College of Dental Medicine (CDM) pre-doctoral program. The Complainant requested and was granted a leave of absence in October 2012. The Complainant reenrolled during the Fall 2013 semester. The Complainant informed OCR that he suffers from mental illness, ADHD, depression, and anxiety. The Complainant applied and submitted documentation to the University's Office of Student Disability Services (OSDS) on June 21, 2013 for his disabilities of mental illness, ADHD, depression and anxiety. He requested and received the following academic adjustments: extra time (x.1.5) for written exams of two or more hours.

The Complainant was dismissed from CDM on March 5, 2014, by letter from the University. In the letter, the CDM states that the Student Progress Committee had met on February 27, 2014, and concluded that because the Complainant had four incomplete courses from the Fall 2013 semester, had withdrawn from two courses during the Fall 2013 semester without prior approval, failed to complete any basic science courses from Fall 2013, and had multiple exam failures and incomplete exams for the Winter of 2014, he should be dismissed from the dental program. He then appealed his dismissal on March 21, 2014, but the dismissal was upheld by the University on April 16, 2015. The incidents which occurred during this time period are the basis of this complaint.

Issue 1- Whether the University, beginning on January 13, 2014, discriminated against the Complainant on the basis of disability when it failed to provide the accommodations described above.

University's Procedure for Academic Adjustments

The University's policy states that requests for academic accommodations must be made in writing to the OSDS with the appropriate documentation of recent medical, psychological, or educational assessment data administered and evaluated by a qualified professional. If the student disagrees with the accommodations proposed by the OSDS in consultation with the appropriate academic program, he/she may appeal the decision through the College or University. If this cannot be worked out, then the Student can appeal within 10 days of the final decision to the University's Academic Accommodation Appellate Committee. Students can address any specific needs through the Academic Officer of their program, pursuant to written policy contained in the University Student Handbook. The Academic Officer will then evaluate the students request for academic adjustments and auxiliary aids by considering the nature of the request, and the programs internal policies.

The CDM's role regarding a student's request for academic adjustments is generally to follow instructions given by the OSDS. The OSDS handles the interactive accommodation process, evaluates any medical documentation provided by the student, and works with the student to develop proposed disability accommodations. However, if the student requests an accommodation that could potentially alter the academic program, the CDM is consulted to determine whether a requested accommodation would fundamentally alter the program or lowers its academic standards. The final determination as to the reasonableness of a requested disability accommodation is made by the OSDS.

(a) Provide extra time for all exams

In his complaint, the Complainant stated that he was discriminated against on the basis of disability when the CDM refused to give him extra time for all exams as was recommended by his physician. Specifically, the Complainant stated that he needed additional time on all his exams, lab practicals, and quizzes, but the University only approved extra time on his lecture written exams. He claims that the Student Handbook placed lecture, lab and quizzes in the same testing category. The Complainant also alleged that the University failed to give him extra time on his pop quizzes in the Occlusion course, the Evidence-based dentistry course, and the CDM 1051 Ethics course. The Complainant affirmed that he received extra time on his written exams of two hours or more, and his complaint only related to the University's failure to grant extra time on his lab exams and quizzes.

OCR reviewed the Complainant's records with the OSDS, and confirmed that on June 21, 2013 the University granted the Complainant the academic adjustment of 1.5 extended time on his "written" exams of two hours or more in duration. OSDS interpreted this section to broadly apply to written lecture exams. OSDS did not approve any other exam accommodation for the Complainant. In addition, there is nothing in the Complainant's File with the OSDS to indicate that he appealed this decision to the OSDS or provided additional documents to OSDS challenging its decision not to extend the prescribed academic adjustment to include lab examinations and quizzes.

OCR reviewed the Student Handbook and found that it does not define the term "examination," nor state that lab practicals and quizzes are considered the same as examinations. Although the Complainant sent emails to his instructors stating that he is entitled to extended time on lab practicals/examinations and quizzes, the Complainant did not make a request to the OSDS to have these two categories of exams specifically included as approved accommodations.

Conclusion

By the Complainant's own admission, he was provided the academic adjustment that was approved for him by the OSDS – 1.5 extra time on all written exams of two or more hours. His contention that pursuant to the Student Handbook he was entitled to testing modifications for all tests, including lab practicals and quizzes, is without merit. The Student Handbook is silent on this matter. The Complainant did not go through the OSDS to request that extra time on lab practicals/examinations and quizzes be added to his list of approved academic adjustments. The evidence supports that the Complainant was provided extra time for all his written exams of 2

hours or more as approved by the University. Therefore, OCR concludes there is insufficient evidence to establish that the University discriminated against the Complainant on the basis of disability with respect to providing extra time on exams in noncompliance with Section 504.

(b) Provide an extension of four months for completion of incomplete exams

The Complainant stated that the University refused to provide him with an extension of four months during the 2014 spring semester to finish incomplete prior exams despite the recommendations of his physician. The Complainant provided OCR with a copy of his request and the medical records he submitted to the University on January 12, 2014. The medical records stated that the Complainant needed an extension of four months to finish his incomplete prior exams because his disabilities limited his ability to perform adequately on an exam in comparison to other students. OCR also reviewed a February 21, 2014, email from the Complainant to the Manager of disability services, who processes request for academic adjustments and auxiliary aids for Students at the University), where he stressed that he had not received a response to his January 12, 2014, request. The Complainant informed OCR that the University did not give him a reason for denying his request for a four month extension. He also stated that the University did not request any further documentation from his doctor to approve him for those accommodations, although the University contends otherwise, as noted below.

OCR found that the Complainant submitted two additional letters from his neurologist, dated January 12, 2014 and February 22, 2014. According to the University, it received these letters on February 24, 2014 and February 26, 2014, respectively. The former asks that the CDM allow the Complainant: 1) an extension of four months for completion of the incomplete prior exams; 2) have his written examinations in multiple-choice and true/false format; 3) extension of the program length; and 4) granted 1.5X extra time for examinations.

On February 26, 2014, the Director of Student Disability Services contacted the Complainant by email to advise him that the University needed medical information which included 1) a narrative report listing the Complainant's disability diagnosis, 2) relevant evaluation results, 3) current functional limitations in the post-secondary setting, 4) prescribed medications, and 5) physician's recommended accommodations. The Director also told the Complainant that this information should come from his treating psychologist or psychiatrist, and she attached the University's guidelines for documenting psychological and psychiatric disabilities. There is no information in the Complainant's records which demonstrates that he submitted the information requested by the Director.

Conclusion

The evidence shows that the University notified the Complainant that he needed to submit further documentation. The evidence reflects that the Complainant never provided the medical documentation requested by the University to support his request for an extension of four months to complete the exam. Without this additional documentation, the University was not under an obligation to determine whether the request for these additional accommodations was reasonable. OCR concludes there is insufficient evidence to show that the University discriminated against

the Complainant on the basis of disability with respect to providing an extension of four months to complete prior exams in noncompliance with Section 504.

(c) Provide written examinations in reasonably appropriate testing conditions

The Complainant stated that the University denied his physician's ordered request to take all his exams (lecture, quizzes, lab exams) in a private room rather than with other students. The Complainant considered taking all his exams (quizzes, written exams and lab practicums) in a private space to constitute appropriate testing conditions.

According to the OSDS memorandum, which outlined the Complainant's approved academic adjustments, the University arranged for proctors and separate testing rooms. The Director of Graduate Programs stated that on the day of the exams the administrative assistant would proctor the test with the Complainant in a separate private room at the testing center. As noted earlier, the Complainant was not approved for academic adjustments for quizzes or lab practicals, so these were not given in a separate testing space.

Conclusion

The Complainant did not provide any additional information to demonstrate that he was not allowed to take his "written exams" in a separate testing room. On the other hand, the University submitted information which showed that his tests were given in the testing center. OCR concludes there is insufficient evidence to show that the University failed to provide written examinations under appropriate testing conditions in noncompliance with Section 504.

(d) Provide extension of the time required to complete his educational program

The Complainant stated that he was denied the opportunity to extend the length of his program, even though the CDM's Student Handbook allowed for additional time to complete the educational program. The Complainant further alleged that the CDM acted with greater leniency and generosity in the case of a similarly situated non-disabled student (Student B) who also had incomplete coursework.

First, OCR reviewed the records of Student B, which indicate that Student B was referred to the Student Progress Committee because of concerns related to professionalism and multiple course failures, and was dismissed from the CDM. Evidence revealed that Student B was not provided with an extension of time to complete the educational program.

As mentioned above, the Complainant submitted a letter from his neurologist to support his request for a program extension in February 2014. On February 26, 2014, the Director contacted the Complainant by email to advise him that the University needed medical information from his treating psychologist or psychiatrist which included 1) a narrative report listing the Complainant's disability diagnosis, 2) relevant evaluation results, 3) current functional limitations in the post-secondary setting, 4) prescribed medications, and 5) physician's recommended accommodations. The Director attached the University's guidelines for documenting psychological and psychiatric disabilities. When the Complainant did not respond,

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the University again requested the medical information to support his request for accommodations. There is no information in the Complainant's records which demonstrates that he submitted the information requested by the Director after this date. In fact, email correspondence from the Complainant to the Director reveals that the Complainant simply stated "not true" in response to University's request and did not provide additional information.

Conclusion

Since the Complainant did not submit the documentation to support his request for an extension of the length of time to complete the program, the University was not under an obligation to consider whether this modification request was reasonable. OCR concludes there is insufficient evidence to show that the University's denial of the Complainant's request for an extension of the time required to complete his educational program was discrimination on the basis of disability in noncompliance with Section 504.

(e) Provide an aide during a committee meeting on February 26, 2014.

The Complainant stated that the University denied his request to have someone by his side during the committee meeting held on February 26, 2014, despite his physician's recommendations based on his disability. The Complainant further stated that he was totally unprepared for the "hostile proceedings," and appealed the denial of his request for accommodations to the Health Professions Division's Chancellor.

The Complainant also stated that he advised the University that the aide who would accompany him would not speak or present any information to the academic committee; the aide would only assist him with his presentation to the academic committee because of the time pressure and stress. The Complainant also requested that his attorney assist at the Student Progress Committee (SPC) meeting, but was told that the University's Policy would not permit an attorney in the meeting.

In response, the University provided OCR with an email dated February 26, 2014, from the Director, which shows that the Complainant was informed that he needed to submit a narrative report which included a disability diagnoses, relevant evaluation results and discussion, current functional limitations in the postsecondary setting, prescribed medications, and physician recommendations if he wanted the aide to attend the meeting as an accommodation. The email also informed the Complainant that once all the documentation was received the accommodation request would be given further consideration.

The Complainant was also provided with a copy of the University's Psychological and Psychiatric Disabilities policy, which states that documentation for eligibility for services, must reflect the current impact the disability has on the student's functioning. As stated earlier, the Complainant did not provide any information which shows that he submitted the required information to support his request for an aide in the meeting as an academic adjustment; he only submitted the note from his physician dated February 22, 2014, which stated "because the nature of his illness and its severity he certainly needs a professional advisor who can help him

communicate with University officials during the time of his interview to avoid anxiety attack.[sic]” He did not provide any other supporting documentation.

Conclusion

Under Section 504, the student must identify himself or herself as having a disability and request academic modifications or auxiliary aids as needed by providing required medical documentation requested by the University. Here, OCR determined that the Complainant failed to provide the requested medical information requested by the University. For this reason, OCR concludes there is insufficient evidence to show that the University’s denial of an aide during a committee meeting on February 26, 2014, discriminated against the Complainant on the basis of disability in noncompliance with Section 504.

Issue 2: Whether the University subjected the Complainant to a hostile environment on the basis of disability by isolating him and subjecting him to a tougher academic standard by turning more lenient staff against him in noncompliance with Section 504 implementing regulation at 34 C.F.R §§ 104.4 and 104.43(a).

The Complainant alleged that the University subjected him to a hostile environment on the basis of disability by isolating him and subjecting him to a tougher academic standard by turning more lenient staff against him. He further alleged that the Course Director for Integrated Restorative Dental Services (IRDS) Lab revealed his Student Score ID and instructed other faculty members to not sign off on lab projects on multiple occasions.

The Complainant also provided a copy of an email dated October 5, 2013, he sent to the CDM Executive Associate Dean, which states that he was writing to convey grievances against two faculty members for a consistent pattern of singling him out and creating a hostile environment thus making it difficult for him to continue his dental education at the University. In this email, the Complainant stated that he believed the faculty members treated him this way because of his disability. He further stated the faculty members’ treatment weakened his morale and seriously hurt his ability to focus on his studies. He also stated that a faculty member revealed his posting ID, which was supposed to be confidential, causing him great embarrassment? He further asserts that a Professor intimidated him during exams (lecture and lab) by “staring into his eyes.” He also stated that the Professor told him that receiving accommodations gives an unfair advantage over other students; a claim that he states is untrue and reflects his disdainful attitude toward him.

Harassment Procedures

a. Statement of Non-discrimination

The University’s statement of non-discrimination, which is located in the Student Handbook, states that, “ Consistent with all federal and state laws, rules, regulations, and/or local ordinances (e.g. Title VII, Title VI, Title III, Title II, Rehab Act, ADA, Title IX), it is the policy of Nova Southeastern University not to engage in discrimination or harassment against any persons because of race, color, religion or creed, sex, pregnancy, national or ethnic origin, non-

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disqualifying disability, age, ancestry, marital status, sexual orientation, military service, veteran status, political beliefs or affiliations, and to comply with all federal and state nondiscrimination, equal opportunity and affirmative action laws, orders, and regulations.” This nondiscrimination policy applies to admissions, enrollment, scholarships, loan programs, athletics, employment, and access to participation.

b. Harassment Policy

The University’s harassment policy discusses harassment in two places. The first states that the law prohibits retaliation against an individual for opposing any practices forbidden under this policy, for bringing a complaint of discrimination or harassment, for assisting someone with such a complaint, for attempting to stop such discrimination or harassment, or for participating in any manner in any investigation or resolution of a complaint of discrimination or harassment. In the event a student feels discriminated against by another student, an NSU faculty or staff member, an employee, or a third party, the student should contact the appropriate academic center representative or the university equity coordinator, and the policy provides the coordinator’s name and phone number.

In addition, the policy also defines harassment as any conduct (words or acts), whether intentional or unintentional or a product of the disregard for the safety, rights, or welfare of others, which causes physical, verbal, or emotional harm; or conduct, which intimidates, degrades, demeans, threatens, hazes, or otherwise interferes with another person’s rights to comfort and right to be free of a hostile environment. The policy gives examples of such conduct.

c. Grievance

The only grievance procedure provided in the University Student Manual is a grievance procedure for non-academic disputes. The policy says that first, the student should attempt to resolve an issue in dispute at the level at which the dispute occurred. This attempt must be in writing (i.e., email, regular mail, or fax). The student will receive a reply in writing, which addresses the complaint. If the reply is not acceptable, the student is encouraged to submit the complaint in writing to the Associate Dean of Student Affairs. The Associate Dean of Student Affairs will attempt to resolve the dispute. If the dispute cannot be resolved, the Associate Dean will notify the student and the vice president of student affairs in writing. Either side may then appeal in writing to the vice president of student affairs. The vice president will investigate and review the findings, and will notify the student in writing of his or her decision. Finally, the vice president’s decision is final and binding and cannot be appealed.

Conclusion

After reviewing the University’s statement of nondiscrimination, harassment policy, and grievance procedures, OCR has determined that the University’s harassment policy does not include harassment on the basis of disability, a definition of harassment including what constitutes a hostile environment and, if found, that it will take prompt steps that are reasonably calculated to both end the harassment and prevent its recurrence and where appropriate, remedy

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the effects. Also the University's grievance procedure does not include reasonably prompt time frames for an investigation to be conducted, and no opportunity to present evidence and witnesses. For this reason, OCR concludes that there is sufficient evidence that the University's policy and procedure are not in compliance with Section 504.

University's Investigation of Complainant's complaints

As stated above, the record shows that the Complainant submitted his complaint regarding a hostile environment to the University on October 5, 2013. In response to these allegations, the University turned the matter over to the Chair of the Restorative Science Department (Chair). The Chair met with the Complainant and one of the faculty members accused of creating a hostile environment to try to resolve the matter. During the meeting, the faculty member denied the Complainant's claims, and the Complainant did not present any information or identify any witnesses to corroborate his claims. Although the Chair could not corroborate the Complainant's allegations, she assigned another faculty member to approve and sign off the Complainant's daily assignments. The Complainant was given a second opportunity to present information regarding these allegations to the Student Progress Committee on February 26, 2014, but he failed to bring any witnesses or information to support his claims.

Conclusion

Based on the Complainant's evidence and the data response from the University, OCR was unable to conclude that the alleged acts constituted disability harassment. In addition, despite the lack of a formal process for investigating complaints of disability harassment, the University took action to look into the Complainant's allegations. OCR therefore concludes that there is insufficient evidence of a violation of Section 504, as alleged.

However, there is a deficiency in the University's policies and procedures regarding harassment and the matter needs to be addressed. On May 20, 2016, the University entered into an agreement with OCR to address the deficiency.

Issue 3: Whether the University retaliated against the Complainant in February 2014 when two faculty members came into immunology classroom during final exam and began speaking loudly in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.61.

The Complainant informed OCR that the University retaliated against him when two faculty members came into immunology classroom on February 26, 2014, during final exam and began speaking loudly preventing him from concentrating on the exam.

Protected Activities and Knowledge of Protected Activities

A protected activity is one in which a person either opposes an act, policy, or practice that is unlawful under any of the laws OCR enforces; files a complaint, testifies, assists, or participates in an investigation, proceeding, or hearing conducted under the laws that OCR enforces; or otherwise asserts rights protected by the laws enforced by OCR.

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OCR ascertained that the Complainant asked the University for academic adjustments and auxiliary aids and services for his disability in 2013. Based on the Complainant's request, the University provided him with 1.5 X on all written exams two hours or longer in duration. Thus, OCR has determined that the Complainant engaged in a protected activity and that the University had notice of the protected activity. Therefore, OCR proceeded to the next step of its analysis – whether the University subjected the Complainant to an adverse action.

Adverse Actions

OCR next determined whether the University took adverse action against the Complainant contemporaneous with or subsequent to the protected activity. An adverse action must significantly disadvantage the Complainant or his ability to gain the benefits of the program. In the alternative, even if the challenged action did not meet this standard, the action could be considered retaliatory if the challenged action reasonably acted as a deterrent to further protected activity, or if the Complainant was, because of the challenged action, precluded from pursuing his discrimination claims. To make this determination, OCR considers (on a case-by-case basis, in light of all the facts and circumstances) whether the alleged adverse action caused lasting and tangible harm, or had a deterrent effect. Merely unpleasant or transient incidents usually are not considered adverse

The Complainant alleges that because the two professors came into the class on February 26, 2014 and began speaking loudly, it caused him to become distracted. The Complainant however, did not connect the Professors "speaking loudly" to an adverse consequence such as a negative grade on the test or in the class, or an inability to complete the test.

The University provided evidence from the Administrative Coordinator (Coordinator), whose responsibility includes acting as an exam proctor for CDM students receiving disability accommodations. The Coordinator stated the proctor would have been her or the Assistant Director for the Complainant's exam and that she does not have any recollection of this allegation. In addition, she stated that she has not been made aware of an instance in which a faculty member entered an accommodated students testing room and interrupted.

The Assistant Director of Student Services also stated that she does not have a record or recollection of any incident where faculty members entered accommodated students testing room and interrupted.

As stated above, OCR contacted the Complainant via email to give him a chance to respond to the University's evidence and to give him an opportunity to explain whether there was an adverse consequence. To date, the Complainant has failed to respond to OCR's request for information and rebuttal.

Conclusion

As noted above, when a required element of the prima facie case cannot be established, OCR finds insufficient evidence of retaliation. OCR was unable to corroborate the Complainant's

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allegation that several faculty members caused a distraction during his testing time. However, even if such an action occurred, OCR cannot conclude that the action would be considered adverse, rather than merely an unpleasant or transient incident. OCR concludes, based upon the preponderance of the evidence, that there is insufficient evidence that the University retaliated against the Complainant in noncompliance with Section 504, as alleged.

Issue 4-Whether the University discriminated against the Complainant on the basis of national origin in December 2013, when a Professor stated that the Complainant “should go back to where he came from,” in noncompliance with the Title VI regulation at 34 C.F.R. § 100.3.

The Complainant stated that on December 4, 2013, a professor told him that “he should go back to where he came from”. The Complainant further stated that he could not believe what he heard and that after he reflected he believed the comment was directed at him.

OCR interviewed the Associate Dean, his professors during the time period in question and other University staff and no one could corroborate that a staff member told the Complainant to “go back to where he came from.” Each of the staff interviewed denied making the statement, and the University did not receive any complaints from the Complainant regarding this statement.

OCR contacted the Complainant and requested that he identify the professor who allegedly made the comment and any supporting evidence; as of the date of this letter he has not provided the information to OCR.

Conclusion

There is no corroborating evidence that the statement, “he should go back to where he came from” was made to the Complainant. Accordingly, based on the preponderance of the evidence, OCR finds that the Complainant failed to establish a prima facie case of different treatment. Therefore, there is insufficient evidence to conclude that the University subjected the Complainant to different treatment in noncompliance with Title VI, as alleged.

Regarding Allegations 1, 2, 3 and 4, this concludes OCR’s investigation of the complaint and 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.

Regarding the violations OCR found with regard to the grievance procedures, on May 20, 2016, the District signed the attached Resolution Agreement (Agreement), which once implemented, will fully address the complaint allegation in accordance with the requirements of Section 504 and Title II. Under the proposed agreement, the University agrees to change its policy and procedures to include reasonably prompt time frames for the investigation, a written assurance that the University will take steps to prevent recurrence, and an opportunity for the complainant and the alleged accused to present evidence and witnesses. 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, 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.

This concludes OCR's consideration of this complaint, which we are closing effective the date of this letter. If you have any questions regarding this matter, please contact Darryl Dennis, Senior Investigator at (404) 974-9358, or me at (404) 974-9354.

Sincerely,

Melanie Velez
Regional Director