



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

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ATLANTA, GA 30303-8927

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August 22, 2016

Dr. Leanne Van Dyk
President
Columbia Theological Seminary
701 S. Columbia Dr.
Decatur, GA 30030

Re: Case No. 04-15-2413

Dear Dr. Van Dyk:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has concluded its investigation of the above-referenced complaint, filed on July 27, 2015, against the Columbia Theological Seminary (Seminary), in which the Complainant alleged that the Seminary discriminated against her on the bases of race and disability and retaliated against you during your Summer 2015 Intensive Greek Course. Specifically, the Complainant alleged that the Seminary:

1. Discriminated against the Complainant on the basis of disability when it failed to implement and/or changed the plan it agreed to regarding academic adjustments and auxiliary aids and services during summer term 2015;
2. Discriminated against the Complainant on the basis of her race during proctoring of her Intensive Greek tests during summer term 2015;
3. Retaliated against the Complainant for seeking academic adjustments and auxiliary aids and services by posting Complainant's grade in the Intensive Greek course beyond the drop/add deadline, causing her to not receive a refund in the course.

OCR investigated this case under the authority of:

- Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104. The Section 504 implementing regulation at 34 C.F.R. § 104.61 incorporates by reference the prohibition against retaliation provided for in the Title VI regulation at 34 C.F.R. § 100.7(e).
- 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 by recipients of Federal financial assistance. The Title VI regulation, at 34 C.F.R. § 100.7(e), prohibits retaliation.

As a recipient of Federal financial assistance from the Department, the Seminary is subject to these laws.

OCR investigated the following legal issues:

1. Whether the Seminary failed to implement academic adjustments and auxiliary aids and services that it had put in place for Complainant during summer term 2015, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. §104.44;
2. Whether the Seminary subjected the Complainant to different treatment on the basis of race in the provision of academic adjustments and auxiliary aids and services during testing in the Intensive Greek course, in noncompliance with the Title VI implementing regulation at 34 C.F.R. §100.3(a) and (b)(1)(i)-(vi);
3. Whether the Seminary retaliated against Complainant for complaining about the treatment she was receiving and requesting accommodations for her disability in noncompliance with 34 C.F.R. §104.61;
4. Whether the Seminary is in violation of its obligations regarding publication of a notice of nondiscrimination and adoption of grievance procedures in noncompliance with the Section 504 implementing regulation at 34 C.F.R. §§104.7-104.8;
5. Whether the Seminary's policy concerning academic adjustments and auxiliary aids is in noncompliance with the Section 504 requirements set forth in 34 C.F.R. §104.44 (d)(1).

During the course of its investigation, OCR reviewed information provided by the Complainant and the Seminary, including the Seminary's notice of nondiscrimination, Section 504 policies and procedures, the Complainant's records, and correspondence regarding the Complainant's academic adjustments and auxiliary aids.

Prior to OCR concluding the investigation, the Seminary agreed to voluntarily resolve Issues 1, 2, and 3 pursuant to Section 302 of OCR's *Case Processing Manual*. Pursuant to these procedures, a complaint may be resolved at any time when, before the conclusion of an OCR investigation, the recipient expresses an interest in resolving the complaint, OCR agrees, and the recipient signs a resolution agreement that addresses the complaint allegations. In such circumstances, the provisions of the resolution agreement will be aligned with the complaint allegations or the information obtained during the investigation and will be consistent with applicable regulations. In addition, with regard to Issues 4 and 5, OCR determined that the Seminary's notice of nondiscrimination, grievance procedures, and policy on academic adjustments and auxiliary aids do not comply with Section 504 and its implementing regulations. The Resolution Agreement to which the Seminary agreed addresses each of these issues.

Legal Standards

Implementation of Academic Adjustments and Auxiliary Aids and Services

Section 504, at 34 C.F.R. §104.44 (a)-(c) provides, in relevant part, that: a recipient to which this subpart applies shall make such modifications to its 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 or to any directly related licensing requirement will not be regarded as discriminatory within the meaning of this section. Modification may include changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted. A recipient to which this subpart applies may not impose upon students with disabilities other rules that have the effect of limiting the participation of students with disabilities in the recipient's education program or activity.

Retaliation

Retaliation is prohibited under the Section 504 regulation at 34 C.F.R. § 104.61, which incorporates the procedural protections enumerated at 34 C.F.R. §100.7 and 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 she has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under Section 504.

To establish a prima facie case of retaliation, OCR uses a four step analysis, examining: (1) whether the Complainant engaged in a protected activity under the laws OCR enforces; (2) whether the Seminary was aware of the protected activity; (3) whether the Seminary took adverse action against the Complainant contemporaneous with or subsequent to 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.

Statement of Non-discrimination and Adoption of Grievance Procedures

The Section 504 implementing regulation at 34 C.F.R. §104.7(a) provides that, “[a] recipient that employs fifteen or more persons shall designate at least one person to coordinate its efforts to comply with this part.”

In addition, Section 104.7(b) requires that the recipient “shall 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 this part. . .”

The Section 504 implementing regulation at 34 C.F.R. § 104.8 states, “[a] recipient that employs fifteen or more persons shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees. . .that it does not discriminate on the basis of [disability] in violation of section 504 and this part. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its program or activity. The notification shall also include an identification of the responsible employee designated pursuant to §104.7(a). . . .”

Auxiliary Aids and Adjustments

The Section 504 implementing regulation at 34 C.F.R. §104.44(d)(1) provides, “[a] recipient to which this subpart applies shall take such steps as are necessary to ensure that no. . . student [with a disability] is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination because of the absence of educational auxiliary aids for students with impaired sensory, manual, or speaking skills.”

Different Treatment

Title VI’s implementing regulation at 34 C.F.R. §100.3 prohibits discrimination on the basis of race, color, or national origin. To determine whether a recipient has subjected a student to different treatment prohibited under Title VI, OCR looks at: 1) whether there is evidence that the student was treated differently than students of other races or national origins under similar circumstances, 2) without a legitimate nondiscriminatory, non-pretextual reason, and 3) whether the treatment has resulted in the denial or limitation of education services, benefits, or opportunities.

Different treatment requires a finding of intentional discrimination on the basis of an individual’s race, color, or national origin. Such different treatment would interfere with or limit the ability of a student to participate in or benefit from the services, activities or privileges provided by the recipient. Evidence of discriminatory intent may be direct or circumstantial. Absent direct proof of discriminatory motive, a prima facie case of different treatment is established when a district treats minority students differently from similarly situated nonminority students. Once a prima facie case of different treatment is established, the school district may articulate a legitimate, nondiscriminatory justification for the different treatment. However, a recipient’s rebuttal/nondiscriminatory justification can be overcome with a showing of pretext.

Background

The Complainant is an African American woman with diagnosed ADHD, as well as problems with working memory and information processing. She was enrolled in the Masters of Divinity program at the Seminary where she began studying in Fall 2014, after transferring from another seminary.

Summary of Allegations

Prior to beginning her studies, the Complainant had a series of transfer conferences with the Associate Dean of Academic Administration (Associate Dean), regarding her transfer credits. During this conference, Complainant understood the Associate Dean to say that she would not need to take a language, nor a basic scripture reading class due to her transfer status and the fact that she was not seeking to become an ordained Presbyterian minister.

Subsequent to the Complainant's enrollment at the Seminary, she was told that she would be required to take Greek or Hebrew in order to graduate. Despite her reservations, the Complainant enrolled in this course during Summer 2015. Once enrolled, the Complainant alleges that she was treated differently than a similarly disabled white student in the Greek class with regard to academic adjustments. The Associate Dean informed the Complainant, through a series of accommodations letters, that the open book and take-home test accommodations that she had received in other classes at the Seminary would not be available for the Greek course because such a format would "fundamentally alter" the skills being tested. The Complainant also alleges that her testing proctor acted in a way that detracted from her ability to concentrate and test successfully and that her Greek professor was disrespectful toward her due to her race. After taking her mid-term exam in Intensive Greek on July 24, 2015, Complainant dropped the class after learning her grade on that test was a 38%. She was given special permission by the Dean to drop the class after the drop/add period had ended and received a twenty-five percent tuition refund. She alleges that her Greek professor posted her grades after the drop/add deadline in retaliation for her self-advocacy with regard to her academic adjustments.

On July 27, the Complainant filed a formal grievance with the Seminary, which was answered on August 7, 2015. The grievance response did not state the standard of proof used to render a determination on Complainant's complaints and denied the majority of her claims in substance. In her grievance, the Complainant had asked for a course substitution for her Greek class and was told in the grievance response that she could substitute Hebrew for the Greek class.

Issue 1: Provision of Academic Adjustments and Auxiliary Aids

The Seminary declined to allow take home tests for the Greek course, as recommended by Complainant's physician, and allowed the Complainant to use only one of her two course textbooks as a reference during exams. The Associate Dean notified the Complainant that a group had determined that her requested test format would "fundamentally alter" the skills to be measured and learned. However, further investigation by OCR would be required to determine whether the Seminary used an appropriate process for making a determination that the test format used by the Professor was an essential academic requirement.

Further, the evidence obtained by OCR shows that the Complainant requested a course substitution in a grievance she filed with the Seminary after deciding to drop the Greek course. The Dean's response to the grievance acknowledged the request, stating that the request was "reasonable," and that Hebrew was another option for satisfying the language requirement. In explaining to OCR her difficulty with the Greek course, Complainant noted that her disability

impacted her ability to learn any language because her working memory was impaired. In a later email exchange between Complainant and the Dean, the Dean rejected substituting a Hebrew Bible/Old Testament class that Complainant had taken at another seminary for the biblical language course required by the Seminary's curriculum. Further investigation, including interviews of the Seminary's faculty and administrators, would need to be completed for OCR to determine whether the Complainant took steps necessary to put the Seminary on notice that she was requesting exemption from the entire biblical language requirement—not just Greek—due to her learning disability. OCR would also need to ascertain whether faculty at the Seminary ever engaged in an interactive process with the Complainant to determine appropriate academic adjustments or auxiliary aids and services that meet the Complainant's individual needs with regards to the Greek course and/or the language requirement; or whether the Seminary engaged in a deliberative process to determine whether study of a language was deemed to be an "essential" part of the curriculum for the M.Div. degree. Since this investigation opened, OCR received information that the Seminary agreed to graduate the Complainant without requiring that she satisfy the Biblical language requirement. The Seminary has also agreed to conduct trainings and revise their relevant policies to ensure its compliance with Section 504 and its implementing regulations, as detailed in the enclosed Resolution Agreement.

Issue 2: Different Treatment on the Basis of Race

Regarding Complainant's allegations of different treatment on the basis of race in the provision of academic adjustments and auxiliary aids, the evidence obtained by OCR to date shows that, like Complainant, at least one white student received testing in a separate room as an academic adjustment related to a disability during the Greek class. While the Complainant reported having observed another white student testing in the hallway with no proctor present, this second student was not identified by the Seminary as a student receiving an academic adjustment for a disability. Even if this second student was not receiving academic adjustments based on a disability, there could be different treatment based on race, if she was allowed to test outside the room without a proctor present. In addition, based upon what the Complainant alleged, the conduct of the proctor assigned to her may have interfered with the Complainant's test performance. The Seminary's document production included a document acknowledging that the Complainant was upset because of her interactions with the proctor during a July 10, 2015, test. In addition, a member of the Seminary's faculty expressed concern regarding the different treatment of white students and students of color. To conclude its investigation, OCR would need to interview the Associate Dean and any witnesses to the test sessions prior to making a determination regarding different treatment of the Complaint. To address the concerns raised by OCR's investigation to date, the Seminary has agreed to, among other steps, provide training regarding Title VI and to conduct a climate survey, as detailed in the attached Resolution Agreement.

Issue 3: Retaliation

With regard to Complainant's allegation of retaliation, the evidence available thus far shows that the Complainant engaged in protected activity; her midterm grade was among the last set of grades posted; and, when she sought to drop the Greek course, the regular drop/add period had ended. She was able to receive a partial refund only because of the Dean's intervention and, at

that point, was only eligible for a 25% refund. She contends that other students reported that their grades were posted before hers.

Additional investigation would be needed to determine whether the Greek Professor delayed in posting the Complainant's grade and whether that delay constituted an adverse action for purposes of a retaliation analysis. However, the Seminary has agreed to provisions in the attached resolution agreement that provide for training with regard to Section 504's protections against retaliation for Complainants, as well as a full refund of the tuition paid by Complainant for the Greek class.

Issue 4: The Seminary's notice of nondiscrimination and grievance procedures

Notice of Nondiscrimination

The Seminary's nondiscrimination statement is found on page 33 of its 2015-2016 Student Handbook and reads:

Columbia Theological Seminary admits students of any race, color, national, and ethnic origin to all the rights, privileges, programs, and activities generally accorded or made available to students at the school. It does not discriminate on the basis of gender, handicap, race, national, and ethnic origin in administration of its educational policies, admissions policies, scholarship and loan programs, and other school-administered programs.

While the Seminary's notice of nondiscrimination includes one sentence that provides notice that it will not discriminate on the basis of disability, the first sentence—which specifically addresses admitting students to rights, privileges, programs and activities—omits disability as a basis covered by the nondiscrimination statement. In addition, the statement does not include contact information for the individual designated to handle concerns or inquiries regarding disability-related matters.¹ Accordingly, based on these facts, OCR finds that the Seminary is in violation of Section 504 with regard to its statement of nondiscrimination.

Section 504 Grievance Procedures

Page 33 of the Seminary's 2015-2016 Student Handbook also contains its Section 504 Grievance Procedure:

Persons with requests or concerns involving the seminary's accommodation of persons with disabilities are directed to speak with the vice president for business and finance, the campus's designated officer for ADA compliance issues.

The Seminary has no written grievance procedure stating that it is applicable to complaints of discrimination or harassment based on disability aside from this statement that concerns about accommodation of students with disabilities should be directed to the ADA officer. While the

¹ The second sentence also fails to mention color and age as bases of nondiscrimination.

Seminary has both a general student grievance procedure and a student complaint procedure, neither provides notice that the procedure should be used to address complaints or concerns related to discrimination or harassment based on disability. The student grievance procedure encourages students to first have a conversation with the person seen as causing the grievance or with the vice president responsible for that particular area. The grievance procedure can also be invoked if a student is dissatisfied with the result of the student complaint process. The procedure provides no information concerning whether an investigation will occur, whether witnesses or other evidence can be provided, when a decision will be made, how a grievant will be notified of the outcome of the submission to the Dean, or the Seminary's preparedness to take steps to prevent recurrence of any disability-based discrimination or harassment and remedy the effects of the discrimination or harassment for the complainant and others, if appropriate.

Similarly, the Student Complaint Policy provides that complaints should be communicated to the vice president responsible for the area of the complaint; that the vice president will normally respond within ten days; and, that the response will be in writing. However, this procedure also provides no information concerning whether an investigation will occur, whether witnesses or other evidence can be provided, or the Seminary's preparedness to take steps to prevent recurrence of any disability-based discrimination or harassment and remedy the effects of the discrimination or harassment for the complainant and others, if appropriate, as required by 34 C.F.R. 104.7(d). Based upon the foregoing, OCR concludes that the Seminary has not adopted procedures that incorporate due process standards and provide for the prompt and equitable resolution of complaints alleging discrimination or harassment on the basis of disability. Accordingly, the Seminary is in violation of 34 C.F.R. §104.7.

Seminary's policy concerning academic adjustments and auxiliary aids

The Seminary's 2015-2016 Student Handbook section on page 33 related to academic adjustments and auxiliary aids provides that the Seminary will, "allow visually impaired persons to take class notes via audiotape and hearing impaired individuals to have an ASL interpreter present *at their own expense*." The section also provides that the Seminary will "seriously consider all requests for modification of existing policies and practices that may limit access to the seminary's program. . ."

The only information concerning the process for requesting academic adjustments or auxiliary aids is also provided in the student handbook on page 33 and states that the ADA Officer is the contact for "ADA compliance issues" and the Associate Dean is the contact for "learning accommodations." No further procedure for requesting specific auxiliary aids or academic adjustments is anywhere noted in any of the materials submitted by the Seminary to OCR, nor is any type of formal appeals process set forth in the event that an auxiliary aid, service or academic adjustment is denied, as it was in Complainant's case.

Under OCR's interpretation of the regulation at 34 C.F.R. §104.44, recipients may not require students to pay for academic adjustments or auxiliary aids. The inclusion of erroneous language concerning the cost obligation could chill students with respect to requesting an interpreter or any other type of auxiliary aid. Also, the only specific possible auxiliary aids listed in the Handbook are audiotaping and ASL interpreters, and the only disabilities mentioned in the list

are visual impairments and hearing impairments. Those limited lists could be understood to convey that only the listed academic adjustments or auxiliary aids are potentially available, or that academic adjustments or auxiliary aids are available only to students with the specified disabilities. In addition, it is not clear where students should go to initiate a request for those auxiliary aids since such aids would not automatically be understood to constitute a “learning accommodation,” which should be requested through the Associate Dean as opposed to a more general accommodation request which should be initiated with the Vice President for Business and Finance. For all of these reasons, OCR finds the Seminary to be in violation of 34 C.F.R. §104.44.

Conclusion

In conclusion, the Seminary agreed to resolve the Complainant’s allegations before OCR fully investigated Issues 1-3. Nonetheless, based on evidence obtained in the investigation of the Complainant’s allegations, OCR has determined by a preponderance of the evidence that the Seminary violated Section 504’s implementing regulation at 34 C.F.R. §§ 104.7, 104.8, and 104.44, by failing to maintain appropriate and updated policies regarding nondiscrimination, grievance procedures, and the process for obtaining academic adjustments and auxiliary aids. The attached Resolution Agreement addresses the allegations brought forth by the Complainant, as well as these unalleged violations.

In summary, the attached Resolution Agreement provides for a revision of all of the Seminary’s published notices of nondiscrimination, as well as its policy pertaining to how students with disabilities may obtain specific auxiliary aids and academic adjustments, including course modifications and substitutions. The Resolution Agreement also requires the Seminary to develop a Section 504 grievance procedure incorporating appropriate due process standards and providing for the prompt and equitable resolution of all complaints. The Seminary will also undertake a series of trainings for its faculty and staff on the topics of: 1) the Seminary’s new Section 504 policy and grievance procedure; 2) Section 504’s requirements regarding modifications of academic requirements and protections for individuals engaging in protected activity under Section 504; and 3) Title VI’s legal standards prohibiting discrimination on the basis of race, color, or national origin. The Seminary has further agreed to undertake a campus climate survey to assess the racial climate on campus and to prepare a written analysis and plan for addressing the survey results. Finally, the Resolution Agreement provides that the Seminary will refund to the Complainant the tuition she paid for her Greek class, expunge the Greek class completely from Complainant’s transcript, and allow the Complainant to substitute another course for the Seminary’s Biblical language requirement or engage in a full deliberative process regarding this requirement.

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.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records, upon request. If we receive 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 Seminary 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. This concludes OCR's investigation of the complaint and should not be interpreted to address the Seminary's compliance with any other regulatory provision or to address any issues other than those addressed in this letter.

OCR is committed to a high quality resolution of every case. If you have any questions regarding this matter, please contact Robyn Painter, Esq., at (404) 974-9345, or G. Anthony Brown, Esq., Acting Compliance Team Leader, at (404) 974-9374.

Sincerely,

Melanie Velez
Regional Director

Enclosure: Resolution Agreement