

April 20, 2016

Dr. W. Kent Fuchs
President
226 Tigert Hall
P.O. Box 113150
University of Florida
Gainesville, Florida 32611

Re: OCR Docket #04-15-2415

Dear Dr. Fuchs:

On August 3, 2015, the U.S. Department of Education (Department), Office for Civil Rights (OCR) received the above-referenced complaint filed against the University of Florida College of XXXXXXXXXXXXX (University) alleging discrimination on the basis of disability. Specifically, the Complainant alleged that the University: (1) denied her requests for accommodations from Fall 2014 through Spring 2015, including a reduced case load, extended assignment deadlines without penalty; (2) refused to excuse clinical rotation absences and tardies related to her disability; (3) dismissed her from the XXXXX program (Program) based on disability in February 2015; and (4) treated her differently based on disability when it unduly delayed issuing a decision on the appeal of her dismissal until July 2015.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance from the Department and a public entity, the University is subject to the provisions of Section 504 and Title II.

OCR initiated an investigation of the following legal issues: (1) whether the University wrongfully denied the Complainant's requests for accommodations from September 24, 2014, through Spring 2015, in noncompliance with Section 504 and its implementing regulation at 34 C.F.R. § 104.44, and Title II and its implementing regulation at 28 C.F.R. § 35.130; and (2) whether the University treated the Complainant differently based on disability when it dismissed her from the XXXXXX program in February 2015, and when it delayed issuing a decision on her appeal until July 2015, in noncompliance with 34 C.F.R. § 104.43 and Title II and its implementing regulation at 28 C.F.R. § 35.130.

Prior to the conclusion of OCR's investigation, the University expressed an interest in voluntarily resolving this case by entering into a resolution agreement. Pursuant to Section 302 of OCR's *Case Processing Manual*, allegations may be resolved when, before the conclusion of an investigation, a recipient requests to resolve the allegations and OCR determines that it is appropriate to resolve the allegations with an agreement during the course of the investigation. OCR has determined that a resolution is appropriate in this matter to address the concerns that have surfaced in OCR's investigation to date. This letter summarizes the applicable legal standards, the information gathered during the investigation, and the Resolution Agreement.

Legal Standards

Academic Adjustments and Auxiliary Aids

Section 504's implementing regulation at 34 C.F.R. § 104.44(a) provides that, in the postsecondary setting, recipients are required to 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 student with a disability. Section 104.44(d) provides that recipients 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 under the education program or activity because of the absence of educational auxiliary aids for students with a documented disability.¹

Academic requirements that the recipient can demonstrate are essential to the instruction being pursued, or to any directly related licensing requirement, will not be regarded as discriminatory. A recipient's determination as to what constitutes an essential requirement of its program should be based upon a deliberative process that involves a group of trained, knowledgeable, and experienced people who engage in a rational review of the program and its requirements and consider whether effective alternatives to the requirement exist which could allow the student with a disability to participate without waiving or lowering essential requirements or fundamentally altering the nature of the program.

Thus, recipients must provide academic adjustments and aids that are effective and that are appropriate to the individual needs of the student with a disability. To ensure that students with disabilities are not denied academic adjustments based on their individualized needs, a postsecondary institution must engage in a dialogue with its students who are seeking adjustments. The process should be an interactive one between the student seeking the adjustment and the officials responsible for ensuring that adjustments are delivered.

The interactive process begins when a student notifies the institution that he has a disability and that he needs an academic adjustment or aid because of that disability. If students have received proper notice of an institution's process for providing adjustments, they are expected to follow the process in seeking an academic adjustment. This includes the obligation to inform the school

¹ Title II's implementing regulation at 28 C.F.R. § 35.130(b)(7) provides that a public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

of their disability, provide supporting documentation, and ask the school for assistance related to their disability. Once a student takes these steps consistent with the institution's established process, it is then the institution's responsibility to ensure that any necessary and agreed upon academic adjustments are provided to the student.

Different Treatment

The Section 504 implementing regulation at 34 C.F.R. § 104.4(a) and (b)(1)(i)-(iv) and (vii) states that no qualified disabled person 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. A recipient, in providing any aid, benefit or service may not, on the basis of disability, deny a qualified disabled person the opportunity to participate in or benefit from an aid, benefit or service; afford a disabled person an opportunity to participate in or benefit from the aid, benefit or service which are not equal to those afforded to others; provide a disabled person with an aid, benefit, or service that is not as effective as those provided to others; provide different or separate aids, benefits, or services to a disabled person or class of disabled persons unless such action is necessary to provide qualified disabled persons with aids, benefits or services that are as effective as those provided to others; otherwise limit a qualified disabled person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.²

To establish a *prima facie* case of different treatment, the Complainant must have been treated differently than similarly situated students without disabilities. If a *prima facie* case of different treatment is established, the University may articulate a legitimate, nondiscriminatory reason for the different treatment. OCR then determines whether the University's stated legitimate nondiscriminatory reason was a pretext for unlawful discrimination.

Summary of the Investigation

Background

The University recognizes the Complainant as a person with a disability. The Complainant told OCR that her disabilities include XXXX, XXXX, XXXXXX, and XXXXXXXX.

The Complainant filed a document dated January 11, 2013, with the University's Disability Resources Center (DRC), identifying her disability as XXX and seeking to receive services and/or accommodations. The Complainant followed the DRC's process for requesting accommodations and, on January 11, 2013, was provided with accommodations of time and one-half for testing, and for a low distraction environment.

On May 10, 2013, the University's XXXXXXXXXXXXXXXXXXXXXXXX (XXX) placed the Complainant on academic probation due to a 1.83 GPA. The Student's probation required her to "maintain a 2.0GPA minimum, pass all required and elective clinical clerkships, and achieve

² The regulation implementing Title II is interpreted consistent with the regulation implementing Section 504. 28 C.F.R. § 35.103(a).

satisfactory assessments in all categories of ‘Readiness to Practice,’ which are ability to make independent decisions, ability to transfer facts to actual clinical problem solving, and professional maturity.”

The XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX (Associate Dean) received notice of the Student’s “XXXXXXXXXXXXXXXXXXXX” by letter from the Complainant’s health care provider dated September 24, 2013. The University did not provide any information expressly reflecting that the DRC or Program conducted an interactive process or held a discussion about accommodations for XXXX related disabilities at that time.

During the Spring semester of 2014, the Complainant experienced difficulties with attendance for her courses due to her XXXXXXXX. On February 4, 2014, after an inquiry from a professor about the Complainant’s absences, the Associate Dean acknowledged her XXXXXXXX and XXXXXXXX. The University asserts that the Complainant and Associate Dean met on February 13, 2014, to discuss the Complainant taking medical leave. The Complainant emailed the Associate Dean on February 20, 2014, seeking information on taking medical leave. During medical leave discussions, the Complainant missed an exam before completing medical leave paperwork. The Complainant took medical withdrawals from courses and clinics on March 13, 2014.

On July 29, 2014, the Complainant contacted the Program’s admissions office about her readmission and having a letter from her doctor to provide the University in support of her accommodations. The University’s attorney alleges that in emails to the Complainant on June 25, 2014, the Associate Dean noted the Complainant “was unhappy that [the Program] had changed the way it dealt with students with disability accommodations by referring everyone to the DRC,” and the Associate Dean had informed her that “each student is supposed to review their situation with DRC prior to each semester to make sure their needs are met.”

The Complainant re-enrolled in the Program for the Fall 2014 semester, and the University eventually dismissed the Complainant in February 2015.

Issue 1: The Complainant’s requests for accommodations from Fall 2014 through Spring 2015, and the University’s response.

From September 2014 through Spring 2015, the Complainant requested several accommodations from the University relating to alteration of her course schedule for her completion of the Program.

For the Fall 2014 semester, the Complainant was enrolled in the XXXXXXXXXXXXXXXX clinical clerkship and the XXXXXXXX clinical clerkship. On August 26, 2014, the Complainant emailed the Program XXXXXXXX Coordinator (XXXXXX Coordinator) and stated that her doctors strongly recommended moving the start of her XXXXXXXXXXXXXXXX clerkship to the clinical semester of her senior year and take two other rotations this semester instead. The Complainant also stated they said it would be best if her rotations be scheduled to start as late in the year as possible, and she requested to start rotations in the beginning of November and finishing in mid-December of 2014. The Complainant then forwarded this same request to the

Associate Dean on September 5, 2014. The University's attorney asserts the Associate Dean emailed the Complainant on September 18, 2014, asking to meet with her, but no meeting occurred.

On September 21, 2014, the Complainant emailed the Associate Dean, stating she is unable to attend the upcoming XXXXXXXX clinical rotation block as she is "not medically ready to return at this time." The Associate Dean responded the next day requesting that the Complainant make an appointment to meet with her about her plans. The XXXXXXXX Coordinator and Associate Dean discussed possibly moving the Complainant to different clinical rotation blocks for XXXXXXXX and XXXXXXXXXXXXXXXX clerkships by email.

The University asserts the Complainant met with the Associate Dean on September 29, 2014, and again requested moving XXXXXXXX and XXXXXXXXXXXXXXXX to her senior year, as well as moving the start of her clerkships to November. The Associate Dean emailed the Complainant on October 3, 2014, stating she spoke with the Chair of the XXX and put together a schedule, but that she must take XXXXXXXXXXXXXXXX and her XXXXXXXX clerkships before starting spring didactic coursework, arranged for her to take XXXXXXXX "which is a very organized and efficient service and should help you get back into the swing of things and be ready for XXXXXXXX," and "after that, you will have XXXXXXXX, which again should be a good way to get ready for [XXXXXXXXXXXXXXXXX]." The Complainant responded by email stating that after speaking with both her XXXXXXXX and XXXXXXXX regarding the situation, the University's proposed course schedule would exacerbate her XXXX, thereby reducing her probability of successfully returning to the Program. The Complainant then requested a number of accommodations including: taking her XXXXXXXXXXXXXXXX clerkship rotation in her senior year, a two week break prior to approaching spring coursework, a reduced case load, and made a "request unrelated to [her] XXXXXXXX issues," of taking the XXXXXXXXXXXXXXXX rotation. While considering the requests, the XXXXXXXX Coordinator notified the Chair of the XXX on October 21, 2014, that the Student did not attend the XXXXXXXXXXXXXXXX clinic as scheduled, and the Associate Dean instructed that she should receive an "incomplete" for the clinic.

An XXX meeting with the Complainant was held on for October 23, 2014, where the XXX presented her with "options for completing her program of study." The Complainant emailed the chair of the XXX on October 23, 2014, stating she had considered the options provided by the XXX. The Program sent a letter to the Complainant dated October 27, 2014, confirming the Complainant would be permitted to continue her medical leave for Fall 2014 and return as a full-time student to clinical rotations in the Spring 2015 semester, continue through summer clinical rotations through the Summer 2015 semester, complete all required clinics by Fall 2015, complete her senior didactic courses in Fall 2015, and complete her junior didactic courses in Spring 2016. The letter notes stipulations the Complainant has to fulfill including: 1) a note from her physician that she is fully ready to engage in a typical, rigorous schedule as a clinical student prior to start of first clinical rotation block on December 29, 2014; 2) placement on academic probation; 3) finish all clerkship requirements by end of Summer 2015 semester with all passing grades and no unsatisfactory remarks; 4) maintain both a cumulative and semester GPA of 2.0 or greater; and 5) complete XXXXXXXX and XXXXXXXXXXXXXXXX within the first 2 months of Spring semester of 2015. The XXX's letter then urged the Complainant to provide documentation of her medical status as soon as possible.

While the XXX appears to indicate this nontraditional schedule is an accommodation, it notes that a failure to meet the academic requirements during this probationary period could have dire consequences, including possible expulsion. It is unclear at this stage of the investigation whether this meeting, which appears to be an academics and probation meeting, included an interactive process and accommodations discussion. There is no evidence so far in the investigation that establishes that a discussion of each of the Complainant's requested accommodations occurred, including a taking her XXXXXXXXXXXXXXXX clerkship rotation in her senior year, a two week break prior to approaching spring coursework, a reduced case load in clinics, and whether there are reasonable accommodations for any disability related absences and tardies. The Complainant officially medically withdrew on November 21, 2014.

Then, the Complainant enrolled in her clerkships for Spring 2015 slated to begin on December 29, 2014, and the XXXXXX clinic beginning on January 26, 2015. The Complainant provided a letter to the Associate Dean on January 7, 2015, from her healthcare provider, stating she appears well enough to restart school for the Spring 2015 semester despite her "long struggle with her anxiety, depression and concentration difficulties." The Complainant completed the first two clinics satisfactorily, but incurred absences, tardies, and had early departures from the XXXXXX clinic. An XXX meeting was scheduled for the Complainant. The Complainant responded by email to the Associate Dean on February 1, 2015, that her "lateness has been due to [her] diagnosed XXXXXXXX," and that its consequences include being "unable to awaken at desired or scheduled times, despite use of multiple alarms." The Complainant requested that she be allowed to complete the rotation and make up missed time during her upcoming vacation or over the summer. It is unclear whether the Complainant's accommodation request for her absences was considered. The University's attorney asserts the XXX met with her on February 5, 2015, and that the decision was made to dismiss her for failing to meet the requirements set forth in the October 27th letter. The Complainant was dismissed by letter dated February 10, 2015, because she arrived late to clerkships, was absent, and failed to be prepared when she did arrive, which violated the stipulations of her probation. The letter states that she was given accommodations of extended medical leave, easier rotations to begin the semester, a scheduled break between XXXXXX and XXXXXXXXXXXXXXXX clerkships, and rearranging of the entire 3rd and 4th year curriculum to ensure success and on-time graduation, which went outside standard progression between clinical and didactic courses for all XXXXXX students.

The Complainant contacted the DRC on February 11, 2015, to make an appointment to discuss accommodations and the dismissal, and the DRC interfaced with the Associate Dean to learn about her current situation. When the Associate Dean informed the Chair of the XXX of this development, the Chair responded that she is "not sure how sleeping in falls under DRC," and questioned what kind of accommodation could possibly be made, as it would basically give her permission to be late or not show up for class every day. The Complainant met with DRC staff on February 17, 2015, and she stated that accommodation requests were made directly to the Associate Dean, XXXXXX Coordinator, Chair of the XXX, and XXX members, but the Student never thought of coming to the DRC and that she was never recommended to do so by these persons when she requested accommodations.

Although the Complainant did not follow the University's policies and procedures for requesting accommodations through DRC after she received her initial testing accommodations in 2013, the Program's handling (instead of the DRC's handling) of the Complainant's subsequent accommodation requests may have created confusion about the process the Complainant should follow. The Program began taking actions to provide accommodations for the Complainant from the Fall 2014 semester onward. This may have created confusion for the Complainant about whether there was a need to follow the written procedures and request accommodations from the DRC, or whether the Program was responsible accommodations.

The Program did provide certain accommodations to the Complainant, including medical leave, modified clinical rotation schedule and start times, a modified order of didactic courses, and similar scheduling adjustments. However, it appears the Complainant was having absence and tardiness difficulties ostensibly related to her disabilities. It is unclear whether the University or the Program considered all of the specific accommodations requested by the Complainant, including but not limited to, reduction of her case load, absence and tardy related accommodations, or other potential unrequested accommodations such as continuing in the program on a part-time basis.

OCR's investigation raised concerns regarding whether all of the Complainant's request for accommodations were considered, were reasonable or would have waived or lowered essential requirements or fundamentally altered the nature of the program for those courses and clinics during the Fall 2014 semester and in January of 2015. Finally, the October 27, 2014, letter's requirement that the Complainant provide a note from her physician that she is fully ready to engage in a typical, rigorous schedule prior to continuing the start of first clinical rotation block is also of concern. OCR notes it was unclear whether an appropriate deliberative process to identify reasonable accommodations for the Complainant occurred, however this requirement presupposes the Complainant was not eligible for scheduling related accommodations when such determinations must be made through an a deliberative, interactive process.³

Issue Two: The University's dismissal of the Complainant in February 2015 and delay issuing a decision on her appeal until July 2015.

The Complainant alleged the University subjected her to different treatment than others on the basis of her disability when she was dismissed from the University and the University delayed the decision of her appeal. The University dismissed the University by letter dated February 10, 2015, because she arrived late to clerkships, was absent, and failed to be prepared when she did arrive, which violated the stipulations of her University-imposed probation. The University provided the Student with a right to appeal her dismissal within fourteen days of receiving the dismissal letter. The Complainant filed an appeal arguing that the University's denial of accommodations for her XXXXXXX was a significant factor in her tardies, absences, and receiving an incomplete for her XXXXXXX rotation, which, in turn, lead to her dismissal.

On July 30, 2015, the Program's Dean denied the Complainant's appeal. In the letter denying the appeal, the Dean reasoned that the Complainant was unable to complete the XXXXX portion

³ This was also cited in the Complainant's dismissal letter.

of the curriculum and the year of clinical training despite accommodations that were provided. The Dean summarily states that the accommodations “that were not offered [to the Student] *would* have fundamentally altered the nature of the clinical training...[that] is participation-based, and it requires strict adherence to attendance, punctuality, and full engagement, which includes preparing for cases assigned to you and fully completing reports.”⁴ (*emphasis added*). The Dean concluded that the Student’s performance during the XXXXXX rotation did not meet the requirements of her probation set by the XXX and upheld the dismissal. The University asserts that the length of time for the Complainant’s appeal process resulted from the volume of her educational record and complexity of the issues and was not based on her disability.

To establish a *prima facie* case of different treatment, the Complainant must have been treated differently than similarly situated students without disabilities. Based on the investigation to date, the University did not identify any similarly situated individuals who have been dismissed from the Program and who appealed the dismissal that would serve as comparators for this analysis. OCR requested that the University produce a list of “all students dismissed,” and “all students appealing” dismissal from the Program during the 2013-2014, and 2014-2015 academic year. The University informed OCR that no other students were dismissed from the program during that time frame. Further investigation would be needed to ascertain whether there were any similarly situated students who have been placed on academic probation that were not dismissed.

Conclusion

On March 30, 2016, the University agreed to resolve this complaint prior to OCR completing its investigation by agreeing to the terms of the attached voluntary Agreement. The Agreement’s terms resolve the issues in this matter by requiring the University to invite the Complainant to re-enroll in the Program, and if she chooses to do so, to instruct the Complainant to begin the University’s DRC accommodations process, and engage in the interactive process through the DRC while considering accommodations for her XXXXXXXXXXXXXXXXXXXX disabilities. For any of the Complainant’s disabilities which the University alleges are not eligible for accommodations, accommodations that are denied, and accommodations that are alleged to be unreasonable, the University must provide to OCR documentation demonstrating it engaged in a deliberative and interactive process to reach its conclusions on each determination. The University will also provide annual training to staff, faculty, and administrators at the DRC and the Program involved in the provision of accommodations on Section 504’s and Title II’s requirements regarding provision of academic adjustments and auxiliary aids, and the need to engage in a deliberative and interactive process to identify reasonable accommodations.

This concludes OCR’s investigation of this complaint and should not be interpreted to address the University’s compliance with any regulatory provision or to address any issues other than those addressed in this letter.

⁴ An earlier draft of the appeal decision letter does not include this accommodation analysis, indicating this analysis of her accommodations requests may have been made after her dismissal and, further, that the University may have failed to promptly engage in an appropriate interactive process.

OCR will monitor the University's implementation of this Agreement to ensure that it is fully implemented. If the University fails to fully implement the Agreement, OCR will reopen the case and take appropriate action to ensure compliance with Section 504 and Title II.

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 duly authorized OCR officials and made available to the public.

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. 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. 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.

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 Michael Bennett, general attorney, at (404) 974-9274, or Andrea de Vries, Compliance Team Leader, at (404) 974-9314.

Sincerely,

Melanie Velez
Regional Director

Enclosure