



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

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ATLANTA, GA 30303-8927

REGION IV
ALABAMA
FLORIDA
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TENNESSEE

January 19, 2017

President David McGuire
South University – West Palm Beach
1760 N Congress Avenue
West Palm Beach, Florida 33409

Re: OCR Complaint #04-15-2448

Dear President McGuire:

The U.S. Department of Education, Office for Civil Rights (OCR) has resolved the above-referenced complaint filed against South University (University) alleging discrimination on the basis of disability. Specifically, the complaint alleged that the University discriminated against the Student when it failed to engage in the required interactive process to make needed accommodations at a site for Student to complete clinical requirements of the Masters of Clinical Mental Health Counseling Program (Program).

OCR enforces Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (Section 504), and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance. As a recipient of Federal financial assistance from the Department the University is subject to these laws.

OCR opened an investigation of the legal issue of whether the University discriminated against the Student on the basis of disability by failing to provide her with academic adjustments in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.44(a)-(d).

Before OCR concluded its investigation, the University offered to resolve this complaint through a voluntary resolution agreement. Pursuant to OCR's *Case Processing Manual* at Section 302, a complaint may be resolved when, before the conclusion of an investigation, "the recipient expresses an interest in resolving the allegations and issues *and* OCR determines that it is appropriate to resolve them with an agreement during the course of an investigation." Set forth below is a summary of the evidence obtained thus far, prior to the signing of the resolution agreement.

Legal Standards

The Section 504 implementing regulation at 34 C.F.R. § 104.3(l)(3) defines a qualified person with a disability with respect to postsecondary education services, as a person with a disability who meets the academic and technical standards requisite to admission or participation in the postsecondary institution's education program or activity. The Section 504 implementing regulation at 34 C.F.R. § 104.44(a) requires a recipient to 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. The Section 504 regulation at 34 C.F.R. § 104.44(d) requires that a recipient 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. Thus, recipients must provide academic adjustments and auxiliary aids that are effective and that are appropriate to the individual needs of the student with a disability.

A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program or activity with respect to handicapped persons, or (iii) that perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State. 34 C.F.R. 104.4 (b)(4).

Summary

The evidence obtained thus far indicates that the Student followed the University's procedure for obtaining academic adjustments for her undergraduate and master's program, and the University granted her approved academic adjustments, which were applied in her coursework and at her first practicum site. The evidence obtained thus far also shows that for the Student's second practicum, the University did not discuss the Student's disabilities or need for academic adjustments directly with actual practicum sites, and did not present an academic adjustment/auxiliary aid of a note taker, until one of the clinical sites declined to extend an invitation to intern to the Student because of her need to have limited computer use. Finally, the evidence obtained thus far indicates that the Student was declined at five other clinical practicum sites partially because of her inability to favorably discuss her disability and her accommodations.

The evidence gathered to date does not reveal whether the University's efforts to secure the Student's second practicum site provided the Student with effective and appropriate academic adjustments or auxiliary aids pursuant to Section 504 since the Student was required to discuss her accommodations directly with the clinical site without University involvement. While the University alleges that they factored in the Student's academic adjustments and auxiliary aids prior to identifying the sites for the Student to interview, OCR needs to conduct additional interviews with the other clinical sites to fully determine if these actions constituted a failure to provide the Student with effective and appropriate approved academic adjustments/auxiliary aids

or failure to engage in a deliberative process because the academic adjustments could not be provided in the practicum setting.

Based on the foregoing, OCR accepted the University's request to resolve this complaint and the University entered into the enclosed Resolution Agreement submitted to OCR on January 16, 2017, which when fully implemented, will resolve all of the allegations in this complaint. This agreement requires the University to **(1)** revise its policies and procedures to include the following: (a) a detailed interactive process for considering, evaluating and providing disability-related accommodations to students with regard to their placement in clinical/experiential settings related to their programs of study; and (b) a process for obtaining consent from the student, and then notifying staff and any other necessary parties of the student's approved accommodations for clinical; **(2)** offer the student re-admission into the Program and: (a) advise her of the placement options at which she may be able to complete the clinical requirement for the Program (subject to her interviewing with, and being accepted at, same), along with a list accommodations that the proposed clinical sites have agreed to provide; (b) provide the Student an opportunity, within a reasonable amount of time, to request modifications to the agreed upon placement and services, and engage in an interactive process; and (c) refund all monies received from the Student and/or on the Student's behalf for the 2015 summer semester; and **(3)** provide University staff responsible for receiving and approving academic adjustments and auxiliary aids, training on the topics provided in the Resolution Agreement.

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. Further, the Complainant may file a private lawsuit in federal court regardless of whether OCR finds a violation.

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

Intimidation or retaliation against complainants by recipients of Federal financial assistance is prohibited. No recipient may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the laws OCR enforces, or because one has made a complaint, or participated in any manner in an investigation in connection with a complaint.

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Thank you for the cooperation your staff showed to the staff of OCR. If you have any questions, please contact the investigative attorney, Edget Betru, at 404-974-9351, or me, at 404-974-9356.

Sincerely,

Wendy Gatlin
Compliance Team Leader

Enclosure

Cc: Robert Kelley, Counsel for the University