



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

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ATLANTA, GA 30303-8927

REGION IV
ALABAMA
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January 10, 2017

Via U.S. & Electronic Mail

XXXXXXXXXXXXXXXXXXXX

XXXXXXXXXXXXXXXXXXXX

Savannah Law School
516 Drayton St.
Savannah, GA 31401

Re: OCR Complaint # 04-16-2270

Dear XXXXXX:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed against Savannah Law School (School) on July 8, 2016, alleging discrimination on the basis of disability and retaliation. Specifically, the Complainant alleged that the School discriminated against her by failing to provide her with academic adjustments and auxiliary aids (accommodations) for the XXXXXXXX. The Complainant further alleged that the School dismissed her in XXXXXX in retaliation for her requesting accommodations.

OCR investigated this complaint pursuant to 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 School is subject to Section 504.

OCR investigated the following legal issues:

1. Whether the School discriminated against the Complainant on the basis of her disability by failing to provide her with accommodations during the XXXXXXXX XXXXXX, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.44 (a)-(d).
2. Whether the School retaliated against the Complainant when it dismissed her from School, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.61.

OCR evaluates evidence obtained during an investigation under a preponderance of the evidence standard to determine whether the greater weight of the evidence is sufficient to support a conclusion that a recipient, such as the School, failed to comply with a law or regulation enforced by OCR or whether the evidence is insufficient to support such a conclusion. In reaching a determination in this matter, OCR reviewed and analyzed documents submitted by the Complainant and the School, including documents OCR requested and received from the School.

OCR also interviewed the Complainant and School officials. Based on its investigation, OCR has determined that the evidence is insufficient to support a finding that the School failed to provide the Complainant with accommodations and retaliated against her, in noncompliance with Section 504. However, based upon a preponderance of the evidence, OCR finds that there is sufficient evidence to support a finding of noncompliance with respect to the School's designation of a 504 Coordinator and its grievance procedures under Section 504.

Legal Standards

Academic Adjustments and Auxiliary Aids

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 or 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, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted. 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.

Policy Guidance

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 adjustments 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, postsecondary institutions may set reasonable standards for documentation and must inform students of the documentation required

Once a postsecondary institution has notice of a student's need for academic adjustments or auxiliary aids, the institution and the student should engage in an interactive process to identify the needed documentation and to determine the appropriate academic adjustments, if any.

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

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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.

To establish a prima facie case of retaliation, OCR uses a five-step analysis: (1) whether the complainant engaged in an activity protected by the laws OCR enforces; (2) whether the recipient was aware of the protected activity; (3) whether the recipient took adverse action against the complainant contemporaneous with or subsequent to the participation in a protected activity; (4) whether there is a causal connection between the protected activity and the adverse action; and (5) whether the recipient has a legitimate, non-discriminatory explanation for the adverse action; and, if such an explanation is proffered, OCR examines whether the reason given is merely a pretext for retaliation.

Designation of 504 Coordinator and Grievance Procedures

Pursuant to the Section 504 implementing regulation at 34 C.F.R. § 104.7(a) and (b), a recipient that employs 15 or more people shall designate at least one person to coordinate its efforts to comply with Section 504 and adopt grievance procedures that incorporate appropriate due process standards and 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 Section 504 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;
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.

The Section 504 implementing regulation at 34 C.F.R. § 104.8(a), a recipient that employs 15 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. The notification shall state, where appropriate, that the recipient does

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not discriminate in admission or access to, or treatment or employment in, its program or activity. The notification shall also the designated 504 Coordinator and their contact information. The Section 504 regulation at 34 C.F.R. § 104.8(b), provides that a notice of nondiscrimination should be included in a recipient's recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants or employees.

Background

The Complainant enrolled in the Savannah Law School (School) in XXXXXXXX. In XXXXXXXX, she provided the School with XXXXXXXXXXXXXXX, stating she had XXXXXXXXXXXXXXX and possibly needed accommodations. A School Administrator referred the Complainant to the section in the Student Handbook on how to request accommodations and the necessary forms to complete; she did not complete these forms. In XXXXXXXX, the School dismissed the Complainant for failure to maintain the minimum cumulative GPA required to XXXXXXXXXXXX.

Factual Findings and Analysis

Issue 1: Failure to Provide Accommodations

Whether the Complainant is a Qualified Individual with a Disability

In a letter dated XXXXXXXXXXXX, XXXXXXXX concluded that the Complainant had XXXXXXXXXXXX. Thus, the evidence showed that the Complainant is an individual with a qualified disability.

Notification to School of Disability and Need for Accommodations

In an email dated XXXXXXXXXXXX, the Complainant inquired about the process for requesting "disability accommodations." The XXXXXXXX responded that as she had indicated earlier, the accommodation process and forms were on the School's website and she could access them anytime. The XXXXXXXX also provided a copy of her previous email that contained the link and process for requesting accommodations. Accordingly, the evidence showed that the Complainant notified the School of her disability and her need for accommodations.

Accommodations Available to Allow Complainant to Participate

The evidence showed that the School's policy on disability accommodations requires students requesting accommodations complete and submit specific forms; one of the forms must be completed by a medical professional. The evidence also showed that the Complainant went to XXXXXXXXXXXXXXX who thought the Complainant could benefit from accommodations. However, XXXXXXXX did not conduct the tests required by the School. The XXXXXXXX informed the Complainant of the documentation needed to request accommodations and directed her to the required forms on the School's website. However, the evidence showed that the Complainant never filed the necessary paperwork or completed the process to request

accommodations. The Complainant confirmed that she did not complete the necessary paperwork required by the School.

Since the Complainant failed to complete the School's process for requesting accommodations, the School never reached the deliberative stage to determine whether accommodations were available to allow her to participate in the School's educational program. Accordingly, it is not necessary for OCR to continue the analysis to the next step to determine whether the School failed to engage in the interactive process and/or provide an effective accommodation.

Accordingly, based upon a preponderance of the evidence, OCR finds that the evidence shows that the School did not fail to provide the Complainant with accommodations, in noncompliance with Section 504.

Issue 2: Retaliation

To establish a prima facie case of retaliation, OCR uses a five-step analysis:

Protected Activity and Knowledge of Protected Activity

An individual has engaged in a protected activity, and thus is protected from retaliation if: (1) the individual has opposed any act or policy that is unlawful under one of the laws that OCR enforces; or (2) the individual has made a complaint, testified, assisted, or participated in any manner in an investigation, or proceeding or hearing conducted under the laws that OCR enforces.

The evidence revealed that the Complainant engaged in a protected activity in XXXXXXXXXXXX by informing the School of her disability and inquiring about the process to request accommodations for the XXXXXXXXXXXX. The School had knowledge of this activity because the XXXXXXXXXXXX responded to the Complainant's request by providing her with a link to the School's process and forms for requesting accommodations. Thus, OCR will move to the next step of the analysis.

Adverse Action

OCR next determined whether the School took adverse action against the Complainant contemporaneous with or subsequent to the protected activity. To determine whether an action is adverse, OCR must determine whether the School's action significantly disadvantaged the Complainant's ability to gain the benefits of the School's program.

On XXXXXXXXXXXX, the School notified the Complainant of her dismissal based on her failure to maintain the minimum required GPA. Accordingly, the Complainant suffered an adverse action, and OCR will move to the next step of the analysis.

Causal Connection between Protected Activity and Adverse Action

To determine causal connection between the protected activity and the adverse action, OCR considers: (a) closeness in time between knowledge of the protected activity and the adverse action; (b) change in treatment of the complainant after the School had knowledge of the protected activity; or (c) treatment of the complainant compared to other similarly situated persons.

The evidence showed that the Complainant first inquired about the process for requesting accommodations in XXXXXXXX, and the School responded by informing her of the process and procedures for requesting accommodations. Yet, the Complainant did not complete the process. The Complainant's dismissal from the School occurred in XXXXXXXX. Arguably, there is not sufficient closeness in time between the protected activity and the adverse action. However, OCR will proceed with the last step of the analysis.

Legitimate, Nondiscriminatory Reason for the School's Action

Once OCR has established a prima facie case of retaliation, the recipient must articulate a legitimate, non-retaliatory reason for its action. OCR then determines whether the recipient's proffered reasons are a pretext for retaliation.

The School's reason for the Complainant's dismissal was her failure to meet the minimum GPA needed to advance to her third year, per the School's Academic Code. The Academic Code, found in the Student Handbook, requires a minimum cumulative GPA of 2.0 to advance to the third year. The evidence showed that the Complainant had a XXXX GPA at the end of her second year, and she ranked at the bottom of her class. Thus, the Complainant failed to meet the minimum GPA needed to advance to the third year. Accordingly, OCR finds that the School proffered a legitimate, nondiscriminatory reason for the Complainant's dismissal.

Pretext

OCR next analyzes whether the School's proffered reason was a pretext for discrimination. Pretext can be shown by deviation from policies and practices or evidence which tends to weaken the inference that the asserted reason is the true reason for the action.

OCR finds that the School's proffered reason was not a pretext for retaliation. The evidence showed that the Complainant completed her first year with a XXXX GPA. The evidence further showed that based on her first year grades, the XXXXX referred the Complainant to the XXXXX who provided academic support services. The XXXXXXXX provided the Complainant with assistance on her studying and writing skills, among other things. In XXXXX, the School warned the Complainant that her cumulative performance placed her on continuing academic probation, and the Academic Code required at least a 2.0 GPA to advance to the third year. This is consistent with the Recipient's policy and practice to place a student on academic probation when the student fails to have a 2.0 GPA. The School placed the Complainant XXXXXXXXXXXXXXXXXXXX. However, the Complainant failed to complete the process for requesting accommodations as recommended by the XXXXXXXX. OCR also learned that

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XXXXXXXXX students were dismissed from the Recipient's Law School during the same time the Complainant was dismissed because they failed to maintain a 2.0 GPA. Even though XXXXXXXX students who were dismissed requested and received accommodations, the XXXXXXXX never submitted official documentation to receive accommodations. Evidence from the Recipient also showed that XXX students, who requested and received accommodations, met the requisite 2.0 GPA requirement to remain in the Law School, and were not dismissed. So there was no evidence of deviation from practice.

Based on the foregoing, OCR finds that the reasons proffered by the School for the Complainant's dismissal was not a pretext for retaliation and that there is insufficient evidence to find that the School retaliated against the Complainant, as alleged.

Unalleged Allegations

Designation of 504 Coordinator

According to the School's disability policy, the Vice Dean handles requests for accommodations and the investigation of alleged disability discrimination. The Dean is listed in the Notice of Non-Discrimination (Notice) as the individual to whom to direct inquiries concerning the School's policies, including its Section 504 policy.

Neither the School's disability policy nor its Notice designates at least one person to coordinate the School's efforts to comply with Section 504, or the identity of the designated 504 Coordinator and their contact information. Thus, the School is not fully in compliance with the applicable regulation.

504 Grievance Procedures

The grievance procedures provide that students who are denied accommodations or believe they have been discriminated against on the basis of their disability should notify the Vice Dean who will attempt to resolve the matter. If the student is still unsatisfied, the student may file a written grievance with the Vice Dean who will then have 15 days to make a decision in writing. Students may appeal this decision by filing a written appeal to the Dean with 5 days. The decision by the Dean shall be considered final.

The procedures make no reference to harassment on the basis of disability, affording each party an opportunity to present witnesses or evidence, time frames for the other major stages of the investigation, prevention of the recurrence of any disability-based harassment, or remedies for individuals who have been subjected to disability-based harassment. Last, the procedures make no reference as to whether they apply to complaints filed by students or on their behalf alleging discrimination or harassment carried out by employees, other students, or third parties. Thus, the School is not fully in compliance with the applicable regulation.

Accordingly, based upon a preponderance of the evidence, OCR finds that the School's grievance procedures do not fully comply with Section 504. OCR also finds that the School has not designated at least one person to coordinate its efforts to comply with Section 504 or

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provided the identity of and contact information for a Section 504 Coordinator, as required by Section 504.

Conclusion

Based upon a preponderance of the evidence, OCR finds that there is insufficient evidence to conclude that the School denied the Complainant accommodations or retaliated against her, in noncompliance with Section 504. However, OCR finds that there is sufficient evidence to support a finding of noncompliance with respect to the School's designation of a 504 Coordinator and adequate grievance procedures under Section 504.

On January 4, 2017 the School agreed to enter into a resolution agreement and take the following corrective actions: (1) revise its grievance procedures to comply with the requirements of Section 504; and (2) designate an employee to coordinate its compliance effort and responsibilities under Section 504.

These corrective actions are outlined in the enclosed resolution agreement which also contains monitoring provisions. When fully implemented, the agreement will resolve the identified compliance issues. If the School fails to fully implement the Agreement, OCR will reopen the case and take appropriate action to ensure compliance with Section 504.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

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 possible, any personally identifiable information, the release of which 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.

This concludes OCR's consideration of this complaint, which we are closing effective the date of this letter. If you have any questions about this complaint, please contact XXXXXXXXXXXXXXXX.

Sincerely,

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XXXXXXXXXXXXXXXXXXXX
Supervisory General Attorney

Enclosure