



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

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REGION IV
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December 20, 2016

Cherrell Campbell-Street
Assistant Commissioner
Department of Human Services
400 Deaderick Street, 15th Floor
Nashville, Tennessee 37243

Re: OCR Complaint #04-16-3012

Dear Ms. Campbell-Street,

We have resolved the above-referenced complaint the Complainant filed against the Tennessee Vocational Rehabilitation Services Program (VR) alleging discrimination on the basis of disability. Specifically, the Complainant alleged that the VR discriminated against him when the VR discontinued supporting and paying for his schooling at the University of Tennessee, Knoxville.

We enforce Section 504 of the Rehabilitation Act of 1973, 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; and Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131, et seq., and its implementing regulation, 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 Tennessee Vocational Rehabilitation Services Program is subject to these laws.

Based on the allegation, OCR opened an investigation of the legal issue of whether the VR discriminated against the Complainant when it declined to continue support for the Complainant's schooling, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.46, and the Title II implementing regulation at 28 C.F.R. § 35.130

Before OCR concluded its investigation, the VR 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 regulation implementing Section 504 at 34 C.F.R. § 104.46 (a) states that (1) in providing financial assistance to qualified handicapped persons, a recipient to which this subpart applies may not: (i) On the basis of disability, provide less assistance than is provided to persons without disabilities, limit eligibility for assistance, or otherwise discriminate or (ii) Assist any entity or person that provides assistance to any of the recipient's students in a manner that discriminates against qualified persons with a disability on the basis of disability. The regulation also provides that a recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established under wills, trusts, bequests, or similar legal instruments that require awards to be made on the basis of factors that discriminate or have the effect of discriminating on the basis of disability only if the overall effect of the award of scholarships, fellowships, and other forms of financial assistance is not discriminatory on the basis of disability.

(b) A recipient that assists any agency, organization, or person in providing employment opportunities to any of its students shall assure itself that such employment opportunities, as a whole, are made available in a manner that would not violate subpart B if they were provided by the recipient. (c) A recipient that employs any of its students may not do so in a manner that violates subpart B.

The Title II implementing regulation at 28 C.F.R. § 35.130 is interpreted consistently with Section 504 with respect to the allegation in this complaint.

Summary

The uncontested facts obtained to-date show that the VR policy requires students to provide documentation at the end of each semester showing they are satisfying the requirements for VR educational services funding, such as maintaining a certain grade-point average, attending full time, etc. When the Complainant met with a VR Counselor in XXXX, he was told that he had gone beyond the number of semesters allowed by the VR for funding for a Bachelors' Degree, which meant his educational services funding from the VR would stop after the XXXXX, and indeed, both parties confirm that no further VR educational services funding was provided after that semester. The Complainant asserts that he was also advised during that XXXX meeting that there was no exception to this semester limitation rule, although the VR Counselor did not recall whether there was any mention of a possible exception during that meeting.

At the end of the XXXX, emails provided by the VR show that the same VR Counselor told the Complainant to submit information required by VR policy because he needed to show he was continuing to progress towards his goal of employment, despite that no further VR funding was being provided, and the Complainant admittedly failed to provide such. Subsequent to that, the VR provided emails indicate that the VR Counselor asked the Complainant to meet again, and also asked for further information so that the VR could reassess if the Complainant was eligible for future VR funding. The Complainant admittedly did not agree to meet and failed to provide such information, questioning whether such was needed. OCR did not conduct further

interviews or make any findings because prior to completing the investigation, the VR voluntarily agreed to resolve this matter.

Based on the foregoing, OCR accepted the VR's request to resolve this complaint and the VR entered into the enclosed Resolution Agreement submitted to OCR on December 19, 2016, which when fully implemented, will resolve all of the allegations in this complaint. This agreement requires the VR to 1) promptly and permanently reassign the Complainant to an experienced VR Counselor who will manage the Complainant's case and assist in providing services to the Complainant, as appropriate under VR policy; 2) consider the Complainant for eligibility for an exception to the VR policy limiting the number of semesters of funding for a Bachelor's degree, based on the information in its possession, including the last instance in which an exception was granted; 3) provide Section 504 staff training for the VR Counselor formerly assigned to the Complainant, as well as all VR Field Supervisors for that VR Counselor, on the topics provided in the Resolution Agreement.

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

OCR appreciates the VR's cooperation in this matter and looks forward to receiving the monitoring reports, as required by the enclosed Agreement. If you have any questions, please contact Angela Collins, Senior attorney at 404-974-9436 or me at 404-974-9408.

Sincerely,

/s/

April England-Albright
Compliance Team Leader

Enclosure

Cc: Jeffrey Blackshear, Esquire, Counsel for the VR