



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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August 16, 2021

Via email only @ slittle@chamberlain.edu

Dr. Shawn Little, CN, DNP, RN
Campus President
Chamberlain University School of Nursing
5775 Peachtree Dunwoody Road, N.E.
Suite A-100
Atlanta, Georgia 30342

Re: Complaint #04-21-2120

Dear Dr. Little:

This letter is to advise you of the outcome of the U.S. Department of Education, Office for Civil Rights (OCR) investigation of the complaint received on February 6, 2021, alleging discrimination on the basis of disability (multiple sclerosis). Specifically, the Complainant alleged that when she was placed in a live clinical rotation, she informed the Dean of Academic Affairs that due to treatment for her disability it was advised by her doctors that she not be exposed to COVID-19 patients during her clinical rotations. She requested a guarantee that she would not be around COVID-19 patients. The Dean informed the Complainant that she could not guarantee her request and advised the Complainant to contact the Campus Accommodations Liaison. The Complainant contacted the Office of Student Disability Services and requested on-campus clinical rotations and lectures. While waiting for a response from the Office of Student Disability Services, the Dean informed the Complainant that she had been placed in an on-campus clinical because a space became available and not as an accommodation. The Office of Student Disability Services informed the Complainant that it was not necessary to complete the accommodation process as her issues had been resolved when she was placed in the on-campus clinical. The Complainant made a second request to have virtual lectures and clinical since she would need to travel to New York for her treatment. The Office of Student Disability Services denied the accommodation request, stating it was unreasonable, no appropriate accommodation was available, and the Complainant would not meet the in-person requirement. The Complainant informed OCR that the University provided lectures and clinicals in substitution for the on-campus clinical and lectures for several days due to COVID-19 and weather.

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OCR initiated an investigation pursuant to Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. Section 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in any program or activity receiving Federal financial assistance. As a recipient of Federal financial assistance from the Department of Education, the University is subject to Section 504 and to OCR's jurisdiction.

Based on the above, OCR investigated whether the University failed to provide the Complainant with an academic adjustment in noncompliance with Section 504 and its implementing regulation at 34 C.F.R. Section 104.44 (a).

To date, OCR has reviewed and analyzed documents submitted by the Complainant and the University. OCR reviewed the Complainant's disability services file, University policy and procedure for requesting an accommodation, and emails between the Complainant and the University. OCR conducted interviews of the Complainant, as well as the Atlanta campus President and the Office of Student Disability Services Coordinator. Prior to OCR conducting further interviews in this matter, the University requested to resolve, pursuant to Section 302 of OCR's *Case Processing Manual*, the alleged failure to provide an academic adjustment. OCR determined that it is appropriate to resolve this issue because OCR's investigation has identified concerns that can be addressed through a resolution agreement.

Legal Standards

The regulation implementing Section 504, at 34 C.F.R. § 104.44(a), provides that a recipient shall make such modifications to its academic requirements as are necessary to ensure that such requirements do not discriminate on the basis of disability against a qualified disabled student. Academic requirements that the recipient can demonstrate are essential to the program of instruction being pursued by such student or to any directly related licensing requirement will not be regarded as discriminatory.

When determining whether a recipient provided academic adjustments in accordance with Section 504 OCR examines the following: (1) whether the student provided adequate notice in accordance with required procedures of the need for academic adjustments; (2) whether reasonable academic adjustments were provided; and (3) whether the academic adjustments provided were of adequate quality and effectiveness.

In keeping with the policy of deference to academic decision making, OCR gives significant deference to the professional judgments of faculty and other educational experts with respect to genuinely academic decisions. OCR does not substitute its judgment for that of educational experts with respect to whether academic requirements are or are not essential to participation in a recipients' program or activity. OCR may, however, review the process that a postsecondary institution utilizes to determine whether an academic adjustment is an essential requirement.

Under an appropriate process, when determining whether a requested academic adjustment or auxiliary aid would constitute a fundamental alteration of an essential program requirement, relevant officials within the institution are generally required to engage in a reasoned deliberation

that includes a diligent assessment of available options. An appropriate process should include the following: 1) the decision is made by relevant officials including faculty members; 2) the decision makers consider a series of alternatives, their feasibility, cost, and effect on the academic program; and after reasoned deliberation; and 3) the decision makers reach a rationally justifiable conclusion that the available alternatives would result either in lowering of academic standards or requiring substantial program alternative.

Background

Chamberlain University is an institution of higher education that offers undergraduate healthcare and nursing programs at campuses across the United States, including in Atlanta, Georgia, and certificate and graduate courses online. Chamberlain's Bachelor of Science in Nursing program prepares students for the practice of professional nursing through an integration of theoretical knowledge, psychomotor skill acquisition, and development of clinical judgment/reasoning. A Bachelor of Science in Nursing student generally must complete general education coursework, didactic nursing coursework, and clinical nursing coursework to complete the program. The final courses of the Bachelor of Science in Nursing program are the Collaborative Healthcare and Capstone courses. Both of these courses have required clinical experience components. Following completion of the Collaborative Healthcare and Capstone courses, a successful student will graduate with a Bachelor of Science in Nursing degree and will then be eligible to sit for the licensure exam to become a registered professional nurse.

The Complainant is a former Bachelor of Science in Nursing student at Chamberlain – Atlanta. The Complainant's last day in the program was April 12, 2021. The Complainant took the Collaborative Health course from January 2021 – February 2021 and began taking the Capstone course on March 1, 2021.

Facts

On December 7, 2020, the Complainant spoke with the Dean of Academic Affairs about a medical accommodation to opt out of her clinical rotation due to it being unsafe for her to be exposed to COVID-19 patients and she was advised to contact the Campus Accommodation Liaison. The Campus Accommodation Liaison is an individual trained to assist with coordination and implementation of accommodations. On December 10, 2020, the Complainant requested to have on-campus clinical rotation as an accommodation due to her disability. She had been advised by her doctor that she should not be exposed to COVID-19 and the hospital where she had been placed could not guarantee non exposure. Students are given the option to apply for placement in the on-campus clinical but must do so during the required time frame. The deadline to request on-campus clinical placement was November 25, 2020, and the program can only admit a limited number of students. The Complainant had not opted for on-campus clinical and intended to attend her onsite clinical but due to her doctor's advice it was no longer a safe option. The Complainant submitted the documentation to the Office of Student Disability Services to support her request. During the processing of her request, a student in the on-campus clinical decided to leave. On December 21,

2020, the Dean informed the Complainant that a space had become available, and she would be placed in the on-campus clinical, but it would not be an accommodation but because space had now become available. The Accommodation Coordinator also emailed the Complainant on December 29, 2020, to advise her that a space had become available in the on-campus clinical and there was no need to complete the accommodation process since this satisfied her request for an on-campus clinical. The Complainant informed the Accommodation Coordinator that the “request was not facilitated as part of my accommodation request, but rather due to an available slot.”

OCR interviewed the Accommodation Coordinator and she confirmed that they terminated processing the Complainant’s request because she had received what she asked for and they considered the request resolved. When OCR inquired as to why she felt the issue was resolved given she was made aware a decision had not been made with respect to the accommodation, she stated that the option to be placed in the on-campus clinical was available to all students, but the Complainant had missed the deadline to apply. However, the President informed OCR that there is a limit to the number of students that can participate in the on-campus clinical. The Accommodation Coordinator also stated that if a space had not become available, the accommodation process would have continued, and a decision would have been made regarding the Complainant’s request. The University’s policy and procedure regarding requesting an accommodation can be found at <https://www.chamberlain.edu/media/8041/studenthandbook.pdf>. The policy states in relevant part that “the accommodation coordinator will evaluate your request and supporting documentation and request or obtain any additional input, including additional supporting documentation as appropriate to determine whether your request should be granted or denied.”

On January 4, 2021, the Complainant submitted a second accommodation request along with supporting documentation “requesting to have virtual clinicals, lectures, and tests effective February 1, 2021, until further notice...” for her courses Collaborative Healthcare and Capstone. The Complainant noted that she made this request so that she could receive treatment for her disability in New York. According to the Accommodation Coordinator and the President, they met along with the Campus Accommodation Liaison on January 22, 2021, to discuss the Complainant’s request. During the meeting, they discussed “whether the University had the ability to reasonably accommodate virtual testing.” The President stated that she explained that an essential element of the Capstone course was hands-on learning and the instructors needed to see the skills performed in person. The Capstone course is the last course and a high-level course and is the last opportunity to evaluate/test the student to ensure the student is ready to become a nurse. Additionally, the State of Georgia had eased COVID-19 restrictions, and the University was no longer offering a virtual option. According to the President and Accommodation Coordinator, the lectures were already virtual.

On February 1, 2021, the Complainant received an email from the Office of Student Disability Services advising her that it denied her request. The denial stated as follows, “The Office of Student Disability Services has determined that an appropriate accommodation could not be identified or does not exist, and the accommodation you requested is unreasonable.” The Complainant contacted the President on February 1, 2021, regarding the denial of her January 19,

2021, accommodation request. According to the President and confirmed by the Complainant, the two met by phone on February 4, 2021. The Complainant alleges that the President did not explain why her request was denied beyond the information in the denial letter. However, the President stated that they discussed the reason for the denial during the February 4th phone call. Both confirmed that during the call, the Complainant was offered other options, such as taking the courses at the North Brunswick campus in New Jersey, which was still offering courses virtually, take the course in the on-campus clinical or taking a session off. The Complainant declined to take the course in New Jersey or take a session off; the Complainant completed the on-campus clinical and delayed her treatment.

According to the University, all clinical coursework experience components, including the Collaborative Healthcare and Capstone courses, were transitioned to a virtual format from mid-March 2020 until November 2020 due to COVID-19 restrictions in the state of Georgia. The temporary move to a virtual-only clinical occurred because the unprecedented health and safety challenges of the pandemic left no other option. The President confirmed that students who took the Collaborative Healthcare and Capstone courses virtually successfully passed the courses and took the board exam to become nurses. However, once the COVID-19 restrictions in the state of Georgia were relaxed and clinical partners resumed accepting nursing students for clinical placements in their healthcare facilities, the University returned to requiring in-person attendance at its clinical experiences. However, the University continued to offer virtual clinicals for courses where a live clinical setting was not available, for example because an available clinical partner could not be found, the clinical component remained virtual.

Analysis

As stated above, prior to the conclusion of the investigation, the University requested to resolve the complaint allegation. Based on the evidence provided, to date, it does not appear that the University engaged in the interactive process to determine whether an element of the program is essential. Although the President met with the Complainant to discuss her request, there is no evidence University staff considered appropriate reasonable alternatives especially since several other students had successfully completed the course virtually and the course was still offered virtually on other campuses and on the University's campus. The University expressed an interest in resolving the complaint pursuant to Section 302 of OCR's *Case Processing Manual* and OCR determined that it would be appropriate to resolve this complaint pursuant to Section 302.

Conclusion

The University signed the enclosed Agreement that, when fully implemented, will resolve the complaint. The Agreement requires the University to provide training to the University's Office of Student Disability Services Staff and all University staff at the Atlanta Campus responsible for implementing the University's disability policy and procedures regarding the requirements to modify its academic requirements, including the provision of auxiliary aids and services, and modifications of policies, practices and procedures in compliance with Section 504 and its implementing regulation at 34 C.F.R. § 104.44 (a).

This concludes OCR's investigation of this complaint. This letter should not be interpreted to address the University's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. 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. Complainants may have a right to file a private suit in Federal court whether or not OCR finds a violation.

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.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives 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.

We appreciate the University's cooperation in the resolution of this complaint. If you have any questions about this complaint, please contact Vicki Lewis at vicki.lewis@ed.gov or 404-974-9332 or the undersigned at Claudia.campo@ed.gov or 404-974-9378.

Sincerely,

Claudia Campo
Acting Compliance Team Leader

Enclosure

cc: Scott C. Goldschmidt, Counsel for the University
via email @ sgoldschmidt@thompsoncoburn.com