



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

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REGION IV

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May 31, 2023

George L. Hanbury, II, Ph.D.  
President and CEO  
Nova Southeastern University  
3301 College Avenue  
Fort Lauderdale, Florida 33314-7796  
*Via email only-* [hanbury@nova.edu](mailto:hanbury@nova.edu)

**Re: Complaint #04-22-2327  
Resolution Letter**

Dear Dr. Hanbury:

The U.S. Department of Education, Office for Civil Rights (OCR) has completed its investigation of the complaint received on September 27, 2022, against Nova Southeastern University (University). The Complainant brought the complaint on behalf of the Student and alleged discrimination on the basis of disability.

OCR enforces 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. Because the University receives Federal financial assistance from the Department, OCR has jurisdiction over it pursuant to Section 504.

OCR opened an investigation of the following legal issues:

1. Whether the University failed to provide the Student with academic adjustments in noncompliance with Section 504 and its implementing regulation at 34 C.F.R. §104.44.
2. Whether the University discriminated against the Student on the basis of disability, in noncompliance with Section 504 and its implementing regulation at 34 C.F.R. §§ 104.4 and 104.43.

In reaching a determination in this matter, OCR reviewed information provided by the Complainant, Student, and the University, including the University's disability procedures and policies, Student Code of Conduct, its notice of nondiscrimination, the Student's disability file, records concerning the Complainant's allegations, and correspondence between the Complainant, the Student and University officials. OCR also spoke with the Complainant and received updates

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from the Complainant throughout the course of the investigation and conducted a rebuttal interview with her and the Student. OCR conducted interviews with the Assistant Dean of Student Development, the Director of Office of Student Disability Services, and the Director of the Counseling Center. As a result of OCR's investigation, OCR determined that there is insufficient evidence to support a violation of Section 504 with respect to Issue 1. In addition, OCR negotiated the attached Resolution Agreement that will resolve OCR's findings with respect to Issue 2. Provided below is an explanation of how OCR reached its determination.

### **Legal Standards**

The regulation implementing Section 504 at 34 C.F.R. Section 104.4(a) states that no qualified person with a disability 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.

The Section 504 implementing regulation, at 34 C.F.R. § 104.43(a), provides that no qualified student with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any academic, research, occupational training, housing, health insurance, counseling, financial aid, physical education, athletics, recreation, transportation, other extracurricular, or other postsecondary education aid, benefits, or services to which the subpart of the regulation regarding postsecondary education applies. The Section 504 regulation, at 34 C.F.R. § 104.43(c), states that a recipient to which this subpart applies may not, on the basis of disability, exclude any qualified student with a disability from any course, course of study, or other part of its education program or activity.

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.

### **Factual Findings**

The University's Student Code of Conduct in its foreword states the following:

Students who engage in conduct that endangers their health or safety, or the health or safety of others, may be required to participate and make satisfactory progress in a program of medical evaluation and/ or treatment if they are to remain at the university. The determination as to the student's participation and progress is to be made by the NSU Student Behavioral Concerns Committee. The university reserves the right to require the withdrawal of a student from either enrollment and/or university housing, whose continuation in school, in the university's judgment, is detrimental to the health or safety of the student or others. The Student Behavioral Concerns Committee, in its judgment, can also place conditions upon a student for either remaining in school or returning from a leave of absence. Such conditions include, but are not limited to, mandating that a student attend counseling. Students who withdraw for reasons of health or safety must contact the

Office of Student Conduct before seeking readmission to NSU. Decisions made under this policy are final.

The University's *Student Handbook*, updated August 18, 2022, references its *Health and Safety* policy, as excerpted below:

NSU recognizes that certain life-threatening behavior (e.g., suicide threats, gestures, or attempts; eating disorders; substance abuse; threats, gestures, or attempts to harm others) is a sign of personal distress. The university is committed to helping students alleviate whatever stress factors are precipitating life-threatening behavior by providing support and/or referral through use of appropriate resources. However, since it is critically important to maintain civility and respect for all members of the university community, it is recognized that action must be taken when such behavior is considered by the university to be disruptive to and unacceptable in the academic and social/living environment. The determination of a student's participation and progress is to be made by the Student Behavioral Concerns Committee. NSU reserves the right to require the withdrawal of a student whose continuation in school, in the university's judgment, is detrimental to the health or safety of the student or others.

The Student Behavioral Concerns Committee<sup>1</sup> (SBCC) policy and procedures apply when the University is considering an involuntary administrative break in enrollment and the student's return from the break. The SBCC is a subset of the Coordinate, Access, Respond and Education (CARE) Team and evaluates if an involuntary administrative break in enrollment is warranted. Once the Assistant Dean of Student Development (Assistant Dean) is notified of a student who may meet the requirements for an involuntary administrative break, the Assistant Dean will notify the student in writing that an involuntary administrative break is under consideration. The Policy requires the University to provide the student at least 24 hours' notice prior to the imposition of the break. The notice includes an opportunity for the student to respond and request a meeting with the Assistant Dean who serves as the point of contact for all student questions. Upon request, the Assistant Dean convenes the SBCC which considers relevant information from the student's education records well as other information such as reports of concerns and police reports. The SBCC also considers potential disability-related modifications that could obviate the need to place a student on an involuntary administrative break.

Before placing any student on an involuntary administrative break in enrollment, the SBCC conducts an individualized assessment based on reasonable judgment that relies on current medical knowledge or the best available objective evidence, and should ascertain: the nature, duration, and severity of the risk or disruption, the probability that the risk or disruption will actually occur, and whether reasonable modifications of policies, practices, or procedures will adequately mitigate the risk or disruption so as to eliminate the need for an involuntary administrative break in enrollment. Following its review of the student's request and supporting documentation, the SBCC makes its decision. Within 5 days of notification of the SBCC decision, the student has a right to appeal to the Vice President of Student Affairs or Designee. According to the University's SBCC policy, the Vice President's decision is final.

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<sup>1</sup> <https://www.nova.edu/studentconduct/report-a-concern.html> (Last accessed 5/09/2023)

The Student was accepted into the University for fall 2022. On April 6 and 18, 2022, the Complainant and Student respectively informed the University that the Student would need academic and housing modifications. On April 26, 2022, the Student submitted requests for academic adjustments and a single room with no shared spaces as a housing modification. On May 18, 2022, the University approved the Student's request for a single bedroom with no shared spaces, if available. At the time of her application, the University notified the Student that the only available single bedroom unit had shared spaces. The University offered the Student the option to choose the single bedroom unit with shared spaces; put her name on the housing waiting list; or find off-campus housing. The Student opted for the single bedroom unit with shared spaces.

During the summer 2022, the Student was notified of the identity of her suitemates and reached out to them via text messages. On July 11, 2022, one of the Student's suitemates contacted Disability Services about concerns with the text messages that she and her other suitemate had received from the Student. The suitemate reported that the Student asked her to "take care of her fill in for her mother." The suitemate felt uncomfortable and suggested that the University assign the Student to a different suite. Disability Services also received information that the suitemates had blocked the Student because she made them uncomfortable. The Student's suitemates also contacted Disability Services that they received messages from the Student's male friend asking why they had blocked the Student.

The Assistant Dean said that the University initially treated the situation as a conduct issue but later referred the matter to the CARE Team. Members of the team, along with the Assistant Dean, include a representative from public safety, Disability Services, the Title IX office, counseling, conduct, campus life, and resident life. The CARE Team meets weekly to discuss student concerns, provide early assessment and refer students to counseling who are determined to be a threat to the safety of self or others. The purpose of the team is to intervene early and provide an action plan for the student.

On or around July 22, 2022, the Complainant, Student, Assistant Dean, Director of Disability Services, the Director of Housing, and Director of the Counseling Center, who at the time served as the interpreter, met via Zoom to discuss the concerns brought to the University's attention by the Student's suitemates. In response to the suitemates' concerns, the Student stated she was trying to be friendly and asked for help. The Assistant Dean understood that the Student had been homeschooled in Puerto Rico and this was her first time residing outside of Puerto Rico. During the meeting, the Student was advised that her friend had to stop contacting the suitemates. According to the Assistant Dean, the Student's suitemates have not received further contact from the Student's male friend. Although they discussed moving the Student to another dorm room, the Complainant made a written request not to move the Student to another dorm room. The Complainant believed that the situation would improve once the suitemates met the Student.

The students reported to campus on or around August 17, 2022, and the issues between the Student and her suitemates failed to improve. On August 19, 2022, the resident assistant met with the Student and suitemates to discuss the issues. The Student and her suitemates agreed on bathroom rules; however, the suitemates stated that the Student did not comply with the rules. In addition, the suitemates felt the Student crossed personal space boundaries (unwanted hugs, entered her suitemate's rooms without permission and when they were away) and the Student's parents visited the suite until midnight. The suitemates also complained that the Student did not communicate well with them. On August 29, 2022, the Complainant emailed the Director of Housing regarding

the issues that the Student's suitemates reported and reiterated that the Student needed single room housing and, due to her disability, would need time to adjust. The Complainant also stated that she wanted to attend any meeting with the Student. The Director of Housing informed the Complainant that the Student had contacted the Director of Disability Services and that he would defer to the University officials regarding her concerns about the Student's housing request.

A Zoom meeting was held on September 1, 2022, with the Director of Disability Services, the Student, Complainant, Assistant Dean, and the Director of Housing to discuss the suitemates' continued concerns. The Director of Residence Life notified the Student along with other University officials on September 1, 2022, that a single room with no shared spaces had been located at Rollins Hills Hall (RHA) and that the Student would be reassigned to that dormitory. Later in the day on September 1, 2022, the University received a crisis call from the Student. According to the Director of Counseling, the Student reported to the counseling Graduate Assistant that she felt hopeless and helpless and stated that she was feeling those emotions intensely. The Director of Counseling stated that the Student alluded to wanting to end things and the Student said she wanted to go to sleep and end it all and stated that she was taking gummy melatonin and did not want to wake up. The Director of Counseling set up an emergency meeting for the next day but was unable to contact the Student. She later learned that the Student had shut her phone off. The University contacted the Complainant about these concerns, and they asked her to contact the Student so that she could receive services. The Complainant responded that she was not concerned about the melatonin, or the phone being shut off, because this was normal behavior for the Student. However, she informed the Director of Counseling that she would reach out to the Student and try to get her to go for counseling. The Complainant and the Student denied that she was attempting or contemplating suicide.

Following the Student's September 2, 2022, call, the Assistant Dean informed the Director of Residence Life that he did not support the Student's move to RHA at that time. The Assistant Dean informed OCR that he changed his mind about the Student living in RHA because although she had recently turned 17 years old, she presented as a 12-year-old, and was not able to navigate the campus. The Assistant Dean stated that the Graduate Assistant felt the Student was leaning towards suicide and based on the Student's statements to the Graduate Assistant counselor, he felt she was a threat to herself. On September 3, 2022, the Complainant was notified that the Student needed to undergo a Fit for Duty Assessment to determine if she had the ability to function in the university environment and live in the university community successfully. According to the Assistant Dean, the Fit for Duty Assessment requires a student to undergo a psychological exam with the University's psychiatrist who meets with the student and requests medical documentation. The Assistant Dean makes the final decision regarding the need for a Fit for Duty Assessment. According to the Assistant Dean, a student cannot decline a Fit for Duty Assessment and remain on campus. The Assistant Dean stated he felt that Student needed a Fit for Duty Assessment because she expressed feeling hopelessness or helplessness, she was taking more than the prescribed amount of melatonin, was struggling in the residential environment, not focused, and was having trouble navigating the campus.

On September 6, 2022, the Assistant Dean decided that based on the information provided by the Graduate Assistant, the Student would be referred for mandatory counseling. Also on September 6, the Student was told to meet with the counselor to discuss academic and personal issues and she agreed to meet with the counselor on September 7, 2022. However, the Student did not show up

for the scheduled counseling and the counselor was unable to locate the Student. On September 9, 2022, the University located the Student who was with a friend at the Mako dorm. The Director of Student Counseling relayed that she felt it was imperative for the Student to see the psychiatrist. According to the University, the Student met with the psychiatrist on September 2 and September 13, 2022. The Student did not recall the dates that she met with the psychiatrist but alleges that the psychiatrist asked her if she was trying to harm herself and the Student denied that she was trying to harm herself. The Student also reported that she took melatonin to sleep and took medication for anxiety. The Student recalls attending approximately 11 total counseling appointments.

On September 14, 2022, the Assistant Dean convened the SBCC via Zoom. According to the Assistant Dean, the SBCC determines the best way to support and provide assistance when a decision needs to be made regarding whether a student can stay on campus, needs a psychological evaluation or the student does not want to leave the campus. The SBCC is comprised of the same people who comprise the CARE Team. The committee met to vote on whether they agreed with the psychiatrist's recommendation from the Student's Fit for Duty Assessment. The SBCC agreed with the recommendation to remove the Student from the dormitory. The committee's decision was based on the evaluation letter which only contains the psychiatrist's recommendation and the Student's case file.

Via letter dated September 27, 2022, the Student was notified of the results of the Fit for Duty Assessment. OCR reviewed the letter which stated that the medical professionals lacked confidence in the Student's ability to adapt to on-campus living, care for herself or live independently due to her inability to cope in a living and learning environment. The University gave the Student 10-days to vacate the dormitory with the option to complete her semester courses online, request a leave of absence or find off-campus housing. On September 28, 2022, the Complainant responded to the Fit to Duty Assessment determination inquiring about reimbursement for dormitory fees and the Student's Shark card. The Complainant also notified the University that she had submitted an appeal of the decision and the Student would not move until she was notified of the decision regarding the appeal. The Assistant Dean responded to the appeal on September 28, 2022 and re-affirmed that the decision was final and not subject to further appeal but gave the Student additional time to move out of the dormitory.<sup>2</sup> The Complainant informed the University that she would find the Student off-campus housing. The Student lived off-campus for about a month. The Complainant confirmed that the University reimbursed her for the dormitory fees and the Student's Shark card.

According to the Director of Disability Services, the Student and Complainant requested academic and housing modifications upon being accepted into the University. However, the Complainant and Student only provided documentation to support a request for housing modifications. Although the University was aware the Student had requested academic adjustments, they did not receive notification that the Student wanted to pursue academic adjustments until the Disability Services office received an email from the Assistant Dean on September 14, 2022, requesting assistance with the Student's classroom modifications. On September 13, 2022, the Student emailed the Dean and said that her professors informed her that they were not aware of her

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<sup>2</sup> OCR's review of the SBCC policy reflects that the policy provides an opportunity for an appeal. The Assistant Dean confirmed that if a student is being removed from the University or there is new evidence, a student can petition the committee to review the decision.

disabilities; the email attached the Student's medical documentation supporting her request for academic adjustments. The Director of Disability Services stated that their office contacted the Student to schedule an intake meeting. In mid-September, the Student – through the Complainant - provided documentation to support her request for academic adjustments. On October 18, 2022, the University approved the Student's request for academic adjustments which included consideration for tardiness/absences, extended time on assignments, advanced alternate format syllabus, handouts, Power Point, movement notification, use of calculator, notetaking assistance. For exams the modifications included extended time on quizzes, distraction-free testing, use of calculator, text to speech software, exam modification, one exam per day and movement notification. On November 23, 2022, the Student was approved to attend the didactic portion (class lectures) of the following courses (PSYC, COMP, MATH) through an online learning modality for the fall 2022 term ending December 22, 2022. On November 11, November 23 and December 9, 2022, the Student reported to her professors and Disabilities Services that she was unable to turn in her assignments for Math and Psychology and access exams due to problems accessing CANVAS. The Disability Services Directory confirmed that the Student reported issues with CANVAS and the office worked with the Complainant, Student, and program director to try to resolve the issues. The Director of Disability Services recalls that the portal was not working for the Math class so they permitted the Student to submit work via email; however, she could not recall the resolution for the other class. Based on documentation provided, the Student's professors allowed the Student to submit her work via email, resubmit work, and offered alternative ways for her to take her exams. The University also offered the Student the option to drop her Math class without penalty; the Student declined this offer. According to the University, the Student began the withdrawal process on or around December 18, 2022 and was officially dropped from winter courses on December 19, 2022.

## **Analysis**

### *Legal Issue #1*

OCR determined that the Student requested a housing modification and an academic adjustment upon her acceptance into the University, but only provided information to support her request for a housing modification. The evidence shows that the Student did not submit documentation to support her request for academic adjustment until September. Following the submission of the documentation to support her requests, the University approved the Student's requests for academic adjustments. Therefore, the evidence is insufficient to conclude that the University failed to provide the Student with academic adjustments in non-compliance with Section 504, as alleged.

### *Legal Issue #2*

Testimony and written documentation indicate that the University excluded the Student from the dormitory because administrators were concerned the Student might self-harm. However, the University's own assessment did not determine that the Student was at risk of self-harm. The University also failed to consider whether any risk was or could be sufficiently mitigated with accommodations. The University mandated the Student to counseling and located her a single room with no shared spaces as she had originally requested but provided no evidence that it considered whether these factors were or could sufficiently mitigate any risk it believe the Student posed to herself.

Based on the record, OCR also found that the University did not follow its Policy which required at least 24 hours' notice that the University was considering a removal from the dormitory. In addition, the University did not give the Student an opportunity to respond to the potential removal or appeal the final decision. Therefore, OCR finds that the University removed the Student from campus housing in non-compliance with Section 504.

The University entered into the attached resolution agreement (Agreement). When fully implemented, the Agreement will address the issues identified in this complaint. The Agreement requires the University to revise its Health and Safety and SBCC policy and procedures, implement and publish the revised policy and procedures, provide training on the revised policy and procedures, maintain records of all threat assessments conducted pursuant to the revised policy and procedures for one year, and reimburse the Complainant, following submission of supporting documentation, for expenses incurred for the Student's off-campus housing. OCR will monitor the implementation of the Agreement until the recipient is in compliance with its terms and the statute(s) and regulation(s) at issue in the case.

### **Conclusion**

This concludes OCR's investigation of this complaint. 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.

Please be advised that the University must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

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 personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.



We would like to thank the University for its cooperation during the investigation of this complaint. If you have any questions regarding this letter, please contact, Vicki Lewis at [Vicki.lewis@ed.gov](mailto:Vicki.lewis@ed.gov).

Sincerely,

Jana Erickson,  
Program Manager

Enclosure

cc: Dana MacDonald, Counsel for University  
Via email only- [dmacdonald@panzamaurer.com](mailto:dmacdonald@panzamaurer.com)