



**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS**

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April 28, 2017

Dr. David Maxwell
Drake University
Office of the President
2507 University Drive
Des Moines, IA 50311

Re: OCR Docket # 05-17-2039

Dear Dr. Maxwell:

This is to advise you of the resolution of the above-referenced complaint investigation of Drake University (University). The complaint alleges that, on July 7, 2016, the University discriminated against Student A, a student in the College of Pharmacy & Health Sciences, based on his disabilities (General Anxiety Disorder, learning disability) when it denied his request to extend the timeframe for him to complete his degree program and dismissed him from the University.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 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. As a recipient of Federal financial assistance from the Department, the University is subject this law. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

As a part of its investigation, OCR conducted interviews of Student A, University personnel, and Student A's preceptor. OCR also reviewed documents provided by Student A and the University. Prior to the conclusion of OCR's investigation, the University expressed an interest in voluntarily resolving this matter under section 302 of OCR's *Case Processing Manual*. In light of the University's willingness to address the issues raised in the complaint allegations, OCR determined entering into a voluntary resolution agreement would be appropriate.

Background

The University is a private university located in Des Moines, Iowa. Student A was a student in the College of Pharmacy and Health Sciences from 2012 to 2016. In 2012, Student A met

with the Student Disabilities Coordinator (Coordinator) and identified himself as a student with a learning disability. Student A was granted academic adjustments in his classes, such as additional testing time, note-taking services, and distraction-reduced testing spaces. These adjustments were renewed every term Student A was at the University. Beginning in 2013, Student A received counseling services from the Director of the University's Counseling Center (Director). In 2015, the Director diagnosed Student A with Generalized Anxiety Disorder (GAD).¹ The Director told OCR, with Student A's consent, he sent the diagnosis to the Coordinator. The Coordinator confirmed she received the diagnosis from the Counseling Center and was aware of Student A's GAD diagnosis. Student A and the Coordinator concur that Student A did not request additional academic adjustments accommodations based on his GAD diagnosis.

Doctor of Pharmacy Program

The University's doctor of pharmacy (PharmD) program consists of four years of classes (P1, P2, P3, P4). Students must maintain a grade of C or higher in all of the required courses in order to remain in the program, and must have a minimum cumulative grade point average of 2.00 in order to graduate. Students in the program are expected to complete their didactic coursework in the first three years of classes, but are allowed an additional year to complete these classes, in case a student runs into difficulty completing all classes within three years. All didactic coursework must be completed within four years. Students who fail to complete all didactic coursework within four years are dropped from the program. The P4 year consists entirely of rotations and is not included within the didactic coursework timeline requirement.

The Introduction to Pharmacy Practice Experience (IPPE) is a required component for students enrolled in the PharmD program. During the IPPE, students work in pharmacies under the supervision of pharmacists serving as "preceptors." Preceptors are responsible for monitoring and assessing PharmD students, identifying strengths and areas of improvement, and conducting evaluations of performance. Although students may express preferences for specific preceptors or preceptor sites, the IPPE Coordinator has final say in preceptor and preceptor site assignment for all students.

Student A

In the spring 2013 semester, Student A received approval to withdraw from a required class and reduced his required course load each semester for the remainder of his time at the University.² The University notified Student A that the withdrawal and reduction in course

¹ The Director told OCR he first met with Student A during a crisis situation in March 2013, however he did not initially have enough information to diagnose Student A's anxiety. According to the Director, as he continued to counsel Student A, his anxiety became increasingly apparent, and in 2015 the Director determined that Student A met the DSM-5 criteria for GAD.

² Student A told OCR that his decision to lower his course load was also related to his learning disability and personal reasons unrelated to his disability. The Associate Dean and the Director supported Student A's petition to reduce his course load.

load would extend his timeline for graduation from the PharmD program and make it more difficult to complete his didactic coursework within the required four-year timeline. Student A worked with the Associate Dean to create an academic plan that ensured he could complete his coursework within the required four years. Although Student A was on track to complete his coursework, his new academic plan put him in a position where he needed to pass each class on time, or he would risk not meeting the program's four-year requirement. By the end of the Fall 2015 term, Student A had successfully completed all the classes he had attempted earning a 3.91 cumulative grade point average.

In the Spring 2016 term, Student A enrolled in 6 classes, including the P3 IPPE, that includes 40 experiential hours.³ In early February 2016, following 24 hours at the IPPE site, Student A's preceptor completed an evaluation that documented concerns regarding Student A's performance, mainly in the areas of drug knowledge and patient counseling skills. To address his concerns, Student A's preceptor arranged a meeting at the University with Student A and Student A's professor for the course to come up with a remediation plan for Student A. The plan was approximately five weeks in length, and paused Student A's experience at the pharmacy. During the time off, Student A was expected to conduct research on some of the most popular medications, and practice mock patient counseling, and report back to his preceptor and professor for the course.

According to Student A, he and his preceptor "did not see eye to eye" and "the working chemistry was not there." In addition, Student A learned that his mother had been diagnosed with lung cancer for which she had to undergo extensive surgery which reportedly aggravated his GAD. Student A reported to OCR that he reached out to the Director in the first or second week of the IPPE because his GAD was not allowing him to function normally. In February 2016, Student A wrote two of his professors and informed them that he had a documented diagnosis of GAD in addition to his learning disability and that in working with his therapist, the Director, the therapist agreed that the current IPPE situation was detrimental to his emotional and psychological health. One of the professors forwarded this email to two Deans in the College of Pharmacy and Health Sciences. The Director told OCR that the University was aware he counseled Student A, and in February 2016 the University asked him to attend a meeting which included the University's Dean and Coordinator on how to address Student A's struggles in his IPPE. According to the Director, he recommended that the group consider a change in preceptor for Student A, because he thought there was a personality conflict that was aggravating his GAD, and he did not believe Student A could be successful returning to the same site. The Director also added that he did not know if the committee understood "how debilitating" Student A's GAD was and how this affected his performance in the IPPE site. The University contends that Student A did not expressly request a change in his IPPE site as an academic adjustment for his GAD.

³ Student A received an "A" in 3 classes, a "B" in one class, no credit (NC) in one class and, as explained further below, an "F" in the IPPE P3 class.

After completing his remediation plan, Student A returned to the same IPPE site on April 3, 2016, April 8, 2016, and April 12, 2016.⁴ According to the University, after Student A returned to the site, the preceptor completed evaluations of Student A each day and reported that although Student A displayed minor improvements, there were multiple situations where Student A created concerns for patient safety. On April 12, 2016, Student A's preceptor asked the University to remove Student A from the IPPE due to patient safety concerns. The removal resulted in Student A receiving a grade of "F" for the course.

Student A filed three grade appeals with the University on April 16, 2016, April 22, 2016, and April 28, 2016, which were denied. In his grade appeals, Student A noted, "[The Director] has been very concerned about me being at this IPPE site and expressed to me that working with [the preceptor] could be a [detriment] to my emotional health." On May 24, 2016, Student A was notified that because he failed the IPPE, he was unable to finish his didactic coursework within the program's four year requirement and was dropped from the PharmD program.

On May 31, 2016, Student A requested an exception from the program's policy requiring all didactic coursework to be completed within four years, and this request was also denied. In his request, Student A indicated that he was requesting extra time to finish the program due to "multiple extenuating circumstances." Student A appealed the decision on June 23, 2016, to the Dean of Students and asked the University to consider his overall good academic standing (3.9 GPA), as well as the effect his parents' health concerns were having on his emotional health. On July 7, 2016, the Dean of Students denied Student A's appeal. The Dean of Students told OCR that since she has worked at the University, no other pharmacy student has been allowed to complete didactic coursework beyond the four year requirement, but it is possible to extend this requirement depending on the individual circumstances presented, such as a leave of absence. The Dean reported that if a leave of absence puts a student beyond the four year requirement, the student must go through an assessment upon return to the University to determine if the student's knowledge base is current. According to the Dean, Student A was aware that a leave of absence was an option to him because it had been offered to him in the past. Student A concurs that a leave of absence had been presented to him early in his tenure at the University but concedes that at the time, he did not think a leave of absence would have helped his situation. Student A denies that anyone at the University reminded him that a leave of absence could have been an option for him during the Spring 2016 term.

The Dean of Students also told OCR that she did not take Student A's disability into consideration when she considered his request for policy modification because Student A did not specifically mention his disability in his request. The Dean of Students told OCR disability services would only be included in the interactive process where a student requests

⁴ According to the University Student A's IPPE site could not change—he had to return to the same site, with the same preceptor because Student A did not present a sufficient justification to merit changing the preceptor and/or preceptor site.

an exception to a program policy based on the student's disability. However, the Coordinator told OCR that when a student with a disability requests an exception to a program policy, she informs the student that is an academic issue and not a disability issue and refers the student to his or her academic dean.

The Dean of Students pointed out to OCR that Student A also received a NC grade for Phar 188 class. Student A told OCR he was completing the requirements of the Phar 188 course toward the end of the Spring 2016 term but the class professor told him that since he had already failed Phar 185 there was "no purpose [for Student A] to complete the class," and convinced him to take a NC for the class.

Resolution Agreement

Prior to the conclusion of this investigation, the University requested to resolve the complaint through a section 302 agreement. OCR has determined that it is appropriate to resolve this allegation at this juncture because OCR's investigation has not proceeded to a point where a finding is clear. OCR would need to gather additional information, including interviewing members of the committee who considered Student A's request for policy modification to determine whether they were aware of Student A's disabilities and considered whether to grant a modification as a disability-related accommodation. The enclosed Resolution Agreement is fully aligned with the complaint allegations. It requires the University to:

- review and revise, as necessary, its academic adjustments policies and procedures to include a provision requiring the initiation of an interactive process when a student with a disability requests a general policy modification or a program policy modification (policy modification) as an accommodation to their disability.
- provide notice to all students, faculty and staff of the revised procedures, and publish the revised procedures on its website and in the 2017 – 2018 catalog, when the catalog is printed in 2017.
- train faculty on the University's revised policies and procedures in considering policy modifications as part of its process in providing academic adjustments and auxiliary aids and services to student with disabilities. Additional specific training will be given to the counselors, OSDS staff and other University officials who have responsibility to implement and enforce the policies and procedures and their obligations to comply with Section 504.
- begin an interactive process with Student A to consider his request for program policy exception and determine appropriate and effective academic adjustments that are supported by documentation and that do not fundamentally alter the essential requirements of the Phar 185 course and the Pharmacy D Program at the University.

- if the University grants Student A a policy modification to complete the requirements of the Pharmacy D program based on his disability, the University will remove the F grade for the Phar 185 course and the NC notation for the Phar 188 course and conduct an assessment to determine what remedial actions Student A requires to maintain currency of knowledge to successfully complete the Pharmacy D program, including the Phar 185 and Phar 188 courses.

OCR will monitor the agreement. Please note that the first monitoring deadline is **May 30, 2017**.

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 file a private suit in federal court whether or not OCR finds a violation.

Thank you for your assistance and cooperation during OCR's investigation, particularly for the assistance of Ms. Emily Kolbe and Andrew Bracken, counsel to the University. If you have questions about this letter, you may contact Roberto Flores, Equal Opportunity Specialist, at 312-730-1688 or roberto.flores@ed.gov.

Sincerely,

Marcela Sanchez-Aguilar
Supervisory Attorney

Enclosure