



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

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February 27, 2023

Dr. Deborah J. Curtis
President
Indiana State University
Sent via email only to Deborah.Curtis@indstate.edu

Re: OCR Docket #05-22-2346

Dear Dr. Curtis:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its processing of this complaint filed against Indiana State University (University) alleging discrimination on the basis of disability. Specifically, the complaint alleges the following:

1. the University discriminated against an undergraduate student (Student A) based on disability when it failed to provide Student A the necessary academic adjustment of absence leniency in one course in the XXXX XXXX semester; and
2. the University is discriminating against students with disabilities in the Bachelor of Social Work program (Program) by requiring them to disclose their disability status prior to entering an internship.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131–12134, and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance from the Department and public entities, respectively. As a recipient of Federal financial assistance from the Department and a public entity, the University is subject to these laws.

During its investigation, OCR reviewed documentation provided by the Complainant and the University and interviewed Student A and University personnel. OCR has determined that there is insufficient evidence to establish a violation of the applicable regulations regarding Allegation #1 in this complaint. Prior to the completion of OCR's investigation, the University expressed interest in resolving Allegation #2 and OCR determined it was appropriate to do so with an agreement pursuant to Section 302 of the *Case Processing Manual* (CPM). The bases for OCR's determinations are set forth below.

Allegation #1

Legal Standards

The regulation implementing Section 504, at 34 C.F.R. § 104.4(a), provides that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a recipient, or be subjected to discrimination by a recipient of Federal financial assistance. The Title II implementing regulation, at 28 C.F.R. § 35.130(a), provides that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

The Section 504 implementing regulation, at 34 C.F.R. § 104.44(a), requires a recipient to make such modifications to its 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 student with a disability. 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 Title II regulation, at 28 C.F.R. § 35.130(b)(7), states that a public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

Recipients may require a student to follow reasonable procedures to request and document the need for academic adjustments, including modifications to policies, practices, and procedures. In postsecondary settings generally, if a student with a disability believes that they need an academic adjustment and/or other modification, the student has the obligation to identify themselves as having a disability and to request the provision of academic adjustments or modifications. Although students may request academic adjustments at any time, students needing services should notify the institution as early as possible to ensure that the institution has enough time to review their request and provide an appropriate academic adjustment. Recipients are not required to provide students with retroactive academic adjustments.

Facts

According to the University's website, students request disability-related academic modifications by completing the Accessibility Resource Office (ARO) intake form (Form), located [here](#). The website states that students must submit supporting documentation, including the diagnosis, a description of the effect of the diagnosis, and modifications that may address any resulting limitations. Students request modifications annually but must submit an additional Form if they want to add modifications at any point during the academic year.

The Program's Student Handbook (Handbook) includes the attendance policy for the Program (Policy). The Policy states that, for classes that meet twice a week, the student's grade will be reduced by 1/3 (e.g., from a B+ to a B) for each absence beyond four, up to eight. Under the Policy, a student with nine or more absences in such a class will receive a failing grade.

During the XXXX academic year, Student A was enrolled as an undergraduate student in the Program. In XXXX, Student A was enrolled in Social Work XXXX, which met twice a week and was taught by Professor A. Student A stated that she did not receive academic adjustments pertaining to attendance leniency in Social Work XXXX.

As of XXXX, Student A had approved academic adjustments for her XXXX courses, including "Allow student to make up assignments when missed because of health-related absences. Student must communicate with the professor before the assignment's due date to request additional time to submit the assignment." Student A did not have an academic adjustment that allowed for modifications to the Policy regarding the number of absences a student can have in a class. Student A asserted to OCR that she provided supporting medical documentation and requested absence leniency on the Form she submitted at the start of the XXXX semester so that she would not receive grade penalties for absences. The University provided OCR a copy of the Form submitted at the start of the XXXX academic year, which did not include a request for attendance leniency. The medical documentation she submitted to the University also did not discuss absence leniency.

In XXXX, Student A contacted the Associate Dean of Students (Associate Dean) to explain that she needed extra time to write her papers in all her courses. The Associate Dean responded by email on XXXX, writing, "To request additional accommodations, please complete our online Intake Application and have your medical provider complete the ... Form, both available via the links below." Student A and her medical provider did not complete the Form at this time.

Student A told OCR that she called the ARO Director (Director) about getting extensions for coursework and absence leniency at the beginning of XXXX; she said that the Director advised her to get a note from her medical provider explaining how her condition affected her ability to make deadlines and come to class, but she did not have access to a provider at the time to obtain the requested information. The Director denied that Student A contacted her about additional academic adjustments in XXXX.

On XXXX, Student A emailed the general email address for the Dean of Students Office, "I wanted to register my XXXX and XXXX diagnosis. How would I go about doing that? I also wanted to talk about getting leniency for my absences. What documentation would I need for that?" Student A also emailed the Director on XXXX, attributing her numerous absences to her XXXX about going on campus, indicating that her medical provider could complete necessary paperwork, and writing, "I am getting worried about my grades. I've gotten all of the work in, but I will fail my classes because of my attendance." On XXXX, the Associate Dean responded by email to Student A's emails, and again provided her with the link to the ARO's website regarding how to request additional academic adjustments.

On XXXX, Student A spoke with the Director by phone. The Director reported to OCR, and her contemporaneous notes confirm, that Student A expressed concerns about her excessive absences, and the Director explained that her academic adjustments did not address the number of absences. She reported to OCR that she instructed Student A to complete the Form to request an additional academic adjustment and directed her to the University's counseling service if she needed assistance with XXXX.

Student A did not complete the Form during the XXXX semester. The Associate Dean reported to OCR that, although Student A had not completed the Form and the University does not grant retroactive academic adjustments, she contacted Professor A and Student A's other professor (Professor B) to inquire about her absences and their effect on Student A's grades. On XXXX, the Associate Dean emailed the professors, referencing Student A's "on-going health issues that have impacted her ability to attend class throughout the semester." The Associate Dean wrote, "I understand that [Student A] has spoken with you about her situation, and my note is meant to serve as confirmation for her situation. She has been unable to attend some classes during the semester due to her health issue and appointments with medical providers to assist her...As always, it is at your discretion on how you handle this notification based on your syllabus." The Associate Dean did not instruct Professors A and B to modify their attendance requirements for Student A.

Professor B replied to the Associate Dean by email that day, writing, "I am not worried about her grade. I did not deduct for absences."

Regarding Professor A's course, the Chair of the Department (Chair) explained to OCR that Student A had nine unexcused absences and one excused absence and had a B+ grade before factoring in absences. The Chair explained that while Student A's absences could have resulted in an automatic failure in the class under the Policy, Professor A agreed to give Student A a C in the course due to her situation. She explained that Student A was doing well in her coursework, but she had excessive absences which amounted to missing a third of the class sessions. The Chair explained that granting Student A a C instead of an F was an adjustment to the attendance policy.

Analysis and Conclusion

In determining compliance, OCR must weigh conflicting evidence and determine whether the preponderance of the evidence substantiates the allegation.

The evidence established that Student A did not submit a request for an academic adjustment to modify the attendance requirement to the ARO. Student A was advised on at least two occasions in the XXXX semester to complete the Form if she wished to request additional academic adjustments. Although Student A reported that she requested academic adjustments related to absences at the start of the XXXX academic year, documentation provided to OCR did not support this assertion. Therefore, OCR determined that the evidence is insufficient to establish that Student A requested and was approved for an academic adjustment or modification related to absences in Professor A's course. OCR notes that even though Student A did not follow the required procedures for requesting an academic adjustment, the University modified the Policy

to give Student A a grade of C instead of an F in Social Work XXXX. In addition, Professor B did not reduce Student A's grade as a result of her absences.

Based on the above, the evidence is insufficient to show that the University discriminated against Student A by failing to provide her with the academic adjustment of attendance leniency in XXXX.

Allegation #2

Legal Standards

The Section 504 regulation, at 34 C.F.R. § 104.4(a), states, in relevant part, that a recipient may not, on the basis of disability, deny an individual any service or other benefit provided under the program; provide any service or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program; subject an individual to different treatment in any matter related to his receipt of any service or other benefit; or deny an individual an opportunity to participate in the program through the provision of services, or otherwise, or afford the individual an opportunity to do so which is different from that afforded others. The Title II implementing regulation, at 28 C.F.R. § 35.130(a), provides that no qualified individual with a disability may, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity, or be subjected to discrimination by any public entity.

The Section 504 regulation, at 34 C.F.R. § 104.42(b)(4), states, in relevant part, that a recipient may not, in administering its admission policies, make a "preadmission inquiry as to whether an applicant for admission" has a disability but, after admission, may make inquiries on a confidential basis as to disabilities that may require accommodation.

Facts

The Program's Application for Admission into the MSW Field & Practice Sequences (Application) states the following:

Students must remain free from drug and alcohol dependency/misuse, mental health difficulties, or disabilities which interfere with the capacity to learn or impair the student's judgment or performance either in class or in the field. Please document your ability to comply with each of the following requirements. In other words, discuss any recent issues or treatment related to alcohol or drugs, mental health, and/or disabilities and address how you will:

- a. Remain free from drug and alcohol dependency/misuse which interferes with the capacity to learn or impairs the student's judgment or performance either in class or in the field.
- b. Remain free from mental health difficulties which interfere with the capacity to learn or impair the student's judgment or performance in class or in the field.

- c. Adjust to disabilities which interfere with the capacity to learn or impair the student's judgment or performance either in class or in the field.

The Chair explained to OCR that the Application helps the Program plan for student field placements. She explained that it is an internal form that is not shared with the field placement, and that no students have been denied a placement due to information provided in response to the Application, including reporting disabilities. Students do not request a specific placement on the Application.

The Chair also explained to OCR that students are not required to disclose a disability on the Application but did not identify any language on the Application that specifies that disclosure of one's disability is optional or that it will not affect the admission decision. She said that because the absence of an accommodation during the field placement could disrupt the student's learning, the Program offers students the option to disclose a disability on the Application in considering the selection of a field placement. The Chair explained the inclusion of this language was an effort to ensure that necessary modifications were in place during the field placement; however, the Application itself did not identify the purpose of the request to include information about a disability.

The Chair reported that students with disabilities have received field placements in the past and that no students have been denied a field placement due to their disability.

Analysis and Conclusion

Based on the evidence collected to date, OCR has identified compliance concerns regarding the University's requests for information in its Application pertaining to an applicant's disability status and its effect on the applicant's capacity to learn or perform in the class or field. Although the University reported that no applicants have been denied a field placement because of their responses to the Application and that disclosure of such information is optional, OCR is concerned that the Application does not make clear that such disclosure is optional, explain the reasons a student may wish to voluntarily provide the information in order to ensure appropriate adjustments are available in the class or field, or clarify that an inquiry as to disabilities that may require accommodations can occur after an admission decision has been made.

In accordance with Section 302 of the CPM, a complaint may be resolved at any time when, prior to the conclusion of an investigation, the recipient expresses an interest in resolving the complaint. Prior to the conclusion of OCR's investigation, the University expressed interest in resolving the complaint and signed the enclosed Agreement to resolve the issues raised in Allegation #2 of this complaint. OCR will monitor the University's implementation of the Agreement.

Overall Conclusion

This concludes OCR's complaint processing. 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.

OCR would like to make you aware that individuals who file complaints with OCR may have the right to file a private suit in federal court whether or not OCR finds a violation.

It is also important for you to understand that the laws OCR enforces prohibit the University from harassing, coercing, intimidating, or discriminating against any individual because the individual filed a complaint or participated in the complaint resolution process. If this happens, the individual may file a complaint against the University with OCR alleging such treatment.

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, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

I wish to thank you and your staff for the cooperation extended to OCR during the processing of this complaint. In particular, OCR appreciates the assistance of Mr. Jonathan Mattingly, Counsel for the University, in resolving this complaint. If you have any questions regarding this letter, please contact Salina Lopez, via email at Salina.Lopez@ed.gov or by phone, at 312-730-1627.

Sincerely,

Jeffrey Turnbull
Team Leader

Enclosure

cc: Jonathan Mattingly, sent via email only to Jon.Mattingly@mbcblaw.com