



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

1999 BRYAN STREET, SUITE 1620
DALLAS, TEXAS 75201-6831

REGION VI
LOUISIANA
MISSISSIPPI
TEXAS

September 1, 2020

Re: OCR Complaint #06202139

Suzanne Shipley, President
Midwestern State University
3410 Taft Blvd.
Wichita Falls, Texas 76308

Via email (suzanne.shipley@msutexas.edu)

Dear President Shipley:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, has resolved the above-referenced complaint, which was received in our office on February 24, 2020, filed against the Midwestern State University (MSU), in Wichita Falls, Texas. The Complainant alleged that the MSU discriminated against his client (Student) on the basis of disability and retaliated against the Student. Specifically, the Complainant alleged that: the MSU did not provide the Student with XXX approved academic adjustment (i.e., extra time for exams) on an oral competency exam on XXX XXX XXX; and after the Student filed an appeal with the MSU graduate nursing program on XXX XXX XXX, and an appeal with the Dean of the Health and Science Center on XXX XXX XXX, the MSU retaliated against the Student by providing XXX with a more difficult and longer oral competency exam on XXX XXX XXX.

OCR is responsible for determining whether entities that receive or benefit from Federal financial assistance from the Department (recipients), or an agency that has delegated investigative authority to this Department, are in compliance with Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794 (amended 1992), and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131 *et seq.*, and its implementing regulations at 28 C.F.R. Part 35. Under Title II, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against public entities. The MSU is a recipient and a public entity. Therefore, OCR has jurisdiction to process this complaint for resolution.

OCR opened the following issues for investigation:

1. Whether the MSU failed 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 disabled student, by failing to provide the Student with necessary academic adjustments (i.e., extra time for exams) on XXX oral competency exam on XXX XXX XXX, in violation of Section 504, at 34 C.F.R. § 104.44, and Title II, at 28 C.F.R. § 35.130; and
2. Whether the MSU retaliated against the Student by giving XXX a more difficult and longer oral competency exam on XXX XXX XXX, because the Student filed an appeal with the MSU graduate nursing program on XXX XXX XXX, and an appeal with the Dean of the Health and Science Center on XXX XXX XXX concerning not receiving XXX approved academic adjustment, in violation of Section 504 and Title II, at 34 C.F.R. § 104.61, and 28 C.F.R. § 35.134, respectively.

OCR reviewed documentation provided by the MSU, the Complainant, and the Student, as well as information provided during interviews with MSU Staff members. Specifically, OCR interviewed four nursing instructors at MSU (i.e., Professor 1, Professor 2, Professor 3, and Professor 4). In addition, OCR conducted interviews with the Student and Complainant, including an interview with the Student, after completing interviews with MSU staff members.

The Student, Professor 1, Professor 2, Professor 3, and Professor 4 explained that at the end of the Family Nurse Practitioner Program at MSU, students complete an oral competency exam consisting of a timed preparation part and an untimed question and answer part. The Student, Professor 1, and Professor 3 further explained that students are provided twenty minutes for the preparation part, and that there is no time limit for the question and answer part. Professor 4 explained that, although students are allotted twenty minutes for the preparation part, most students are given thirty minutes in practice because faculty members administering the exam generally see patients while students are completing the preparation part. A program syllabus refers to oral competency as an “exam”, indicating that students have twenty minutes for the preparation part and does not identify a time limit for the question and answer part.

The Student’s Disability Support Services Accommodation Letter indicates that the Student has an approved accommodation of 1.50 time for exams. Professor 1 and Professor 4 confirmed they were aware of the Student’s accommodation for 1.50 time for exams. Professor 1 indicated that XXX told the Student that XXX would not receive XXX accommodation for the oral competency exam because it was not an “exam” and was not referred to as an exam in the syllabus. As noted above, OCR’s review of the program syllabus indicates oral competency is identified as an exam. Professor 1 also indicated that, despite XXX statement to the Student, XXX believed that the

Student was provided with XXX accommodation. Professor 2 initially indicated that the Student was not given XXX accommodation for the preparation part of the exam because it was not a testable period, but also indicated that since the Student was given thirty minutes, XXX was given XXX accommodation for the preparation part. In an internal MSU email, including Professor 3 and Professor 4, Professor 1 explained that when the Student took XXX oral competency exam the second time on XXX XXX XXX, XXX attempted to provide the Student with XXX 1.50 time accommodation by allowing XXX to have double the allocated preparation time and unlimited time for the question and answer portion of the exam.

In response to an email from the Student requesting that XXX be provided with XXX accommodation of extended time for XXX third oral competency exam, an XXX XXX XXX email response from Professor 4 informed the Student that XXX would be provided thirty minutes for the preparation part and forty-five minutes for the question and answer part of the exam. The Student, Professor 2, and Professor 4 indicated that on XXX XXX XXX, the Student was provided thirty minutes for the preparation part and forty-five minutes for the question and answer part of XXX oral competency exam. A graded copy of the Student's XXX XXX XXX oral competency exam contains handwritten notes indicating that the Student was given forty-five minutes for the question and answer part and permitted to use three additional minutes. Professor 2 explained that forty-five minutes after the start of the question and answer part, a timer indicated that the time was complete, Professor 2 told the Student XXX had gone over the forty-five minute timeframe and could not continue much longer, asked the Student if there was anything else XXX wanted to say, and the Student was given three additional minutes. The Student explained that when the alarm sounded and XXX was told that time was up, XXX knew that XXX was not near complete, and that XXX had much more to cover in XXX responses.

Professor 1 and Professor 3 explained that generally, professors draft five scenarios for all students taking the oral competency exam, and each student picks one of the scenarios at random. Professor 3 indicated that, unlike the procedure above, XXX drafted the XXX XXX XXX oral competency exam scenario specifically for the Student, and that XXX created it by modifying a previous scenario. Professor 3 explained that the previous scenario had nine differential diagnoses, one main diagnosis, and five ancillaries to the main diagnosis, and the modified scenario provided to the Student had eighteen differential diagnoses, one main diagnosis, and four ancillaries to the main diagnosis. Professor 3 indicated that XXX created a specific oral competency exam for the Student because XXX did not want the Student have an advantage on the exam based on any knowledge XXX had about past scenarios. The Student's appeals, filed with the MSU graduate nursing program on XXX XXX XXX, and with the Dean of the Health and Science Center on XXX XXX XXX, indicate that XXX was not provided with XXX approved accommodation the first two times XXX took the oral competency exam. Professor 1, Professor 3, and Professor 4 indicated they were aware of the Student's appeals on XXX XXX XXX and XXX XXX XXX.

OCR's preliminary review of the evidence reflects concerns as to whether the Student was provided with XXX approved accommodation for the oral competency exam on XXX XXX XXX, and whether the exam scenario prepared for the Student was more difficult and/or longer than that of other students, because the Student filed the appeals referenced above indicating that XXX was not provided XXX approved accommodation.

Prior to the conclusion of OCR's investigation, the MSU requested to resolve the complaint by voluntarily entering into a Resolution Agreement (Agreement). Under Section 302 of OCR's Case Processing Manual (CPM),¹ a complaint may be resolved at any time when, prior to the point that the OCR Regional Office issues a final determination under Section 303 of the CPM, the recipient expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them with an agreement. OCR approved the MSU's request to resolve the complaint pursuant to Section 302 of the CPM.

On August 28, 2020, the MSU voluntarily entered into the enclosed Agreement which, when fully implemented, resolves the complaint. The Agreement is aligned with the complaint allegations and the information obtained during the investigation, and is consistent with applicable law and regulations. Accordingly, as of the date of this letter, OCR will cease all investigative action regarding this complaint. OCR will actively monitor MSU's implementation of the Agreement.

This concludes OCR's investigation of the complaint and should not be interpreted to address the MSU'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. Please also note that the Student may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that a recipient 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, complainants 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. In the event that OCR receives such a request, it 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.

¹ OCR's Case Processing Manual is available at: <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.

If you have any questions, you may contact Michael J. Pillera, the Civil Rights Attorney assigned to the complaint, at 214-661-9614 or by email at Michael.Pillera@ed.gov. You may also contact me at 214-661-9648 or by email at Timothy.Caum@ed.gov.

Sincerely,

Timothy D. Caum
Supervisory Attorney/Team Leader
Office for Civil Rights, Dallas Office

Enclosure

Cc: XXX XXX, Counsel for the MSU, via email (XXX)