



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

1244 SPEER BLVD, SUITE 310
DENVER, CO 80204-3582

REGION VIII
ARIZONA
COLORADO
NEW MEXICO
UTAH
WYOMING

April 9, 2018

Mr. Brian Mueller, President
Grand Canyon University
3300 W. Camelback Rd.
Phoenix, AZ 85017

Re: Grand Canyon University
OCR Case Number: 08-17-2141

Dear President Mueller:

On March 17, 2017, we received a complaint alleging Grand Canyon University (University) discriminated on the basis of disability and engaged in retaliation. Specifically, the complaint alleged that the University discriminated on the basis of disability when it failed to timely provide the student with her previously approved testing accommodations. The complaint further alleged that the University engaged in retaliation when it failed to adhere to its own attendance policies and dismissed the student from the University due to her repeated requests that her approved testing accommodations be provided. The student will be identified as the "Complainant" throughout the remainder of the letter.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 and its implementing regulation at 34 C.F.R. Part 104, prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department. As a recipient of Federal financial assistance from the Department, the University is subject to this law and its regulations.

During our investigation we conducted interviews with the Complainant and the following University staff members: the Student Disability Services Manager, the Student Disability Services Ground Administrator, a Nursing Instructor, and a Field Clinical Counselor. We also reviewed documents provided by the Complainant and the University. Prior to the completion of OCR's investigation, the University agreed to resolve the issues raised in this investigation pursuant to Section 302 of OCR's Case Processing Manual (CPM). Below is a discussion of our review of the complaint allegations, the relevant facts, the legal requirements, and our findings.

Background

The Complainant was a student at the University enrolled in its nursing program during the 2015-16 and 2016-17 academic years. The University approved accommodations for the Complainant in a letter dated March 14, 2016. The letter was addressed to University faculty and among the approved accommodations were testing accommodations that provided the Complainant with extended time of time-and-a-half and a separate testing location, as needed. The letter also allowed for accommodations for assignments but specifically excluded

assignments that were directly related to patient care. The letter did not include any such exclusion for the approved testing accommodations. The same letter was sent to University faculty again on August 29, 2016, approving the same accommodations for the fall semester of the 2016-17 academic year.

During the fall semester of the 2016-2017 academic year the Complainant was enrolled in a course entitled NUR-436. In order to pass the course students had to score at least a 90% on a Med-Math exam. Students were given three attempts to achieve a passing score. The Complainant alleged that she requested testing accommodations prior to her first attempt at the Med-Math exam but her request was denied.

During an interview with the Complainant she stated that she recalled making her request for accommodations the day of the exam – in a written appeal made soon after she was dismissed from the University the Complainant wrote that she made her request directly to the instructor administering the exam. The instructor administering the exam was an adjunct¹ and not the instructor that was teaching NUR-436. The adjunct told the Complainant that after checking with the Nursing Director she was informed that the Med-Math exam was not eligible for testing accommodations. As a result, the Complainant took the exam without accommodations and scored an 80%, failing the exam.

The Complainant then took the exam a second time. She did not request accommodations for the second attempt because she relied on what she was told prior to her first attempt, that she could not have her approved accommodations for the Med-Math exam. This attempt was administered by the instructor who taught NUR-436. The Complainant again scored an 80%, failing the exam.

After her second attempt at the exam, the Complainant spoke to the instructor of NUR-436 about being denied accommodations. According to the Complainant, the instructor told her that she shouldn't have been denied accommodations and that she was not aware that the Complainant had approved accommodation because she never received a notice from the Student Disability Services office (SDS). The Complainant reported that in a later conversation, the instructor told her that the notice of accommodations from SDS had been sent to the instructor that taught the first half of the course and that had she known, she would have stopped her from taking the exam without accommodations and made sure that she took the exam at SDS.

OCR conducted an interview with the Instructor of NUR-436. She explained the process for how she is typically notified that a student in her class has accommodations approved by SDS. She explained that she typically receives a notification from SDS, usually in the form of a letter or email. An icon then gets placed next to the student's name in the online grade book, indicating that the student has approved accommodations. She further explained that the course, NUR-436, is split into two disciplines, obstetrics and pediatrics. Half of the students begin the semester in obstetrics, which is taught by a different instructor and the other half studies pediatrics. At the midpoint of the semester the halves switch. The Instructor said that SDS doesn't fully understand this structure, so they only send notices to the instructor of record for the start of the semester. This means she receives notices for half the class and the obstetrics instructor receives the other

¹ At the time of OCR's investigation, the University stated that the adjunct was no longer working at the University and they did not have her contact information.

half. The Instructor did state that when the students switch, she and the other instructor share the SDS notices they received. The instructor, however, was not able to recall whether she ever received an SDS notice about the Complainant from the other instructor or from SDS. She assumed she must have received a notice at some point because she recalled filling out paperwork for the Complainant to receive accommodations for other tests in the course, but she could not recall when she received the SDS notice or from whom.

The Nursing Instructor also explained how she is typically notified that a student is seeking accommodations for a specific exam. She stated that sometimes a student will tell her directly that s/he is seeking to use their approved accommodations for an exam. When that happens, she will contact SDS to notify them and provide them with the exam. It is her understanding that SDS then contacts the student to schedule a time to take the exam. Other times she will receive a call from SDS informing her that a student has requested to use their accommodations. In either case she will provide the exam to SDS and SDS will contact the student to schedule the exam. However, the instructor explained that it is her typical practice to reach out to students first. When she sees that a student in her class has approved accommodations, either through an SDS letter or an icon next to the student's name in the grade book, she will reach out to that student and ask if s/he would like to use their accommodations on the exam. The instructor agreed that neither of those situations occurred when the Complainant took the first Med-Math exam. The Instructor was also not able to recall whether she contacted SDS once the Complainant shared her concern about not having received her approved testing accommodations.

OCR reviewed undated emails, provided by the University, between the Nursing Instructor and Complainant regarding the Complainant's request for accommodations. Some of these emails appeared to take place between the Complainant's second and third attempts at the Med-Math exam. During one exchange the instructor writes to the Complainant that she received confirmation from the nursing program that there was no requirement for accommodations to be provided for the Med-Math exam, because it is part of the program's clinical requirement.

The Complainant reported that after her second attempt at the Med-Math exam she contacted SDS and spoke to the SDS Manager. OCR conducted an interview with the SDS Manager. The SDS Manager reported that she and a Ground Administrator -- whom OCR interviewed separately -- met with the Complainant on October 28, 2016. The SDS Manager reported that she told the Complainant that SDS would look into accommodations being allowed for her third attempt on the exam and if she did not pass, SDS would look into the possibility of the Complainant taking the test a fourth time, which would be the second time with accommodations.

During our interview with the SDS Manager she explained the process by which students are expected to provide notice that they are using their approved accommodations on an exam. She explained that students are expected to notify their instructor 24-48 hours before the exam that they wish to use their approved accommodations. Once the instructor is notified, the instructor is expected to contact SDS and relay the request. The instructor then provides a copy of the exam to SDS along with a "Testing Request Form" and SDS contacts the student to schedule a date and time for the exam to be taken at the SDS office. The only action the student is expected to take is to notify their instructor 24-48 hours prior to an exam.

The SDS Manager further explained that the notice of accommodations letters that were sent to the Complainant's instructors on March 14 and August 29, 2016 did not contain, nor was there any intent to contain, any limitation or exclusions to the exams that qualified for testing accommodations. The SDS Manager did report, however, that in the spring of 2017 the nursing program changed its policies and made a determination to not provide accommodations for any exams that are closely tied to patient care, including the Med-Math exam.

Both the SDS Manager and Ground Administrator said that they did not recall ever being called by the Nursing Instructor or adjunct instructor about the Complainant's request for accommodations. They both reported that they first learned of the situation on October 28, 2016 when the Complainant reached out to them. They each stated that they tried to resolve the situation quickly and were able to ensure that the Complainant received her accommodations for the third attempt at the exam and they also secured a fourth attempt, with accommodations.

The Complainant took the Med-Math exam a third time, the first time with accommodations, on November 4, 2016. The Complainant scored an 80%, failing the exam. The Complainant was then scheduled to take the test a fourth time, the second with accommodations, on November 18, 2016. However, prior to the Complainant taking her 4th attempt she was informed that she was being dismissed from the University because she had missed a clinical day. The University's position was that the missed clinical day automatically caused the Complainant to fail NUR-436 and since it was her second failing grade while in the nursing program² she was being dismissed from the University.

The Complainant appealed the University's decision on the basis that she should have been provided with three attempts on the Med-Math exam with accommodations and that the University was engaging in retaliation by using the missed clinical day as pretext to dismiss the Student because she continued to pursue three attempts at the Med-math exam with accommodations. The University informed the Complainant on January 25, 2017 that her appeal had been denied.

OCR's investigation included whether the University engaged in retaliation by using the missed clinical day as pretext to defend the Student's dismissal. OCR reviewed emails provided by the Student and University regarding the missed clinical day and conducted interviews with the Complainant and University faculty.

OCR's review of emails found that on October 26, 2016 at 2:55 AM the Complainant emailed her clinical instructor that she was not feeling well, had flu-like symptoms, and did not think it was a good idea for her to attend her clinical day because she would be around children. The clinical instructor responded at 10:07 AM and told the Complainant to contact her Field Clinical Counselor in order to reschedule her clinical day. The Complainant contacted her Field Clinical Counselor and he told her that he could not reschedule her clinical day but that she could contact her clinical instructor again and she would assign make-up work.

² The Complainant previously received a non-passing grade in the spring semester of 2016.

OCR interviewed the Field Clinical Counselor. He explained that when a student misses a clinical day the procedure is for the student to notify the clinical instructor who will then provide any make-up assignments s/he believes is necessary to make up for the missed day. He further explained that in some instances, if there is room at a site, he is able to reschedule a student who misses a clinical day but that is not common. He also reported that he was not aware of any policy that said a student could not make up a missed clinical day via make-up assignments or that a missed clinical day automatically led to a failed grade in a course or dismissal from the University.

OCR reviewed the University's policy on "clinical attendance and participation policy." It states that "absences in clinical rotation may jeopardize a student's successful progression and completion of the program." It goes on to state that, "students who are too ill to perform safely in clinical should seek medical attention and contact their course faculty preceptor prior to missing clinical." The policy also states that a legitimate illness may be an excused absence if it is "a communicable disease which can be transmitted to patients, staff or other students" or if it's "an illness which would be aggravated by attendance at lecture, lab, or clinical," or if it results in hospitalization. The policy then asks that students with an illness provide evidence of the illness.

The University's "clinical absence policy" states that if a student is unable to attend clinical s/he is to report their absence to their preceptor in a timely manner via email, text, or phone. Such notice should be at least one hour before the clinical time; the student must notify the clinical agency at least one hour before the clinical time; and at the discretion of the faculty, submit a release signed by a health care provider to return to clinical.

OCR reviewed a letter from the Steingard Medical Group, dated October 26th, which the Complainant provided to the University. It stated that the Complainant was being treated for an illness and would be able to return to school on October 28, 2016.

Alleged Failure to Provide Approved Testing Accommodations

The Complainant had testing accommodations for the fall semester of 2016 that were approved by the University and were communicated to faculty in a letter dated August 29, 2016. The testing accommodations provided to the Complainant were time and a half on all tests, quizzes, and exams, as well as testing in a separate room. As confirmed by the SDS Manager, during the fall semester of 2016, there were no limitations or exclusions to the testing accommodations. They were allowable on all tests, quizzes, and exams that the Complainant would take.

Prior to the Complainant's first attempt at the Med-Math exam she was incorrectly told by the instructor administering the exam that her approved accommodations were not allowable on the exam. As a result of being told that accommodations were not allowed, the Complainant did not request accommodations for her second attempt at the exam.

The University agreed that the Complainant had approved testing accommodations. The SDS Manager and Ground Counselor also agreed that during the fall of 2016 there were no exclusions to those approved testing accommodations and that the Complainant should have received them during her first two attempts at the Med-Math exam. It is apparent then, that the Complainant

should have received three attempts at the Med-Math exam in course NUR-436, with her approved testing accommodations. Instead she only received one attempt with accommodations.

Further interviews may have been needed in order to determine why the Complainant did not receive the accommodations during her first two attempts at the Med-Math exam. An interview with the Director of Lab Classes should explain why the adjunct lab instructor told the Complainant that the exam was excluded from accommodations. If it was a determination made by the Nursing Program then an interview of the Director of the Nursing Program would be needed to determine why the Med-Math exam was excluded from accommodations. Finally, an interview with the obstetrics instructor who taught the first half of NUR-436 may be needed to determine if she received notice of the Complainant's accommodations.

Alleged Retaliation

During our interview with the Nursing Instructor we asked why the Complainant was not provided with a fourth attempt at the Med-Math exam with accommodations. She replied that she was not sure but that by then the Nursing Program had become aware that the Complainant had missed a clinical rotation day. The Instructor explained that missing a clinical rotation day would have been reason enough for the Complainant to receive a non-passing grade in the NUR-436 course. Therefore, according to the Instructor, the Med-Math exam became irrelevant. We reviewed an undated email between the Nursing Instructor and the Complainant where the Instructor provides this same reasoning to the Complainant. She informs the Complainant that her results on the Med-Math exam notwithstanding, she would have failed the course anyway because she had missed a clinical attendance day.

During our interview with the Field Clinical Counselor, the individual responsible for scheduling clinical rotation days, he said he was not aware of any University policy that stated that a missed clinical rotation resulted in an automatic non-passing grade in a course. In fact, he knew of several circumstances in which students had been allowed to make up a missed clinical rotation day by completing make-up assignments that were assigned by the course's instructor. There were other, less common situations, when he was able to schedule a make-up rotation day for a student. The Field Clinical Counselor explained that it was his understanding that the procedure for a missed clinical rotation day was for the student to notify their instructor and the instructor would then assign make-up assignments for the student to complete.

During our review of the University's clinical attendance policies we found no mention of a missed clinical rotation day resulting in an automatic non-passing grade in a course. The University does have a policy that set out steps for what a student should do should they miss a clinical rotation due to illness – such as notify the instructor and provide a letter from a health care provider – and the Complainant met those requirements.

The University dismissed the Complainant from the University due to two non-passing grades while in the Nursing Program, her second non-passing grade was her grade in NUR-436. The University's position is that the Complainant would have received a non-passing grade in NUR-436 on two fronts, for either missing a clinical rotation day or not passing the Med-Math exam.

However, there is no University policy that states that a missed clinical rotation day automatically results in a non-passing grade.

In order to make a final determination whether the missed clinical rotation day was mere pretext to uphold the Complainant's dismissal, in retaliation for the Complainant's self-advocacy, we may need to interview the Director of the Nursing Program as well as the Clinical Instructor for the class in which the Complainant missed a clinical rotation day.

Conclusion

Further interviews may have been needed in order to make final determinations over whether the University discriminated on the basis of disability when it failed to timely provide the Complainant with previously approved testing accommodations determination and engaged in retaliation. Further interviews were not conducted because during our investigation and before we had sufficient evidence to make final findings regarding these allegations, the University expressed a willingness to resolve the complaint. The University agrees to provide the Complainant with two additional attempts at the Med-Math exam with her previously approved accommodations. Prior to the attempts the University will provide the Complainant with tutoring. Should the Complainant pass the Med-Math exam the University agrees to enroll the Complainant back into the Nursing Program, provide her with a full scholarship to cover NUR-436, and reimburse the costs associated with any reenrollment paperwork. Should the Complainant not achieve a passing score on the two attempts of the Med-Math exam the University will provide the Complainant with a full scholarship to take another course in an alternate program and it will change the Complainant's grade in NUR-436 from an F (failed) to a W (withdrawn). The University also agrees to publish new policies and procedures on testing accommodations and missed clinical rotation days. Finally, the University agrees to train staff on the new policies.

A copy of the signed Resolution Agreement is enclosed. When the Agreement is fully implemented, this allegation will be resolved consistent with the requirements of Section 504 of the Rehabilitation Act of 1973 and its implementing regulations. OCR will monitor implementation of this Agreement through periodic reports from the University about the status of the Agreement terms. We will provide the University written notice of any deficiencies regarding implementation of the terms of the Agreement and will require prompt actions to address such deficiencies. If the University fails to implement the Agreement, we will take appropriate action, as described in the Agreement.

This concludes OCR's investigation of this complaint and 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. The case is now in the monitoring phase. The monitoring phase of this case will be completed when OCR determines that the University has fulfilled all terms of the Agreement. When the monitoring phase of this case is complete, OCR will close this case and send a letter to the University and the Complainant stating that this case is closed.

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.

Under the Freedom of Information Act, we may release this document, related records, and correspondence upon request. If OCR receives a request, we will protect personal information to the extent provided by law.

Individuals filing a complaint or participating in the investigation process are protected from retaliation by Federal law.

Thank you for your and the University's cooperation during the course of this investigation. If you have any questions, please contact XX, at XX. I can be reached at (303) 844-6083.

Sincerely,

/s/

Angela Martinez-Gonzalez
Supervisory General Attorney

Cc: Dan Steimel, Assistant General Counsel, Grand Canyon University (via email)