



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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DENVER, CO 80204-3582

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June 12, 2023

Dr. Jeremy Haefner
University of Denver, Chancellor
Via

Mr. Howard Kallem
University of Denver, Interim Associate Vice Chancellor for Equal Opportunity and Title IX
Howard.Kallem@du.edu

Mr. Jim Goh
Outside Counsel
jgoh@constangy.com

Via email only

RE: OCR Complaint No. 08212215-University of Denver

Dear Chancellor Haefner:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has resolved the above-referenced complaint filed against the University of Denver (DU or Recipient). The Complainant alleged that DU discriminated based on disability on January 8, 2021, when the Counseling Psychology Department of the Morgridge College of Education (MCE) dismissed the Complainant from her graduate program at least in part due to issues related to the Complainant's disability (e.g., asking for extensions on assignments, lateness).

On September 15, 2021, OCR opened an investigation into the above allegation under 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, which prohibit discrimination on the basis of disability by recipients of federal financial assistance. Because DU receives federal financial assistance from the Department, OCR has jurisdiction over it under Section 504.

As part of its investigation, OCR reviewed information provided by the Complainant and DU, conducted interviews with the Complainant and relevant witnesses from DU, and discussed the allegations with DU and its representatives. After carefully reviewing the information the Complainant and DU provided, OCR determined that there is insufficient evidence of a violation

of Section 504 regarding the allegation opened for investigation. OCR explains its decision in further detail below.

During the course of its investigation, however, OCR developed a compliance concern on a related matter. OCR relayed this concern to DU and its intention to investigate the related matter.

Before OCR completed its investigation, DU asked to resolve the identified compliance concern voluntarily pursuant to Section 302 of OCR's *Case Processing Manual* (CPM). Section 302 provides that OCR may resolve a complaint at any time when, before the conclusion of its investigation, the recipient expresses an interest in resolving the complaint and OCR determines that such a resolution is appropriate. OCR determined that a Section 302 resolution was appropriate because the investigation to date identified compliance concerns regarding the issues under investigation, as described below in this letter. By implementing the enclosed Section 302 Resolution Agreement (Agreement), DU will resolve OCR's compliance concerns.

Legal Standard

Disability Discrimination

Under the Section 504 regulations, no qualified individual 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 in a program of the recipient.¹ To determine whether a recipient has discriminated against an individual on the basis of disability under Section 504, OCR assesses whether there is evidence that the school's actions resulted in the denial or limitation of the recipient's services, benefits, or opportunities to the individual with a disability. If there is such evidence, OCR examines whether the recipient provided a nondiscriminatory reason for its actions and whether there is evidence that the stated reason is a pretext for disability discrimination.

Facts

General

OCR's review indicates that the Complainant was enrolled as a graduate student at MCE in the fall of 2018, where she began studying psychology in order to become a counselor. In March of 2019, she requested accommodations from DU's Disability Services Program (DSP). The Complainant received the following approved accommodations: (1) 1-2 disability/medical related absences in addition to the course maximum allowed, and (2) extensions on assignments when needed and appropriate. In May of 2019, DSP approved the additional accommodations of 50% more time on tests and a reduced-distraction test room. DU's policies clarify that "extensions on assignments" is typically 1-2 days, and often at the discretion of the professor.

¹ 34 C.F.R. §§ 104.4(a) and (b).

Beginning in 2019, professors expressed concern to the Complainant about her academic performance and professional behavior, including her failure to maintain emotional regulation and professional boundaries, failure to engage in adequate self-care, and lack of self-awareness regarding the impact that stressors had on her and her ability to work with counseling clients as part of DU's clinical internship program. Ultimately, the Complainant was terminated from her counseling internship during the fall quarter of 2019 due to behavior similar to that outlined above, plus a failure to integrate feedback from internship supervisors, as well as the Complainant's tardiness to the internship site, which impacted scheduled meetings with clients. The Complainant was placed on probation and entered into a remediation agreement with DU.

In April 2020, DU extended the Complainant's probation and the term of the remediation letter because the Complainant had not completed all of the requirements detailed in the remediation letter, including completing outstanding assignments from the 2019 fall and winter quarters. Later in 2020, the Complainant late-dropped a course and failed a second internship for reasons similar to those outlined above. DU dismissed the Complainant from her program in January 2021.

Policy

In addition to the facts above, OCR also reviewed relevant DU policies, including the following:

Good Academic Standing²

Graduate students must maintain a cumulative GPA of 3.0 or higher to be in good academic standing. Master's students in the Sturm College of Law must maintain a cumulative GPA of 2.7. JD students in the Sturm College of Law must maintain a cumulative GPA of 2.3.

Probation³

Any student whose overall grade point average falls below a 3.0 will be placed on probation. Requirements for probationary status for Sturm College of Law is 2.7 for master's students and 2.3 for JD students.

Each quarter on probation, the student must contact the advisor to develop a plan to remedy the academic deficit.

If it is numerically impossible for the student to raise the GPA to 3.0 (2.7 for Law Master's, 2.3 for Law JD), or if in the opinion of the student's advisor, department chair and/or dean, the student is not making academic progress to finish the requirements of the degree, the student will be dismissed from the program.

Dismissal and Termination⁴

² <http://bulletin.du.edu/graduate/academic-requirements-policies-and-procedures/academic-standards/good-academic-standing/>

³ <http://bulletin.du.edu/graduate/academic-requirements-policies-and-procedures/academic-standards/probation/>

⁴ <http://bulletin.du.edu/graduate/academic-requirements-policies-and-procedures/academic-standards/termination/>

Academic Dismissal

A student will be recommended for dismissal from their graduate program for the following reasons:

- the student maintains a GPA lower than 3.0 (2.7 for Law Master's, 2.3 for Law JD) for three consecutive quarters (two semesters)
- if it is numerically impossible for the student to raise the GPA to 3.0 (2.7 for Law Master's, 2.3 for Law JD), or if in the opinion of the student's advisor, department chair and/or dean, the student is not making academic progress to finish the requirements of the degree
- the time limit for completing provisions has expired
- severe academic or behavioral misconduct
- violation of the Honor Code

Students who have been dismissed from the academic program are not normally readmitted

Termination

A student will be recommended for termination from their graduate program for the following reasons:

- the time limit for completion for the degree has expired
- the request for an extension of time has been denied
- the student wishes to change to another degree program outside of the college, school, or department in which the student is currently enrolled

Students who have been terminated from their program due to an expired time limit for degree who wish to be readmitted must meet the following criteria outlined in the [Readmission for Terminated Students policy](#)

1. Submit a new application to the program and meet the current admissions criteria.
2. If admission is granted, the most current program bulletin must be followed, including all curriculum and program requirements.
3. All previous coursework older than five years must be reviewed by the department to determine if it is still relevant for current term of admittance.

Final approval for admission, consideration of coursework from a program in which a student was previously terminated, and timeline for degree completion must be approved by the Vice Provost for Research and Graduate Education.

On June 2, 2023, OCR contacted the Complainant by email and phone provided the opportunity to respond to the information above. OCR was unable to reach the Complainant, and the Complainant did not respond to OCR.

Conclusions

With respect to the Complainant's allegation that DU discriminated against her based on disability when she was dismissed from MCE, there is no information to show that DU treated the Complainant differently than non-disabled students in deciding to dismiss the Complainant from DU. In addition, it appears that DU followed its policies regarding student probation and academic dismissal. The evidence OCR reviewed indicates that the Complainant failed to fulfill the requirements of the remediation letter and that DU decided to dismiss the Complainant from MCE

as a result. Based on the information above, OCR determined there is insufficient evidence to find that DU discriminated against the Complainant based on disability.

The complainant has a right to appeal OCR's determination within 60 calendar days of the date indicated on this letter. In the appeal, the complainant must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal. If the complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the recipient. The recipient has the option to submit to OCR a response to the appeal. The recipient must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

OCR's investigation into the above allegation revealed that, while DU granted the Complainant's requests for accommodations, it may have relied on rote, pre-established policies for certain accommodations (e.g., extra time on assignments and test, and extra permitted tardies and absences) rather than engage in an individualized assessment of the Complainant's needs. Though this blanket policy is a concern for OCR, it did not directly impact the Complainant in this case.

Prior to OCR determining whether DU's actions outlined above violated Section 504, DU expressed interest in resolving OCR's concerns under Section 302 of OCR's CPM, and OCR determined that it was appropriate to do so.

DU voluntarily signed the enclosed Agreement to resolve OCR's compliance concerns identified in the investigation and discussed above. The Agreement details the specific actions DU will take and the dates for their implementation. When fully implemented, the Agreement will address the evidence obtained and all the allegations investigated to date. OCR will monitor the implementation of the Agreement until DU is in compliance with the terms of the Agreement and the statutes and regulations at issue in the case.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address DU's compliance with any other statutory or 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. The Complainant may have the right to file a private suit in federal court whether OCR finds a violation.

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

If you have any questions about this letter, please contact Mr. Craig Nydick, the attorney assigned to this complaint, by telephone at (303) 844-7104 or by email at craig.nydick@ed.gov.

Sincerely,

Craig Nydick
Acting Team Leader
For
Michael D. Todd
Supervisory Attorney
OCR Denver Office

Enclosure: Signed Resolution Agreement