



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

50 BEALE ST., SUITE 7200
SAN FRANCISCO, CA 94105

REGION IX
CALIFORNIA

March 15, 2016

Michelle Taylor
President
Argosy University, San Diego
1615 Murray Canyon Road # 100
San Diego CA 92108

(In reply, please refer to case no, 09-14-2280.)

Dear President Taylor:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against Argosy University, San Diego (the University). The complainant¹ alleged that the University discriminated against her on the basis of disability. The issues OCR investigated were:

1. Whether the University failed to engage in an interactive process with the complainant to determine the accommodations necessary for her in a practicum required for her program.
2. Whether the failure of the complainant to obtain a practicum was the result of discrimination against her on the basis of disability by the University.

OCR investigated the complaint under the authority of Section 504 of the Rehabilitation Act of 1973, and its implementing regulation. Section 504 prohibits discrimination on the basis of disability by recipients of federal financial assistance. The University receives Department funds and is subject to the requirements of Section 504 and the regulation.

OCR gathered evidence through interviews with the complainant and University faculty members and administrators. OCR also reviewed documents and records submitted by the University and the complainant.

OCR concluded that the University violated Section 504 by denying responsibility for the complainant's receipt of an accommodation at her practicum site. The evidence did not establish a violation of Section 504 with respect to the placement of the complainant at a

¹ OCR previously informed the University of the identity of the complainant. We are withholding the complainant's name in this letter to protect her privacy.

practicum site. The facts gathered during the investigation, the applicable legal standards, and the reasons for our determination are summarized below.

Background

- The complainant was enrolled in the Masters of Arts (MA) in Counseling Psychology program at the University during the 2013-14 school year. Her objective was to become a Marriage and Family Therapist (MFT).
- The complainant is registered as a student with a disability with the University Department of Student Services and received academic adjustments for dyslexia. In May 2012 and September 2013, the University had approved classroom and testing academic adjustments for the complainant.
- The complainant informed OCR that, in addition to dyslexia, she had been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and spinal stenosis. Prior to 2014, she had not provided documentation of these disorders to the University or requested accommodations for them.

Issue 1: Whether the University failed to engage in an interactive process with the complainant to determine the accommodations necessary for her in a practicum required for her program.

Factual Findings

OCR's investigation showed the following:

Counseling Psychology Program Process for Practicum Assignment

- The MA program in Counseling Psychology requires students to complete a year-long clinical practicum, a clinical training experience that takes place in a health care delivery setting. Students must complete all required courses with a grade point average of at least 3.0 to be eligible to begin a practicum.
- The University provides students with extensive assistance and guidance through the process of obtaining a clinical practicum site. Students are required to participate in two Practicum Orientation meetings which prepare them for the process of applying to clinical sites and for participating in a practicum. The University also provides extensive information about approved clinical sites and sponsors at a mandatory agency fair where they can meet clinical site representatives.
- Students inform the University of the practicum sites to which they wish to apply, and may contact the sites only after receiving explicit permission to do so. Students who do

not receive practicum assignments during the initial application process must contact the Training Department for individualized assistance and approval of additional sites. According to the University Clinical Training Manual, students applying through this “second round” process generally apply to one site at a time under the direction of the Training Department.

- Students are also permitted to create their own practicum sites if they are unable to find one in the University’s established database. This process is closely supervised by the Training Director.
- Although practicum sites are not guaranteed, the University informed OCR that all students who were eligible for practica for fall 2013 and fall 2014 were placed at a practicum site for their initial semester of eligibility.
- Agencies are required to sign a contract with the University before students can use them as a practicum site. The contract is automatically renewed, unless the parties want to terminate the relationship.
- OCR reviewed the contracts between the University and 18 community agencies that provided practicum sites. None mentioned the responsibility to provide accommodations or academic adjustments, and only one included a nondiscrimination statement.
- According to the Clinical Training Manual, students with disabilities are encouraged to meet with the Director of Clinical training to discuss accommodations as they relate to practicum requirements. Students are expected to provide documentation to the Department of Student Services, which “composes a specific disability letter for the student to give to . . . the Director of Clinical Training and appropriate others.”

Complainant’s Practicum Application Process

- In January 2014, the complainant was advised that she could participate in the practicum program for the fall 2014 semester, contingent on her successful completion of required courses. Her provisional acceptance allowed her to take the steps required to prepare for the practicum and seek a placement.
- The complainant participated in the required orientation meetings and the agency fair, and submitted a Practicum Placement Request form. She did not receive interviews or placement offers from any of the agencies she listed.
- During the next several months, the complainant contacted several sites recommended by the University and one that she identified independently, and was invited to several sites for interviews. As of summer 2014, she had not been offered a practicum placement.

- In March 2014, the University arranged for the complainant to interview for a possible practicum placement with the XXXXXXXXXX XXXX. During the interview, the complainant was told that a practicum would require her to climb stairs multiple times each day. The agency informed the University that it did not accept the complainant because it did not have the expected internship vacancy.
- On April X, 2014, the complainant informed the Associate Director of Student Services that she had a back-related disability and wished to amend her Accommodations Notification letter to include a limitation on climbing stairs. The Associate Director responded that “we cannot issue accommodation letters for practicum/internship or externship sites” and instructed the complainant that, if she was looking for accommodations at a practicum site, she should follow the site’s process for providing documentation of a disability and requesting accommodations.
- The complainant informed OCR that she subsequently obtained medical documentation of her disability and inability to climb stairs and attempted to provide it to the Student Services department, which refused to accept it. By email dated April X, 2014, the Associate Director again informed the complainant that the doctor’s letter “would need to be submitted to the practicum site directly and not to the University.”
- The complainant also raised the issue of accommodations for her back injury at a meeting with the Director of Clinical Training, the department chair, and the complainant’s academic advisor. According to University records concerning this meeting, she was again informed “that her accommodations need to be given by the actual site,” not by the Director of Clinical Training.
- The University referred the complainant to only one site where she would have been required to climb stairs.

Legal Standards

The Section 504 regulations, at 34 C.F.R. §104.43(a), provide that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any postsecondary education program of a recipient.

The Section 504 regulations, at 34 C.F.R. §104.44(a), require recipient colleges and universities to make modifications to their academic requirements that are necessary to ensure that such requirements do not discriminate, or have the effect of discriminating, against qualified individuals with disabilities. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific required courses, and adaptation of the manner in which courses are conducted. However, academic requirements that recipient colleges and universities can demonstrate are essential to the program of

instruction being pursued or to any directly related licensing requirement will not be regarded as discriminatory.

The Section 504 regulations require, at 34 CFR § 104.43(b) that, where a college or university considers participation by students in a program not operated by the university itself to be part of the university program, the university must assure itself that the other entity's program, as a whole, provides an equal opportunity for the participation of students with disabilities. Appendix A to 35 CFR part 104 interprets this provision to require the university to ensure that the portion of its program that is operated by other entities does not, as a whole, deny students with disabilities an equal opportunity to participate.

Analysis and Conclusion

In this case, section 104.43(b) requires the University to ensure that students with disabilities have an equal opportunity to participate in internship/practicum programs. In order to do so, the University must work with students with disabilities to identify the accommodations they require in a practicum setting and, if necessary, assist the students in locating an internship where these accommodations will be provided.

OCR found that the University failed to consider the complainant's request for an accommodation at a clinical practicum site that would address her disability-related inability to climb stairs. The complainant received classroom accommodations from the University for dyslexia. The Clinical Training manual governing the clinical practicum process states that students should discuss accommodations with the Director of Clinical Training and provide necessary documentation to the Department of Student Services. The complainant attempted to provide documentation concerning an additional disability, a back injury, to both the department of student services and the Director of Clinical Training, and to arrange for accommodations in her practicum assignment. On three different occasions, the University informed her that it had no obligation to identify or arrange accommodations/adjustments at practicum sites, or to ensure that they were provided.

Agencies are required to sign a contract with the University before students can use them as a practicum site. The contract is automatically renewed, unless the parties want to terminate the relationship. The University's standard memorandum of understanding with clinical sites is silent as to the obligation to provide accommodations/adjustments, and, in most cases, includes no non-discrimination provision.

OCR concluded that the University had failed to comply with the requirements of Section 504 and the regulation in connection with this allegation by refusing to work with the complainant to identify the accommodations she would need for her practicum and by denying its responsibility for ensuring that the complainant had an equal opportunity to participate in the practicum portion of its program.

On March 15, 2016, the University submitted a Resolution Agreement (agreement), which, when implemented, will resolve this area of non-compliance. In the agreement, the University agreed to develop staff guidance regarding the responsibility of the University to identify accommodations and academic adjustments needed by students with disabilities in clinical or practicum settings and to work with placement sites to ensure they are aware of the needed accommodations and their responsibility to provide them. The University also agreed to include nondiscrimination language in its affiliation agreements with clinical placement sites.

Issue 2: Whether the failure of the complainant to obtain a practicum was the result of discrimination against her on the basis of disability by the University.

Factual Findings

OCR's investigation showed the following:

- The complainant's participation in the practicum program was contingent on her passing a Group Counseling course by the end of the first summer session. While she was allowed to take the steps needed to apply for a practicum site, she had been informed from the beginning that she would be allowed to enroll only if she passed the prerequisite courses. Students must receive a grade of 'B-' or higher to pass a course in the Counseling Psychology Masters Program.
- The complainant enrolled in Group Counseling during the fall 2013 semester and received a 'D' grade. She enrolled again during the spring 2014 semester and received a 'C'.
- The complainant informed OCR that she did not pass Group Counseling during the spring semester because she did not use the proper format in citing her sources. The University provided evidence establishing that several of her assignments included passages copied directly from websites without attribution. The University informed OCR that these actions were considered plagiarism, and resulted in her 'C' grade.
- On May XX, 2014, the complainant informed the University that she refused to retake the Group Counseling course.
- By email dated August XX, 214, the complainant's academic advisor told her that she was not eligible to enroll in the practicum for the fall semester because she had not completed the Group Counseling course, and had therefore not fulfilled the conditions of her acceptance into the practicum program.
- The University informed OCR that, during the 2013-14 and 2014-15 academic years, no students who had not received passing grades on all prerequisite classes were permitted to enroll in a practicum.

Legal Standard

The Section 504 regulations, at 34 C.F.R. §104.43(a), provide that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any postsecondary education program of a recipient. Exclusion of a student from a practicum program because of her disability, or because of a failure to provide or arrange for reasonable modifications or accommodations, would violate Section 504.

Analysis and Conclusion

Although the complainant had not secured a site by the beginning of the fall 2014 semester, the preponderance of the evidence does not establish that this was a result of discrimination on the basis of her disability. Instead, OCR determined that she was not eligible for assignment to a practicum because she had not passed a necessary prerequisite class. No other students were permitted to enroll in a practicum without having completed the prerequisites. Although the complainant alleged that she was repeatedly required to retake the required class because of her disability, the evidence established that the University provided a legitimate non-discriminatory reason for providing the complainant with a failing grade, namely plagiarism. OCR concluded that the complainant's refusal to retake a required class, rather than her disability, or the University's failure to consider her need for an accommodation, resulted in her ineligibility for a practicum. OCR therefore concluded that the University did not violate Section 504 by excluding her from the practicum program.

This concludes OCR's investigation of the 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. OCR is closing the investigation of this complaint as of the date of this letter and notifying the complainant concurrently. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

This letter sets forth OCR's determination in an OCR complaint investigation. It 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 be advised that the University 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, the complainant 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, 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.

If you have any questions about this letter, please contact Danette Ng, Equal Opportunity Specialist, at (415) 486-5539, or Katherine Riggs, Civil Rights Attorney, at (415) 486-5544.

Sincerely,

/s/

Anamaria Loya
Team Leader

cc: Robert Kelley, Senior Counsel