



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

REGION IX
CALIFORNIA

50 UNITED NATIONS PLAZA
MAIL BOX 1200, ROOM 1545
SAN FRANCISCO, CA 94102

July 26, 2022

VIA ELECTRONIC MAIL

Briana Oborn, Director
Paul Mitchell the School Sherman Oaks
15301 Ventura Blvd, Suite P 2
Sherman Oaks, CA 91403
XXXXXXXXXX

Re: OCR Case No. 09-22-2024

Dear Ms. Oborn:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against Paul Mitchell the School – Sherman Oaks (the School). The Student alleged that the School discriminated against her on the basis of disability.¹ Specifically, OCR investigated whether the School discriminated against the Student based on her disability by charging her for hours that she missed because of her disability.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability under any program or activity receiving Federal financial assistance. As a recipient of Federal financial assistance from the Department, the School is subject to Section 504 and its implementing regulations.

To investigate this complaint, OCR gathered evidence by reviewing documents provided by the School and the Complainant and statements provided in the School's data response. OCR also interviewed the Complainant and the School's Director. Based on this investigation, OCR found that the School violated Section 504 and its implementing regulation with respect to the issue investigated. The applicable legal standards, factual findings, and resolution of this matter are summarized below.

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

¹ OCR previously provided the School with the identity of the Student. We are not including their name in this letter for privacy reasons.

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 a recipient school to make modifications to its 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 a recipient school can demonstrate are essential to the program of instruction being pursued or to any directly related licensing requirement will not be regarded as discriminatory.

Under the requirements of Section 504, a student with a disability is obligated to notify the school of the nature of the disability and the need for a modification, adjustment, aid or service. Once a school receives such notice it has an obligation to engage the student in an interactive process concerning the student's disability and related needs. As part of this process, the school may request that the student provide documentation, such as medical, psychological or educational assessments, of the impairment and functional limitation.

Factual Findings

The Student enrolled in a cosmetology program at the School as a XXXXXXXX student beginning on January XX, 2020. The School's Director told OCR that she learned in mid-February 2020 that the Student was struggling with mental health issues and was asking for an ADA accommodation. Specifically, on February XX, 2020, the Student notified School staff by email that she was having significant mental health challenges. School staff responded to her email to remind her that because she had already missed school for a week she was halfway to a "14-day drop" (referring to students being dropped from the program if they do not attend for 14 days in a row). In a subsequent email exchange two days later, the Student notified staff that a change in medication on February X, 2020 may have caused the problems she was experiencing. The Director confirmed to OCR that she was not aware of any reason other than the Student's mental health that the Student missed school during that time period.

On February XX, 2020, the Student notified school staff by email that she needed to take a leave for approximately two weeks to receive treatment. The School's Director responded that same day to say that she was concerned that the Student had not come in to fill out paperwork to initiate the leave of absence. The Student responded on February XX, 2020 to explain that she had sent her doctor the ADA forms, but that she had been having a hard time getting the leave of absence paperwork from the doctor due to the coronavirus outbreak. She also stated that she had contacted a specialized treatment center and they had recommended a two week leave for full-time treatment. She stated that she would get a leave of absence letter from the treatment center and would get the ADA paperwork "in time" from the treatment center if her doctor did not provide it.

The School subsequently closed for in-person attendance due to COVID-19 on March XX, 2020. In total, between her start date of January XX, 2020 and the date the school closed, the Student

attended only 115.8 of her 378 scheduled hours. After March XX, 2020, the School waived all fees for hours missed during the initial phases of the pandemic.

On April XX, 2020, the Student eventually submitted a leave of absence form and a doctor's note to the School. On that form, both the Student and her doctor reported that she had chronic PTSD. On May XX, 2020, the Director sent the Student a letter confirming the Student's disability and stating that if she missed time from school due to her disability, those hours would not be counted against her. The letter stated, however, that "[p]lease note that this is moving forward from the date your ADA [form] was submitted."

The Student was on a leave of absence from June XX, 2020 through September XX, 2020. After returning from the leave of absence in October 2020, the Student completed the remaining 300 hours to finish her program in March 2021.

On April XX, 2021, after the Student had completed the program, she corresponded with the School's Financial Aid staff about her overtime bill, which was approximately \$3,300. The Director told OCR that all students are given the opportunity at the end of the program to provide documentation for hours they have missed that are resulting in additional charges. The Student's bill was incurred under the School's policy that students are required to pay \$14.38 an hour for any hours attended after the Student's "contract end date." Specifically, the Contract signed by the Student stated that "[i]f the student must attend additional program hours beyond his or her contracted end date due to not meeting a 90% attendance average...the student will be charged an additional \$14.38 for each hour scheduled to complete after the contracted end date is reached." (The 90% attendance average refers to the school's policy that students have a 10% buffer for "vacation, doctor's appointments, illness, etc."). For the Student, that meant that all of the hours she had missed in early 2020 had extended her completion date beyond her original "contract end date" of September 2020, so she was required to pay an additional \$14.38 an hour for those hours beyond the 10% buffer that all students are allowed to miss without charge.

As part of this exchange with financial aid staff, the Student submitted a July XX, 2019 letter from her doctor. In that letter, her doctor stated that he had been treating the Student since January 2019 and that her condition "has rendered her unable to consistently attend classes. Based on my evaluation, she has required and continues to require episodic breaks from coursework because of her symptoms."

In response to that doctor's note, a Financial Aid staff member responded to the Student to say that this document was insufficient and told her that they needed "an updated letter with new dates." In an interview, the Director told OCR that both this July XX, 2019 doctor's note and the April XX, 2020 documentation were insufficient to waive the Student's overtime fees because they did not include specific dates for which the Student was to be excused.

The Student subsequently did not pay her bill and the Student's outstanding balance was sent to a collections agency. During the collections process, the Student provided the collections agency with a third doctor's note, dated August XX, 2021, stating that she was unable to attend school in February 2020 "due to debilitating symptoms related to medications changes during her treatment course." The Student told OCR that she was told by the collections agency that the School was not accepting this doctor's note. The Director told OCR that she was unaware of the

School having received this last doctor's note. The Student subsequently paid the full amount owed and filed a complaint against the School.

Analysis

As described above, the Section 504 regulations require schools to make modifications to academic requirements that are necessary to ensure that such requirements do not discriminate against individuals with disabilities. Here, the Student asked the School to modify its billing practices to waive the overtime fees for certain hours that the Student had missed due to her disability. Once the Student notified the School of this request, the School was required to engage her in an interactive process concerning her disability and related needs.

Here, the Student first notified the School in February 2020 that she needed to miss school because of significant mental health issues. While the Student was not able to immediately provide medical documentation, the School's Director stated in an interview that she understood that the Student was missing school during that time because of mental health issues. Subsequently, however, the Student provided medical documentation on at least two different occasions (a letter dated July XX, 2019 and another dated April XX, 2020) that documented her chronic disability and made clear that her disability would require her to miss school episodically.

The School communicated to OCR that it rejected the Student's request for a modification because the medical documentation the Student provided did not list specific dates to be excused. OCR, however, found that the Student's communication and medical documentation were sufficient to support the Student's requested accommodation.² The Student provided medical documentation for a chronic condition that was completed by a doctor both several months before (July 2019) and shortly after (April 2020) the dates that the Student was asking to be excused for. In addition, the Student was in regular communication with School staff at the time of the absences about why she was missing school, which the School did not dispute. There was no evidence or reasoning offered to cast doubt on the Student's assertion that this chronic condition was the basis for the Student's mental health issues that prevented her from attending school starting in February 2020. In such a circumstance, it was necessary for the School to modify its policy around overtime charges to ensure that such policy did not discriminate against the Student.

OCR therefore found that the School should have provided a modification to waive the Student's overtime charges for the hours she missed in February 2020 and March 2020 due to her disability.

Overall Conclusion

This concludes the investigation of this complaint.

² As noted above, the Student later provided medical documentation with the specific dates to the collection agency. OCR did not make a determination about whether the School received this documentation because it determined that the Student's communications to the School prior to that date were sufficient to support the Student's request.

To address the complaint allegations and the violation identified in the investigation, the School, without admitting to any violation of law, entered into the enclosed resolution agreement.

Based on the commitments made in the enclosed resolution agreement, OCR is closing the investigation of this complaint as of the date of this letter and notifying the Complainant concurrently. When fully implemented, the resolution agreement is intended to address the complaint allegations. OCR will monitor the implementation of the resolution agreement until the School is in compliance with the terms of the resolution agreement. Upon completion of the obligations under the resolution agreement, OCR will close the case.

OCR's determination in this matter should not be interpreted to address the School's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. 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 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 be advised that the School may not harass, coerce, intimidate, discriminate, or otherwise retaliate against any individual because they have filed a complaint or participated in the complaint resolution process. If this happens, an individual may file another complaint alleging retaliation.

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 the law, personally identifiable information that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact Blake Thompson at (415) 486-5630 or at blake.thompson@ed.gov.

Sincerely,

/s/

Anamaria Loya
Chief Attorney

Enclosure

Cc: Emily Stark, Counsel