



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

915 2ND AVE., SUITE 3310
SEATTLE, WA 98174-1099

REGION X
ALASKA
AMERICAN SAMOA
GUAM
HAWAII
IDAHO
MONTANA
NEVADA
NORTHERN MARIANA
ISLANDS
OREGON
WASHINGTON

March 20, 2015

Dr. John Bassett
President
Heritage University
3240 Fort Road
Toppenish, Washington 98948

Re: Heritage University
OCR Reference No. 10132211

Dear Dr. Bassett:

The U.S. Department of Education, Office for Civil Rights (OCR) has completed its investigation of the referenced complaint against Heritage University. The complaint alleged that the university treated a student differently than other students based on disability, age, and race with regard to his student-teaching placement.

OCR enforces section 504 of the Rehabilitation Act of 1973, Age Discrimination Act of 1975, and title VI of the Civil Rights Act of 1964, and their implementing regulations. These laws prohibit discrimination on the bases of disability, age and race, respectively, in programs and activities that receive federal financial assistance from the U.S. Department of Education. The university is a recipient of federal financial assistance from this Department and is subject to these regulations.

OCR determined that the evidence did not support a conclusion that the university failed to comply with the Age Act or Title VI with regard to the issue investigated. However, OCR has determined that the university is in noncompliance with Section 504. OCR's findings of fact and conclusion of law set forth below are based upon information and documents provided by the complainant and the university.

Findings of Fact

1. The student enrolled in the university's Master in XXXXX (MIX) Program in fall 2011. The student is XXXXXXXX and XXXXXXXX-impaired. The student sought and was granted disability-related modifications and auxiliary aids for his visual impairment, which included XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX, and extra time to complete assignments and tests.

2. The student self-identified as Hispanic and at the time of enrollment in the MIT Program was XX years old.
3. The university has a policy entitled Anti-Harassment and Anti-Discrimination which contain a grievance procedure for alleged sexual harassment only. The university also has a policy entitled The American with Disabilities Act which contains a basic definition of a disabled person, a contact, and grievance procedures regarding employees. The university does not have a disability discrimination grievance procedure for students.
4. It is the university's position that a factor that contributed to the delay in the student's internship placement for the spring 2013 semester was his failure to satisfy the XXXXX XXXXXX Skills Tests Endorsements (XXST-E) exam requirement until mid-December 2012. However, another student in his program, "student B" did not satisfy the XXST-E exam requirement mid-December 2012, as well, and was placed in a co-teaching internship for the spring 2013 semester.
5. Students accepted into the Teacher Preparation Program must pass or attempt to pass both subtests of the XXST-E exam before they can begin the co-teaching internship.
6. On December 14, 2012, the student notified the Director of XXXXX XXXXXX XXXXXX (Director) that he passed one of the XXST-E subtests. The Director replied that he must pass the second subtest by February 2013 in order to be placed for the fall 2013 semester. On December 19, 2012, the student informed the Director that he passed the second subtest of the XXST-E exam.
7. The Director told OCR that she acts as the liaison between the university and school districts. She stated that she contacts school districts to find placements for co-teaching applicants for internships.
8. The university's internship application is sent by the Director to potential internship placement sites. The application is entitled "Application for XXXXXXXXXXXX Internship" ("AFXXI") and includes a question "[A]re you aware of any physical conditions that may interfere with the success of your XXXXXXXX experience or that may require special accommodations (i.e. 504 plan) in your XXXXXX assignment?" The student selected "yes" in answer to the question.
9. The AFXXI does not include a section for an applicant to disclose age or race.
10. On the AFXXI that is for the university's use, the applicant identified two placement choices: XXXXXX XXXXXX XXXXX and XXXXXX

XXXXXXXXXXXXXXXXXX. It is the university's position that one of the reasons it took the university longer to place the student was because he chose two rather than three placement options.

11. The student explained to OCR that he limited his options to the two XXXXXXXXXXXX that would meet his disability-related XXXXXXXXXXXX needs.
12. In December 2012, the university contacted XXXXXXXX XXXXXXXX about an internship for the student. On January 30, 2013, the Director sent the student's AFXXI, cover letter, resume and section 504 plan to the XXXXXXXX XXXXXXXX. On February 5, 2013, the university contacted the XXXXXXXX XXXXXXXX about an internship for the student for the spring 2013 semester. In the application submitted to XXXXXXXX XXXXXXXX, the university included the student's AFXXI, cover letter, resume, and a copy of his section 504 plan. It is the university's practice to share students' Section 504 plans with prospective internship sites to assist in providing accommodations.
13. By e-mail dated February 6, 2013, the university informed the student that two placements had been contacted and that neither had a placement for the student.
14. The student was the only MIX student in his cohort not to have been placed in a student internship for spring 2013. These placements included six students self-identified as Caucasian, two as Hispanic, and one undisclosed, ranging in age from 37 through 56. These numbers do not include undergraduate candidates.
15. On February 19, 2013, the student informed the university that he was having medical issues and planned to return to the university for placement in fall 2013. In an e-mail dated February 20, 2013, the university told the student that it will be important to have an updated Section 504 Plan for him to share with his placement.
16. On April 9, 2013, the university asked the student to contact the vice president of student affairs about his Section 504 Plan and update his paperwork for his XXXXXXXXXXXX internship packet for a fall 2013 semester placement. In response, the student provided the university with a letter from his doctor dated April 22, 2013, in which his doctor refers to the student's disability-related needs for XXXXXX XXXXXXXX, XXXXXXXXXXXX, XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX, and also refers to his XXXXXXXX XXXXXXXX.
17. Between June and October 2013, the university submitted the student's updated internship packet to four XXXXXXXX, one private XXXXXXXX and one tribal XXXXXXXX school for placement for fall 2013. On October 2, 2013, the

tribal XXXXXXXX offered the student an interview on October 17, 2013. The university notified the student of the interview on October 16, 2013. The student responded to the university's October e-mail on October 26, 2013, and was not interviewed for the internship position.

18. The student was not placed for fall 2013. In a September 14, 2013 e-mail, the university informed the student that he would have to wait until the spring 2014 semester to complete his XXXXXXXX internship.
19. For the fall 2013 semester, the university placed two students for XXXXXXXX internships. Both students identified as Hispanic and were XX and XX years of age, respectively. The university stated that neither student self-identified as disabled.
20. The university included the April 22 doctor's letter with the student's AFXXIs. The student indicated to OCR that he was not aware that the university had shared disability-related information with his prospective placement schools. In a November 21, 2013, e-mail to the Director, the student writes that he "was under the impression that my 504 plan would not be submitted to the districts this time, or am I confused about this matter?" The university did not address the student's question.
21. The Director stated that on average, she makes at least one to three attempts to place a candidate for the XXXXXXXX internship before a candidate is successfully placed. For the student, the Director stated that she attempted to place the Student at least 15 times for the spring and fall 2013 semesters, including multiple contacts with the same XXXXXXXX.
22. The Director told OCR that the student was the only disabled student that she has attempted to place in a XXXXXXXX internship.
23. The student received a XXXXXXXX internship placement for the spring 2014 semester in the XXXXXXXX School District.

Analysis and Conclusion

The issue OCR investigated was whether the university treated a student differently than other students based on disability, age, and race with regard to his XXXXXXXX placement.

Age and Race

The regulation implementing the Age Discrimination Act of 1975 at 34 CFR 110.10(a) states that no person shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination

under any program or activity receiving federal financial assistance. The regulation implementing title VI of the Civil Rights Act of 1964 at 34 CFR 100.3(a) states that no person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this part applies.

OCR's investigation established that the university's AFXXI does not include a section for an applicant to disclose age or race. University staff members denied that the student's age or race were factors in the internship placement process. The evidence revealed that there was a student who was older than the student who was placed for a XXXXXX internship in the spring 2013 semester. OCR's investigation also established that there were two Hispanic students in the spring 2013 semester and two Hispanic students in the fall 2013 semester XXXXXX internship program.

Because the evidence was not sufficient to support the finding that the university discriminated against the student, or treated the student differently, based on his age or race, OCR concludes that the university is in compliance with the Age Discrimination Act of 1975 and Title VI.

Disability

The Section 504 regulation at 34 C.F.R. § 104.4 (a) and (b), provide that no qualified person 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 under any program or activity which receives federal financial assistance.

The Section 504 regulation at 34 C.F.R. § 104.7(b) provides that a recipient that employs fifteen or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part.

OCR's investigation established that the university only has disability discrimination grievance procedures related to employment. The evidence indicates that the university does not have a disability discrimination grievance procedure for students. Therefore, OCR concluded that the university did not comply with Section 504 at 34 C.F.R § 104.7(b).

Under 34 C.F.R. § 104.4 (b)(4), a recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration that: (i) have the effect of subjecting qualified disabled individuals to discrimination on the basis of disability; (ii) have the effect of defeating or substantially impairing accomplishments of the objectives of the program or activity for individuals with disabilities; or (iii) perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.

OCR's investigation established that even though the university made at least 15 attempts to place the student in the XXXXXXXX internship program for spring 2013 and fall 2013 semesters (compared to one to three attempts for other students), the student was not successfully placed until the spring 2014 semester. The evidence established that the university's AFXXI requires students, who may need accommodations, disclose that on the AFXXI. The university subsequently shares this information with potential internship sites. Additionally, the evidence indicates that the university provided the student's Section 504 Plan and doctor's letter, along with his AFXXI materials, to prospective school districts that the university contacted on the student's behalf. OCR cannot conclude that the disclosures and sharing of the student's plan and doctor's note resulted in him not being accepted by any of the placements the university pursued on behalf of the student.

OCR finds that the practice of sharing disability-related information at the point of applying for a XXXXXXXX opportunity has the effect of defeating or substantially impairing accomplishments of the objectives of the program or activity for individuals with disabilities.

While OCR cannot establish these practices directly harmed this particular student based on the evidence in this case, in general, such practices tend to harm disabled applicants. Under OCR's regulations, institutions of postsecondary education themselves are generally not permitted to make preadmission inquiries about an applicant's disability.¹ There are limited exceptions in OCR's regulations under which preadmission inquiries are permissible.²

Based on the foregoing, OCR concludes that the university failed to comply with the regulations implementing Section 504 with respect to provision of grievance procedures and impermissible use of disability-related inquiry. The university voluntarily agreed to resolve these compliance issues by submitting the enclosed Resolution Agreement (agreement). OCR will monitor the university's implementation of the agreement.

This letter sets forth OCR's determination in an individual OCR case and should not be interpreted to address the university's compliance with any other regulatory provisions or to address any issues other than those addressed in this letter. 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.

¹ Institutions generally may not make preadmission inquiry as to whether an applicant for admission has a disability but, after admission, may make inquiries on a confidential basis as to disabilities that may require accommodation.

34 C.F.R. § 104.42 (b)(4)

² 34 C.F.R. § 104.42 (c).

This concludes OCR's investigation of the complaint. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

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.

Thank you and your staff for your cooperation during the investigation of this complaint. If you have any questions, please contact Samantha Wilson, equal opportunity specialist, by telephone at (206) 607-1671 or by e-mail at samantha.wilson@ed.gov.

Sincerely,

/ s /

Monique Malson
Program Manager

Enclosure: Settlement Agreement

cc: University Legal Counsel