



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVENUE, SW
WASHINGTON, DC 20202-1475

REGION XI
NORTH CAROLINA
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WASHINGTON, DC

February 5, 2016

XXXX

Dr. Nathan O. Hatch
Office of the President
Wake Forest University
211 Reynolda Hall
P.O. Box 7226
Winston-Salem, NC 27109

Re: OCR Complaint No. 11-14-2337
Letter of Findings

Dear Dr. Hatch:

This letter is to notify you that the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) has completed its investigation of the complaint we received on September 22, 2014, against Wake Forest University (the University). The Complainant alleged that:

1. The University discriminated against the Complainant based on disability when faculty of the Biology graduate program demanded that he take a medical leave of absence from the program;
2. The University discriminated against the Complainant based on disability when it discharged him from the XXXX graduate program and as a teaching assistant after he did not request a medical leave of absence; and
3. The University discriminated against the Complainant based on disability when it failed to provide appropriate disability-related grievance procedures and failed to respond to the grievance letter dated July 31, 2014.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department. Because the University receives Federal financial assistance from the Department, OCR has jurisdiction over it pursuant to Section 504.

In reaching a determination, OCR reviewed documents provided by the Complainant and the University and interviewed the Complainant and University faculty and staff.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

After carefully considering all of the information obtained during the investigation, OCR did not find sufficient evidence to support allegations 1 and 2. Before OCR completed its investigation, the University expressed a willingness to resolve allegation 3 by taking the steps set out in the enclosed Resolution Agreement. OCR's findings and conclusions are discussed below.

Background

The Complainant enrolled in the University's XXXX doctoral program (the Program) in a degree-seeking track in the fall of 2011. The Complainant studied and researched under the guidance of a doctoral advisor and dissertation advisory committee with the approval of a graduate committee. During the Complainant's second academic year, 2012-2013, he began having difficulties meeting the academic expectations of his advisor. During this time period the Complainant's working relationship with his advisor began to decline in part because of disagreements as to the reasonable expectations of a graduate student. Academically, the Complainant struggled with written and oral comprehensive exams at the end of the fall 2013 semester, resulting in his having to retake the comprehensive exams. On April 26, 2014, the Complainant contacted the Program Director of the XXXX department (Director), stating his working relationship with his advisor had deteriorated due to serious interpersonal issues and that he needed to talk about options; while the two discussed changing to a different advisor, the Director recommended that the Complainant convene a meeting of his dissertation committee. The following month the Complainant's committee met to discuss the Complainant's progress and to set a schedule for completion of his dissertation.

The Complainant and his advisor met again on XXXX to discuss concerns about the Complainant's level of academic progress and lack of communication concerns. At this meeting his advisor inquired as to whether outside circumstances were interfering with the Complainant's work. The advisor told the Complainant that he should take a medical leave of absence or find another advisor. The Complainant disclosed he was dealing with depression and agreed to take a leave of absence. Two days later, the Complainant changed his mind, declining to take a leave of absence. On XXXX, his advisor stepped down because of the Complainant's refusal to take a leave of absence and because of the deterioration of the advisor-student relationship.

The Complainant believed that since his advisor stepped down he, consequently, would be removed from the Program if he was unable to find a new advisor by July 31st. The Complainant went to the Director to find out how to file a grievance, although, according to the Director, the Complainant did not specify he sought to grieve on the basis of disability. The Complainant was told to contact the Graduate Student Association representative. The Complainant did not file with that person, but instead he filed a grievance on XXXX through his counsel. The Complainant's counsel and the University communicated until September 9, 2014 when communication between the parties ended.

At the start of the fall 2014 semester, the Complainant believed he was dismissed from the Program because he had not found a new advisor and his name was not on the XXXX Department list or Teaching Assistant (TA) assignments. However, records showed he was registered as a full-time student and received stipends for his TA position through January 2, 2015.

Legal Standards and Analysis

Allegation 1

The Section 504 regulation, at 34 C.F.R. § 104.43(a), provides that a qualified person with a disability may not be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in any postsecondary program, including aids, benefits, or services, on the basis of disability.

The Complainant alleged that the University discriminated against him based on disability when faculty of the XXXX graduate program demanded that he take a medical leave of absence from the Program. Although the Complainant told OCR that his advisor demanded that he take a *medical* leave of absence, the faculty advisor told OCR that he told the Complainant that the Complainant's work quality had "plunged," and the Complainant needed to choose between taking a personal or medical leave to manage the decline in his work before trying to resume the Program or finding a different advisor. The advisor told OCR that the Complainant then disclosed that he had depression and stated he needed to focus more on treating his condition; the parties agreed that the Complainant would request a leave of absence. The Complainant was to email the committee that afternoon, but he changed his position on requesting the leave. At that point, the advisor believed that he and the Complainant would be unable to improve their relationship. The advisor withdrew, via a message to the committee, following the Complainant's decision, first writing that the Complainant refused to address problems that made it impossible for him to be productive, and then that he was resigning as advisor because of the Complainant's "refusal to communicate and [his] very different view of past and present reality from mine."

The advisor denied that his statement to the Complainant about taking a leave of absence was based on the Complainant's depression. The Complainant told OCR that he had previously volunteered information about his depression to the advisor, while the advisor told OCR that prior to XXXX; he had not discussed depression with the Complainant. The advisor told OCR that he did not go into the XXXX, meeting with "suspicions" about what was causing the Complainant's academic problems. He told OCR that he was focused on the Complainant's academic progress and was not "speculating" on the Complainant's "personal life." The advisor stated that the Complainant's effort and progress had changed to the point that he believed there was "something going on" that was preventing the Complainant from working effectively, and which the Complainant needed to manage.

Evidence presented by both parties is consistent with the advisor's explanation that he suggested that the Complainant take a leave of absence due to the advisor's belief that the Complainant was not making sufficient academic progress. The deterioration of the Complainant's relationship with the advisor started in 2012-2013, the second year of the Complainant's program. His advisor stated that during his second year the Complainant began falling behind the normal progress of a doctoral student, and his struggle continued into his third year in the Program.

Correspondence beginning in 2013 and continuing into 2014 showed a back-and-forth discussion among the Complainant, advisor, and committee regarding the Complainant's progress and how to better assist him by creating a schedule and plan for the completion of his research and dissertation. Even with the intervention of the committee the parties' relationship continued to deteriorate, the Complainant was still unhappy with the expectations of his advisor, and they disagreed on when and how his research and writing should be completed. On April 26, 2014, the Complainant emailed the director of the XXXX program stating that "things" with his advisor had deteriorated, and he needed to speak with the director about his options. During the subsequent discussion, he discussed an interest in changing advisors because of serious inter-personal issues. This evidence establishes the Complainant was also frustrated by the state of his relationship with his advisor, which would ultimately result in the advisor stepping down. Email correspondence suggests that around the same time period, the advisor contemplated stepping down because no progress was being made, but he noted that he hoped progress would turn around. He took the Complainant to a conference in XXXX with the belief it would motivate and reenergize the Complainant. However, on XXXX, the advisor contacted the committee to inform them that things were still not going well, the Complainant was not being very responsive, and documents were overdue. On XXXX, the advisor wrote to the committee stating that he intended to tell the Complainant that he needs to take a leave of absence as there was "some medical or personal issues that's preventing [the Complainant] from working."

OCR reviewed the information provided by both parties and found that on balance the evidence is more consistent with the advisor's explanation that the request for leave was based on the Complainant's academic performance and their deteriorating relationship rather than on the Complainant's disability. In particular, the XXXX, email is consistent with the advisor's report to OCR that he did not know and was not speculating on the reason for the Complainant's lack of academic progress, but planned to suggest that the Complainant take a leave of absence (medical or personal) to address any issues he had prior to continuing the program. Therefore, there is insufficient evidence to support that the Complainant was discriminated against on the basis of disability when asked to take a leave of absence from the program.

Allegation 2

As above, Section 504 provides that a qualified person with a disability shall not, on the basis of disability, be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in any postsecondary education program. 34 C.F.R. 104.43(a).

Here, the Complainant alleged that the University discriminated against him based on disability when it discharged him from the Program and as a teaching assistant after he did not request a medical leave of absence. The Complainant based his belief that he had been dismissed on a statement by the Director of the XXXX department, who, according to the Complainant, told the Complainant he had until the end of July to find a new advisor or he would have to leave the Program. The Complainant also based his belief that he had been dismissed on the removal of his name from the XXXX Department directory and TA assignment list. He said he did not, however, receive a letter from the University that he was dismissed from the Program.

OCR reviewed the information and evidence received and found that the University did not dismiss the Complainant from the Program. OCR inquired about the University's process for dismissing students. The University responded that when it dismisses a student the dismissal is based on circumstances such as failure to meet academic standards because a student's grade point average dropped below a 2.0, which was not at play in this situation. The University said that it must follow a process prescribed by policy to make such a dismissal; and when it does, it notifies the student of its decision in writing.

Here, the University did not send the Complainant a letter dismissing him because it did not dismiss him. Indeed, on XXXX, the advisor wrote an email to the Complainant notifying him that if the Complainant chose "not to continue as [his] student" (by not taking a leave of absence) he would remain a student in the Program because he had passed the doctoral qualifying exam and would need to be supervised by another faculty member. Then, on XXXX, the associate registrar responded to an e-mail from the Complainant, in which the Complainant said he was expecting a formal dismissal letter, writing that the Complainant was registered as a full-time student and he had a TA package, the stipend for which had been distributed to him. The University continued to deposit the TA stipend in the Complainant's bank account each month from XXXX. The Complainant confirmed to OCR that he received the monthly TA stipend from the University and used it for living expenses during the fall of XXXX.¹ Moreover, the University provided OCR a copy of the Complainant's transcript which showed he was registered for classes for the XXXX semester. Based on the above evidence, OCR finds that the University did not dismiss the Complainant from the Program; since dismissal never occurred the University could not have discriminated against the Complainant based on disability.

Further, OCR finds that the Complainant's belief that he was constructively dismissed was unreasonable. The Complainant said that losing his advisor was equivalent to having been dismissed because he could not continue in the Program without an advisor, and getting a new advisor would mean starting over: he would lose three years' worth of research and would not be able to complete a new project before his remaining two years of funding ran out. He indicated during one telephone call with OCR that the Director told him he needed to find a new advisor by late XXXX or he would have to leave the Program. Later, he told OCR that the Director told him that he had until the start of the XXXX to find a new advisor. When interviewed by OCR, the Director of the biology program stated that he did tell the Complainant he needed to find a new advisor, but he said he never gave a specific cut-off date. Rather, he said he hoped it would be by the start of the XXXX, but that was not a hard deadline. The Director told OCR that he understood the Complainant's concern about running out of funding but that the concern was premature because he had not yet identified a new advisor. He said that depending on the new project, which may have needed to be less ambitious than his original one, he may have been able to extend funding. He noted that this has been done in extenuating circumstances, including in the event of a change in advisor. Alternatively, he noted that a new advisor may have additional research grants. He said that he suggested a few colleagues, one of whom the Complainant contacted once but then did not follow up.

¹ When OCR asked the Complainant why he was receiving the stipend if he had been dismissed, he said that he thought it was an error.

The Complainant told OCR that his advisor's decision to step down amounted to his dismissal because finding a new advisor was not possible and "unheard of." The University, on the other hand, provided information to support that, while not common, changing an advisor did happen on occasion. For instance, a member of the Complainant's advisory committee explained to OCR how one of the students she advised came to her after two years in another lab, where the student had been unhappy. The committee member explained that the prospective student did a 3-month rotation in her lab and another; at the end of the rotation the student selected her lab, and he is set to graduate on track. Another committee member explained that he could not become the Complainant's advisor because of his own lack of funding, that he had recommended another colleague with similar interests and the support of a grant, but he said that he did not think the Complainant contacted her. This committee member told OCR that several of his previous advisees had come from other labs and that changing an advisor was possible. As a result of the information provided to OCR, OCR cannot find that the advisor's decision to step down amounted to a constructive dismissal of the Complainant from the University and, therefore, could not have been disability-based discrimination.

As to the Complainant's name being removed from the Biology department directory and his not being assigned a TA position, the University explained that the Complainant was not on the TA list because he did not attend the first week of classes when the TAs are placed. The Director said the department believed that he had left the area at that point. He further said that TAs are assigned many positions, not just teaching; some do research, develop a new lab or course, or run the greenhouse. The Director said that since the Complainant had not been on campus the department did not assign him a specific role at the time. The same is true for the department list, which the Director said is developed by graduate students and is not an official departmental directory.

For the reasons explained above, OCR determines there is insufficient evidence to support that the Complainant was discriminated against based on disability because there is no evidence that he was discharged from the Biology graduate program and as a teaching assistant after he did not request a medical leave of absence.

Allegation 3

The Section 504 regulation, at 34 C.F.R. § 104.7(b), requires universities that employ 15 or more people to adopt grievance procedures that incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints of Section 504 violations.

OCR examines a number of factors in evaluating whether a university's grievance procedures are prompt and equitable, including whether the procedures provide for the following: notice of the procedures to students and employees, including where to file complaints; application of the procedures to complaints alleging discrimination by employees, other students, or third parties; adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence; designated and reasonably prompt timeframes for major stages of the complaint process; written notice to the parties of the outcome of the complaint; and an assurance that steps will be taken to prevent recurrence of any discrimination and to correct its effects.

OCR has a preliminary concern that the various policies and procedures maintained by the University do not clearly or consistently provide notice to students of where grievances of disability discrimination may be filed. Through the investigation, OCR identified four University publications that identified different points of contact for students with inquiries or concerns regarding the University's non-discrimination policies.

The non-discrimination statement in the Student Handbook for 2013-2014, which was operative when the Complainant was seeking the policy, lists individuals who were designated to handle inquiries about the University's non-discrimination policies, including the Assistant Vice President for Employee Relations & Compliance who was designated as the Section 504 Coordinator, and provides contact information for her in the Human Resources department. The Student Handbook did not, however, include or reference grievance procedures.

The non-discrimination statement in the Graduate Student Handbook (Graduate Handbook) for the 2013-2014 academic year states that the University has adopted a procedure for resolving discrimination complaints and directs students to contact the Title IX Coordinator. Like the Student Handbook, it does not provide, reference, or explain what that procedure is.

The Graduate Handbook included procedures for disclosing a disability to the Graduate School for the purpose of requesting academic adjustments and auxiliary aids and services. The Disability Procedure directs students to contact the Student Health Center for medical or mobility impairments and the Learning Assistance Center to request academic adjustments for learning impairments. The Disability Procedures do not indicate how to file a grievance related to disability discrimination.

The "Graduate Student Non-Academic Grievance Procedures" described in the Graduate Handbook state that such grievances should be directed to the director of the student's academic department, to the Dean of the Graduate School, to the Assistant Vice President for Human Resources and Title IX Coordinator, or to the Office of Human Resources. It does not include the procedure a student is to follow to raise a grievance.

The Complainant provided OCR with a copy of the Graduate School of Arts and Sciences Bulletin of the Wake Forest University (Graduate Bulletin) for the 2013-2014 academic year, which he used as a resource for addressing his concerns. Unlike the Student Handbook, the Graduate Bulletin does not identify the University's Section 504 Coordinator as the contact for inquiries about the University's non-discrimination policies. Rather, the Graduate Bulletin for the 2013-2014 academic year, like the Graduate Handbook, states that "the University has adopted a procedure for the purpose of resolving discrimination complaints." It directs students with "inquiries or concerns" to dial a telephone number to reach an unnamed individual that OCR determined was the telephone number of the Diversity and Compliance Director. However, the Graduate Bulletin does not specify the procedure it references.

Thus, students are alternately directed to contact the Section 504 Coordinator (as indicated in the Student Handbook); the Title IX Coordinator (as indicated in the Graduate Handbook); the director of the student's academic department, the Dean of the Graduate School, the Title IX

Coordinator, or the Office of Human Resources (as indicated in the Graduate Student Non-Academic Grievance Procedures in the Graduate Handbook); or the Diversity and Compliance Director (as indicated in the Graduate Bulletin).

The concern regarding lack of notice of where complaints may be filed is illustrated by the Complainant's difficulty identifying the individual and the circuitous search that he undertook. The Complainant referenced the Graduate Handbook and the Graduate Bulletin, which stated that he should direct inquiries to the Director of the Program. The Director, in turn, notified the Complainant that based on his reading of the Graduate Handbook he should, instead, contact his Graduate Student Association Representative. The Director's recommendation, however, was not in line with the Graduate Handbook's Non-Academic Grievance Procedure, though it is referenced in the Graduate Bulletin's section, "Honor Code & Grievance Procedures." Instead, the Complainant went to the Human Resources location seeking the Diversity and Compliance Director, as stated in the Graduate Bulletin, but, according to the Complainant, the secretary at that location told him it was not the appropriate place to report and directed him to the Office of Multicultural Affairs to see the Assistant Provost for Diversity and Inclusion. Then, on XXXX he made an appointment to speak to the Assistant Provost on XXXX, which she canceled without follow up or advice. The Assistant Provost told OCR that she was not the appropriate person with whom the Complainant should have discussed his grievance because she does not handle matters relating to alleged discrimination. She said she did not reschedule or refer the Complainant elsewhere because, when she returned from leave more than two weeks later, the Complainant had submitted a grievance letter, which she forwarded to University counsel.

The Complainant contacted two individuals designated by the University's stated policies, but in each case, the designated individual sent the Complainant to someone else who had not been identified by the University as a contact for filing grievances. Neither designated individual seemed to have knowledge of the grievance process, or that they were contacts, and sent the Complainant in the wrong direction.

In addition, although the University told OCR that the Graduate School's procedures specify how a student should file non-academic grievance, OCR did not find evidence to support this. While the non-discrimination statements in the Student Handbook, Graduate Handbook, and Graduate Bulletin prohibit illegal discrimination, they do not state or point to a related procedure for a student to file a complaint against another student, employee, or a third party, as required by Section 504. The University's policies and procedures state that the University has a procedure, but it does not specify what that procedure is, and the University did not produce the procedure for OCR. During OCR's interview of an individual designated as a contact by the procedures, the individual did not know what the procedure was.

While OCR could not find an explicit procedure for filing a grievance, the steps a student must take to file such a grievance, or how it is investigated, including timeframes for completion of the investigation, possible outcomes, or a statement against retaliation for filing such a grievance, we note that the website of the University's Learning Assistance Center (LAC), where students with disabilities seek services and support, includes a grievance procedure for students grieving the provision of academic adjustments and auxiliary aids and services.

<http://lac.wfu.edu/disability-services/grievance/>. This procedure indicates that it also pertains to

complaints of disability discrimination; however, the description of the procedure appears more to contemplate grievances regarding academic adjustments. We note this because the University may have a procedure for responding to disability discrimination grievances, but no one in the Complainant's situation referred him to this procedure. Moreover, the University never referenced or otherwise mentioned this procedure in response to OCR's inquiries.

OCR also reviewed the University's steps to respond to the Complainant's grievance. The University told OCR that the Complainant did not submit a grievance but rather sent correspondence through his attorney. OCR disagrees with the University's characterization of the correspondence in that the letter explicitly states that the Complainant believed the University discriminated against him on the basis of disability, and, as discussed above, had attempted to schedule a meeting with the Assistant Provost "to address pertinent grievance procedures." The letter from the Complainant's counsel cites to Section 504 and Title II, which prohibit discrimination based on disability, and states that the Complainant had been subjected to discriminatory conduct prohibited by the statutes.

Here, OCR determined that the Complainant attempted to locate the appropriate individual with whom to file a grievance but was unable to do so. Consequently, the Complainant cannot be faulted for not submitting a formal grievance using the appropriate process. As discussed above, the University has not provided sufficient information to show what the process is.

OCR identified a preliminary concern about the University's implementation of its grievance procedure, specifically regarding the University's response to the Complainant's allegation raising a concern of disability discrimination under Section 504. In response to questions from OCR, the University stated that it engaged in discussions with the Complainant's counsel to resolve the grievance. However, the University did not make a written response to the Complainant's grievance. The University, to this point, has not described the nature of the discussions with the Complainant's counsel or what efforts it made to investigate and resolve the grievance. The University noted that before it reached a conclusion to the discussions the Complainant filed with OCR.

Based on currently held information, OCR has conflicting evidence about the University's pertinent non-discrimination policies and procedures as well as its handling of and responsiveness to the Complainant's grievance. Pursuant to Section 302 of OCR's *Case Processing Manual*, the University signed the enclosed Resolution Agreement on February 3, 2016 which, when fully implemented, will resolve Allegation 3. The provisions of the Agreement are aligned with this allegation, the issues raised by the Complainant, and the information discussed above that was obtained during OCR's investigation, and are consistent with applicable law and regulation. OCR will monitor the University's implementation of the Agreement until the University is in compliance with the statute and regulation at issue in the case. Failure to implement the Agreement could result in OCR reopening the complaint.

Conclusion

This concludes OCR's investigation of the complaint. This letter 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. 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.

Please be advised that the University 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, or participates in an OCR proceeding. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, 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 personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

We appreciate the University's cooperation in the resolution of this complaint. If you have any questions regarding this letter, please contact Amy S. Williams or Josie Evola, the OCR attorneys assigned to this complaint, at 202-453-5933 or amy.williams2@ed.gov, or 202-453-5908 or josie.evola@ed.gov.

Sincerely,

/S/

Alessandro Terenzoni
Supervisory Attorney, Team 2
Office for Civil Rights
District of Columbia Office

Enclosure

cc: Dina Marty, Esq.