



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVENUE, SW
WASHINGTON, DC 20202-1475

REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, DC

June 3, 2015

Mr. Jason Langberg
Attorney
Advocates for Children's Services
Legal Aid of North Carolina
P.O. Drawer 1731
Raleigh, North Carolina 27602

RE: OCR Complaint No. 11-15-2032
Resolution Letter

Dear Mr. Langberg:

This letter is to notify you of the disposition of the above-referenced complaint filed with the U.S. Department of Education (Department), Office for Civil Rights, District of Columbia Office (OCR) on December 5, 2014, against Shaw University (the University). The Complainant filed the complaint on behalf of a student who applied for admission to the University (the Student). The complaint alleges that the University discriminated against the Student on the basis of disability XXXX when the University rescinded his offer of admission because it did not believe it could provide him with the modifications he would need to attend the University.

OCR investigated this complaint pursuant to its authority to enforce 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 the course of investigating this complaint, OCR reviewed information provided by the Complainant and by the University. OCR also interviewed the University's Disability Services Coordinator. OCR determined based on the information gathered that University discriminated against the Student as alleged, in violation of Section 504. In the course of the investigation, OCR further determined that the University's admissions practices more generally, as they pertain to all students with disabilities, run contrary to the requirements of Section 504. The University has signed the enclosed resolution agreement to remedy these violations. A discussion of OCR's findings and conclusions follows.

Background

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

The Student, 18 years old at the time the complaint was filed, has XXXX. The Student graduated from high school in the spring of 2014. In high school, the Student was served through an Individualized Education Program (IEP). Through his IEP, the Student received one-on-one paraprofessional support for the full school day, as well as physical therapy, special transportation, and testing accommodations. His primary mode of mobility is a wheel chair.

On March 27, 2014, the Student received notification that his application for admission to the University was accepted, for enrollment in the fall of 2014. According to the Complainant, the Student also had been accepted at two other institutions, but he wished to attend the University. After he received his letter of acceptance, the Student submitted a housing reservation form on which he self-identified as a student with cerebral palsy and indicated his desire to live on campus.

On July 10-11, 2014, the Student attended an orientation for in-coming students on campus. The Disability Services Coordinator (DSS Coordinator) for the University, who also is the designated Section 504 Coordinator, told OCR that she first became aware of the Student at the orientation. The DSS Coordinator presented to a group of parents and students during the orientation, and after the presentation the Student's mother requested to speak to her about the Student. The DSS Coordinator told OCR the Student's mother indicated she was moving to New York and wanted to be sure the Student's housing arrangements were in place. The DSS Coordinator told OCR that her initial response to the Student's mother was that she was not aware of the Student or that he had been admitted, but that she would take a look at the Student's IEP and evaluate what they could do for him.

On July 11, 2014, the DSS Coordinator met with the Student's mother, along with a representative from University Housing, the Director of Admissions, and another family member. The family provided the University with a copy of the Student's most recent IEP. According to the Complainant, the Student was participating in testing at the time and was unable to attend the meeting. That same day, the DSS Coordinator spoke with the Student's social worker/case manager from a community support agency. During the conversation, the social worker indicated she had arranged for 20 hours/week of personal care assistance for the Student, to be provided Monday through Friday during the early morning and evening hours. The DSS Coordinator told OCR that the social worker also indicated she would follow up with additional information shortly. On July 16, the social worker sent an email to the DSS Coordinator confirming the 20 hours/week of care. The email also stated the following:

Additional hours will be provided for weekend care as well. These hours may vary depending on his class schedule. I am still in the process of obtaining a contract agency to assist him in the classroom setting to assist with assignments, etc. This process is well in the works, I am just awaiting a few details to be worked out. Once services have been confirmed, information will be provided to you.

Prior to receiving this email from the Student's social worker, on July 15, 2015, the University mailed a letter to the Student notifying him that it was rescinding his offer of admission. The letter explained the reason as follows:

Your IEP has been received by the Office of Admissions and Recruitment. We regret to inform you that we must rescind your admission to Shaw University at this time. We have consulted the Disability Services Coordinator and have determined that your needs are beyond the scope of what the University can reasonably provide.

The University explained to OCR in its narrative response that the University determined based on the Student's IEP, the meeting on July 11 with the Student's mother, and the telephone conversation on July 11 with the Student's social worker, that it would be an undue financial burden for the University to meet the Student's individual needs, specifically his need for personal care assistance during the day.

Analysis

The Section 504 regulation provides at 34 C.F.R § 104.4(a), that no qualified individual with a disability shall be, on the basis of disability, excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity which receives Federal financial assistance. Section 104.44(a) provides that postsecondary institutions shall make such modifications to their academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating, on the basis of disability, against a qualified student with a disability. However, postsecondary schools do not have to make adjustments that would fundamentally alter the nature of a service, program, or activity, or that would result in an undue financial or administrative burden.

Under Section 504, students at postsecondary institutions are responsible for notifying the institution of their disability, providing documentation to support requests for accommodations, and advocating on their own behalf when necessary accommodations are not provided. When a student requests auxiliary aids due to a disability, the university is responsible for making a reasonable determination as to which auxiliary aids or academic adjustments should be provided and ensuring that they are provided.

A college or university may require students to follow reasonable procedures for requesting and obtaining accommodations. The question of whether a college or university has to make modifications to its academic requirements or provide academic adjustments is generally determined on a case-by-case basis. Section 504 envisions an interactive process with respect to provision of academic adjustments and auxiliary aids for individuals with disabilities.

Here, the facts are largely undisputed. The Student self-identified as a student with a disability and revealed his specific disability, cerebral palsy, on his housing reservation form and in person at the July 2014 orientation on campus. The University responded by requesting a copy of the Student's IEP, which the family provided. Based on the Student's IEP, along with the information the University gathered during the meeting with the Student's mother and the phone conversation with the Student's social worker, the University determined that it could not meet the Student's individual needs without imposing an undue financial burden on the University. Three days after meeting the Student in person for the first time and gathering initial information

about the Student's needs, the University sent a letter to the Student rescinding his offer of admission. By the University's own admission, it did not wait for additional information from the Student's social worker regarding the availability of outside services to meet the Student's needs, nor did it discuss its concerns with the Student or his mother or social worker prior to making a determination that it could not meet his needs. Based on the undisputed facts, the University failed to engage in the type of interactive process envisioned by Section 504. Without having engaged in that process, the University lacked the appropriate information upon which it could assess the Student's needs and the University's ability to meet them without incurring an undue financial or administrative burden.

The facts also indicate that the University lacks understanding regarding the types of academic adjustments it is required to provide to students with disabilities. The University told OCR that it did not believe it could meet the Student's need for personal care assistance during the day. Personal aids and services, including help in bathing, dressing, or other personal care, are not required to be provided by postsecondary institutions. The Section 504 regulation states: "Recipients need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature." 34 C.F.R. § 104.44(d)(2).

Moreover, OCR learned during the course of investigating how the University handled this individual case that the University's admissions process discriminates against individuals with disabilities in multiple respects. The University's admissions application is available on the University's website. Included in the application materials is a form titled "Self-Identification Form for Students with Disabilities." The form states as follows:

Shaw University will evaluate the information provided and determine if the applicant's needs can be met. Receipt of this information is not a guarantee of admission. If applicant provides this information after being admitted, the university reserves the right to reevaluate the application.

Although the University told OCR that it has not rescinded an offer of admission in any other case, this form makes clear that an applicant places his or her admissions prospects in jeopardy by not revealing a disability at the time of submitting the admission application. This runs directly afoul of specific language in the Section 504 regulation, which precludes colleges and universities from asking an applicant if he or she has a disability during the admission process.

The documentation provided by the University further reveals that the University is actively discriminating against students with disabilities during the admissions process. The University's admissions office regularly coordinates with the DSS Coordinator to ensure that the University does not admit any student with a disability where there is a concern that the University may not be able to meet the student's disability related needs. As revealed in email communications between the DSS Coordinator and admissions staff, when a student submits an IEP with his or her application, the admissions staff send the IEP to the DSS Coordinator and then wait for the DSS Coordinator to sign off on the student's admission based on an assessment of whether or not the University will be able to meet his or her disability related needs. As an admissions officer

stated in one email to the DSS Coordinator that was reviewed by OCR, “My rule is never to admit a student with an IEP, until you give the say so, first.”

The DSS Coordinator acknowledged to OCR that she regularly reviews the IEPs of applicants, approximately 25 per year. Based on the student’s IEP alone, she makes an assessment of whether or not the University can provide the necessary accommodations. She recalled one applicant, specifically, who revealed that he had a severe medical condition that involved seizures. The DSS Coordinator explained that she determined based on review of the student’s IEP that the student required multiple medications that she anticipated would need to be managed by the University. On this basis, she recommended that the University deny the student admission, and the admissions office followed her recommendation.

The Section 504 regulation clearly states that students with disabilities may not be denied admission or subject to discrimination in admission. The process the University has adopted for screening students with disabilities during the admissions process means that students who self-identify on their applications face a higher standard than students without disabilities with regard to admission to the University. Additionally, as it did with the Student, the University is routinely making decisions about whether it can provide a student with necessary modifications or services without engaging in an interactive process.

Finally, the documentation provided by the University indicates that the University is requiring some students with disabilities to go to tutoring. In an email from the DSS Coordinator to admissions staff, the DSS Coordinator outlines accommodations the University will provide to individual students who presumably have applied for admission to the University based on a review of those students’ IEPs. With respect to several students, the DSS Coordinator states that “tutoring will be a requirement.” The Section 504 prohibition on discrimination precludes the University from imposing additional educational requirements on students with disabilities.

The University has signed the enclosed Resolution Agreement, which, when fully implemented, will remedy the violations of Section 504 OCR identified. Under this agreement, the University agrees to change its policies and practices with respect to: admissions, requests for academic adjustments, and grievance procedures, to ensure compliance with Section 504. The agreement also requires the University to ensure that key personnel are trained in the requirements of Section 504 and requires the University to review the applications of previous applicants to the University who were denied admission to determine whether any applicants with disabilities were denied admission in violation of Section 504. If any such applicants are identified, the University commits to offering such applicants the opportunity to enroll in the University. Finally, the University commits to offering the Student the opportunity to attend the University and reimbursement for costs that he incurred in preparing to attend the University. OCR will monitor the University’s implementation of the Agreement.

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 may not retaliate against an individual who asserts a right or privilege under a law enforced by OCR or who 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.

OCR appreciates your cooperation throughout the investigation of this complaint. If you have questions regarding this matter, please contact the OCR attorneys: Todd Rubin at 202-453-5923 or at Todd.Rubin@ed.gov; or Sara Clash-Drexler at 202-453-5906 or at Sara.Clash-Drexler@ed.gov.

Sincerely,

/S/

Alessandro Terenzoni
Team Leader, Team II
District of Columbia Office
Office for Civil Rights