



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

February 4, 2016

Brian Jones, President
Strayer University
2303 Dulles Station Blvd
Herndon, Virginia 20171

Re: OCR Complaint No. 11-15-2217
Letter Of Findings

Dear President Jones:

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 April 20, 2015 against Strayer University. The Complainant alleged that the University discriminated against him on the basis of disability XXXX by:

1. In a January 7, 2015 letter, expelling him from the University; and
2. In the same January 7th letter, stating that it might not consider him for readmission unless he "submit[s] evidence that [he] completed a course of XXXX and that <XXXX SENTENCE REDACTED XXXX>

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, it is subject to the provisions of Section 504 and we have jurisdiction over it. Because the Complainant alleged discrimination under Section 504, we have jurisdiction over the allegations.

Before OCR completed its investigation, the University expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement. The following is a discussion of the relevant legal standards and information obtained by OCR during the investigation that informed the development of the Resolution Agreement.

Legal Standards

The first legal standard applicable to the allegations is that no qualified individual with a disability student shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any postsecondary education program or activity of a recipient. 34 C.F.R. §104.43(a). An individual with a disability, within the meaning of Section 504, is any individual who has a physical or XXXX impairment that substantially limits the individual in one or more major life activities, has a record of such an impairment, or is regarded by a recipient as having such an impairment. In the context of postsecondary education, a *qualified* individual (or student) with a disability is any person with a disability who meets the academic and technical standards requisite to admission to or participation in a recipient's education program or activity.

The second applicable legal standard is that recipients are not required to permit an individual to participate in or benefit from their services, programs, or activities when that individual poses a direct threat to the health or safety of others. The analysis of the regulation implementing Title II of the Americans with Disabilities Act of 1990 (Title II) at 28 C.F.R. Part 35,¹ includes the following guidance on determining whether an individual poses a direct threat to others.

The determination that a person poses a direct threat to the health or safety of others may not be based on generalizations or stereotypes about the effects of a particular disability. It must be based on an individualized assessment, based on reasonable judgment that relies on current medical evidence or on the best available objective evidence, to determine: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures will mitigate the risk. This is the test established by the Supreme Court in *Arline*. Such an inquiry is essential if the law is to achieve its goal of protecting . . . individuals [with disabilities] from discrimination based on prejudice, stereotypes, or unfounded fear, while giving appropriate weight to legitimate concerns, such as the need to avoid exposing others to significant health and safety risks.

Appendix A to 28 C.F.R. Part 35.

¹ Although Title II does not apply to the University because it is not a "public entity," the Title II regulation, regulatory analysis and case law do inform decisions OCR makes under Section 504 (and vice-versa).

Analysis

The evidence establishes that, on January 7, 2015, the University expelled the Complainant and imposed conditions for its consideration of his return because of “an inordinate number of email messages [the Complainant] sent to multiple staff members throughout Strayer University.” The stated basis for these actions was a University policy that provides, in part, that the University may “immediately remove a student ... if the student is a threat ... to any other person on University premises ... if the student exhibits behavior including, but not limited to, extreme XXXX, disruptive or disorderly conduct ... or any other violent or serious behavioral problem.”

In that letter and subsequent communications (e.g., a January 30, 2015 email to the Complainant from the University’s Senior Vice Provost), the University required that, as a condition of it considering any request by the Complainant to re-enroll, he submit evidence demonstrating that he “completed a course of treatment with a XXXX and that the XXXX.

We find that, in taking the above actions against the Complainant, the University regarded him as having a XXXX that substantially limited one or more major life activities, that is, it regarded the Complainant as being an individual with a mental disability. We also find that the University admitted the Complainant and continued to find him eligible to participate in its programs until the alleged discrimination took place, and there is no evidence indicating that he did not meet the academic and technical standards requisite to admission to or participation in the University’s programs, at least until the time of the above University actions. Consequently, we find that the Complainant was, during the time period covered by the allegations, a qualified student with a disability and are therefore protected by Section 504 for the purposes of our consideration of the allegations.

Despite the University’s perception that the Complainant had a disability, it failed, prior to expelling him and imposing conditions for its consideration of his return, to conduct an individual assessment of him and had no evidence (e.g. a <XXXX SENTENCE REDACTED XXXX>

Conclusion

Pursuant to Section 302 of OCR's *Case Processing Manual*, the University signed the enclosed Resolution Agreement on January 28, 2016 which, when fully implemented, will resolve the allegations raised in this complaint. The provisions of the Agreement are aligned with the allegations and 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.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the 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 regardless of OCR's determination.

Please be advised that the the University may 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 Peter Gelissen, the OCR attorney assigned to this case, at (202) 453-5912 or peter.gelissen@ed.gov.

Sincerely,

/S/

Dale Rhines

Program Manager

District of Columbia Office

Office for Civil Rights

Enclosure