



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

XXXX

Via Email [president@duke.edu](mailto:president@duke.edu)

Dr. Richard H. Brodhead  
President  
Duke University  
207 Allen Building, Box 90001  
Durham, North Carolina 27708

RE: OCR Complaint No. 11-17-2118  
Resolution Letter

Dear Dr. Brodhead:

This letter is to advise you of the outcome of the complaint that the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) received on XXXX against Duke University (the University). The Complainant alleged that the University discriminated against him on the basis of disability. Specifically, the complaint alleged:

1. Staff members at the University discriminated against the Complainant based on disability when they refused to allow the Complainant to return to school after a medical leave of absence during the XXXX semester; and,
2. The University discriminates against students with disabilities, specifically mental health-based disabilities, by treating them differently from similarly-situated students without disabilities when University staff members:
  - a. refuse to readmit students with mental health-based disabilities after a medical leave of absence;
  - b. prohibit students with mental health-based disabilities from being on campus while on leave; and,
  - c. require that students with mental health-based disabilities remain on medical leave for at least two semesters.

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.

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

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

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 Section 504 regulation, at 34 C.F.R. § 104.4, and the Title II regulation, at 28 C.F.R. § 35.130(a), provide that no qualified individual with a disability shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under the University's programs or activities on the basis of disability.

When investigating an allegation of different treatment, OCR first determines whether there is sufficient evidence to establish an initial, or prima facie, case of discrimination. Specifically, OCR determines whether the University treated the Complainant less favorably than similarly situated individuals without disabilities. If so, OCR then determines whether the University had a legitimate, nondiscriminatory reason for the different treatment. Finally, OCR determines whether the reason given by the University is a pretext, or excuse, for unlawful discrimination.<sup>1</sup>

### **Factual Background**

The Complainant informed OCR that during the XXXX semester, he had been experiencing XXXX. On XXXX, he communicated his desire to take a medical leave of absence to his academic dean. After submitting the appropriate documentation, his leave request was approved and the University issued an official separation letter confirming his medical leave.

When the Complainant requested a medical leave of absence, he informed his academic dean and the dean responsible for overseeing the Office of Student Returns (OSR) that he intended to return to University for the upcoming XXXX semester. On XXXX, the Complainant submitted a letter from his doctor indicating that he would be ready to return to school in XXXX. On XXXX, the University's office of Counseling and Psychological Services (CAPS), which assists with reviewing student requests to return after a medical leave of absence, indicated that additional information from a treating psychologist was needed before the Complainant would be allowed to return to the University. Although CAPS noted that this information would be needed prior to approving the Complainant's request to return, the Complainant's request to return for the XXXX semester was not denied at this time.

On XXXX and XXXX, the Complainant visited campus, including a student housing building, without prior approval from his academic dean, in violation of the University's leave policies. On XXXX, the dean responsible for overseeing the OSR notified the Complainant that his request to return for the XXXX semester would be denied unless he could provide evidence that he received permission to be on campus. The Complainant did not provide the requested

---

<sup>1</sup> OCR notes that, to the extent the University considers a returning student a threat to themselves or others and limits that student's access to the campus, the University needs to make an individualized and objective assessment of the student's ability to safely participate in the University's program. The University should rely on the best available objective evidence. The student must not be subject to adverse action on the basis of unfounded fear, prejudice, and stereotypes. While there is no indication in this case that the University believed the Complainant was a threat to himself or anyone else, OCR notes this as the University's plans its implementation of the Resolution Agreement and considers revisions to its policies.

information, and his request to return for the XXXX semester was denied. The decision to deny his request to return was upheld on appeal.

### **Analysis**

#### *Allegation 1 and Allegation 2a and c: Returning from a Leave of Absence*

The Complainant informed OCR that he felt he was treated differently based on his disabilities when he was prohibited from returning after his medical leave of absence. He informed OCR that he believes he was prohibited from returning for two primary reasons, both of which he believes are discriminatory. First, the Complainant alleges that he was required to remain on medical leave for two semesters while those on leave for non-medical reasons were allowed to return after one semester. The Complainant noted that the University recently changed its leave policy from mandating a minimum of two semesters for any medical leave to encouraging, but not requiring, a minimum of two semesters of leave. The Complainant noted that he believes this was a change in wording only and that, in practice, the University requires students on medical leave remain on leave for two semesters, a requirement not given to students who take leave for personal, and not medical, reasons.

OCR reviewed the University's medical leave of absence policy. The policy does not mention time requirements for a medical leave of absence - either a minimum or no minimum. OCR also reviewed the Complainant's separation letter from the University, dated XXXX. OCR has concerns that the language used in the letter provides unclear information about the University's leave time requirements. The letter noted that the Complainant was "...expected to remain on leave for two semesters beyond the semester in which the leave was granted" and noted that the Complainant's leave extended through the XXXX semester (two semesters after his request). However, the letter does clarify that the Complainant may request an "early return" from medical leave after one full semester beyond the term in which the leave was granted, but that permission to return was not guaranteed. This implies that there is a required minimum for medical leave, but that exceptions may be made, which is contrary to how the University explained its policy to OCR. OCR also notes that the University's medical leave policy does not address this issue, leaving the possibility for differing applications by University administrators.

According to the University's personal leave of absence policy, there is no requirement that students on personal leave remain on leave for a minimum amount of time. In contrast, the policy notes that students on personal leave should, in most cases, return after only one semester. There is no similar language within the University's medical leave of absence policy. This difference raises preliminary concerns that students may be treated differently when they take a medical leave of absence to address symptoms related to a mental disability. However, OCR would need to review letters of separation for students on personal and medical leave in order to determine if additional information is provided to students, as it was for the Complainant.

OCR also reviewed documentation from the Complainant and the University and spoke to the Complainant's academic dean. Based on this review, OCR identified some preliminary concerns regarding how the medical leave policy is implemented. In particular, OCR notes that the University's academic deans, who are responsible for communicating with students about

potential leaves of absence, appear not to understand whether or not there is a minimum leave time requirement for medical leaves of absence. Additionally, the Complainant's academic dean noted that the training he received regarding the leave process was primarily on-the-job. He could not identify any training specifically provided regarding the leave policies. Additionally, it is unclear from the University's documentation whether the policy was clearly communicated to the Complainant prior to his leave officially beginning. Based on a review of email communications, several administrators appeared to have conflicting understandings of the policy and how it would apply to the Complainant.

*Allegation 2b: Visiting Campus While on a Leave of Absence*

The Complainant also alleges that he was prohibited from returning from his medical leave of absence as a punishment for visiting campus during his leave. The Complainant admitted that he had been on campus during his leave of absence, without permission from his dean, in violation of University policy. However, he alleged that many students visit campus during their leave but that only those with mental disabilities are punished for doing so.

Both the University's policy regarding medical leaves of absence and the policy regarding personal leaves of absence clearly state that all students on a medical or personal leave of absence are considered inactive and are "...not permitted to be on campus." This restriction is further clarified within the University's "General Policies/Expectations: Related to Leaving and Returning to [the University]." These policies apply to all students on leave and note that while on leave, students may not "...enter university residential buildings, participate in student activities, or access student resources and services." The guidelines also note that if a student plans to be on campus for any reason while on leave, the student must contact his or her academic dean for written permission.

The Complainant's separation letter from the University noted that while on leave, the Complainant would not be allowed to visit any student-specific campus areas or participate in activities reserved for students without prior approval from his academic dean. This is consistent with how the University described its policy and, as discussed above, is explicitly mentioned in the policy itself.

While the University's policy regarding students remaining off campus while on leave is fairly clear, the Complainant alleged that students on personal leaves of absence or on medical leave for physical, rather than mental, disabilities were not punished for visiting campus while on leave, in violation of the policy, while those on leave to address mental disabilities were punished for the same behaviors. The Complainant provided statements from several students that indicate not all students were punished for visiting campus while on leave. Before making a violation finding, OCR would need to review additional documentation regarding the University's handling of students on personal and medical leaves of absence who visited the campus in violation of the University's policy. OCR would also need to speak to staff members from the disciplinary office.

Additionally, OCR has preliminary concerns about how the University's requirement that students remain off campus while on leave is communicated to students, and specifically to the

Complainant. The Complainant admitted that the policy was listed in his separation letter, but alleged that it was never explained to him and that he was having a mental health crisis at the time he received the letter. Based on documentation OCR received from the University, it was unclear if the policy was communicated to the Complainant at any time other than within the separation letter. The Complainant's academic dean could not remember if he had explained the policy to the Complainant, but told OCR that it was unlikely as he had met with the Complainant before he had officially decided to take a medical leave of absence.

### **Conclusion**

Pursuant to Section 302 of OCR's *Case Processing Manual*, the University signed the enclosed Resolution Agreement on October 12, 2017, 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 statutes and regulations 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 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, assists, or participates in a proceeding under a law enforced by OCR. 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, please contact Katie Teigen, the OCR attorney assigned to this complaint, at 202-453-5564 or [Katie.Teigen@ed.gov](mailto:Katie.Teigen@ed.gov).

Sincerely,

/s/

Kristi R. Harris  
Team Leader, Team IV  
District of Columbia Office  
Office for Civil Rights

Enclosure

cc: Mr. John Borkowski, Counsel for the University