



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION XV

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REGION XV
MICHIGAN
OHIO

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Re: OCR Docket #15-14-2150

Dear xxxxxx::

This letter is to notify you of the disposition of the complaint filed against xxxxx xxxxxx xxxxxx (the University) on xxxxx xx xxxx, with the U.S. Department of Education’s Office for Civil Rights (OCR), alleging discrimination against a student on the basis of disability. Specifically, the complaint alleged that during the fall of xxxx, the University’s School of Nursing did not allow the student to xxxx xxxx xxxxxx that she needed to accommodate her disability during an xxxxxx xx xxx xxxxxx xxxxxx. During the course of the complaint investigation, OCR clarified that the student alleged the University did not appropriately accommodate her with regard to her xxx xx x xxxxxxxx she needed because of her disability. The student also alleged that the University xxxxxx xxx xxx xxxx xxx xxx xxx xxxxxx xxxxxx xxxxxx xxx xxxxx.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance from the U.S. Department of Education (the Department). OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 *et seq.*, and its implementing regulation, 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance from the Department and as a public entity, the University is subject to Section 504 and Title II. Accordingly, OCR had jurisdiction to investigate this complaint.

Based on the complaint allegations, OCR investigated the following issues:

- whether the University failed to make such modifications to its academic requirements as were necessary to ensure that such requirements did not discriminate or have the effect of discriminating against a qualified student with a disability on the basis of disability in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.44;
- whether the University failed to make reasonable modifications in policies, practices, or procedures when the modifications were necessary to avoid discrimination on the basis of disability in violation of the Title II implementing regulation at 28 C.F.R. § 35.130(b)(7); and
- whether the University effectively excluded a qualified student with a disability from participation in a University program on the basis of disability in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.4(a) and the Title II implementing regulation at 28 C.F.R. § 35.130(a).

During OCR’s investigation, OCR interviewed the student and reviewed documentation submitted by the student and the University. OCR also interviewed relevant University personnel, including the xxxxx xxxxxxx for the University campus that the student attended; the xxxxx xxxxxxx who instructed the student in the xxxxxxx xxxxxxx of the nursing course (Instructor); the xxxxx xxxx xxxx xxxxxxxx, xxxxxxx xxxxxxx xxxxxxx xxxxx xxxxx xxxxxxx xxxxx xxxx xxxxxxx xxxxxxx xxxxxxxxxx xxxxxxx. In addition, OCR provided the student with the opportunity to respond to information submitted by the University.

After a careful review of this information, OCR has determined that the evidence is not sufficient to support a finding that the University effectively excluded the student from its nursing program by xxxxx xxxx xxxxx xxxx as alleged, in violation of Section 504 and Title II. However, OCR has also determined that the evidence is sufficient for OCR to conclude that the University violated Section 504 and Title II with respect to the student’s xxxx xxxx xxxx xxxxnursing course. The bases for these determinations are explained below.

Background

[xx paragraph xx]

Summary of OCR’s Investigation

- The University Procedure for Obtaining Academic Adjustments/Auxiliary Aids and Services

The University consists of a main campus located in xxxxx xxxxx, along with a number of regional campuses. The main campus and various regional campuses have departments known as Student Accessibility Services (SAS) offices, which are responsible for handling student requests for disability services. A University document entitled “SAS Handbook” summarizes the process through which a student may request and obtain academic adjustments and auxiliary

aids and services. According to the Handbook, the first step in the SAS process is for a student to make an appointment to speak with an SAS counselor and register for services. The Handbook encourages students to register with SAS as soon as possible.

The Handbook provides that, once a student registers with SAS, SAS staff and the student are to engage in an interactive process to determine (1) whether the student is eligible for disability-related services and, (2) if so, the services the University will provide to the student. According to the Handbook, during the interactive process, the student must submit appropriate documentation to demonstrate his/her current disability and the need for such services. The Handbook states that SAS will notify the student if additional documentation is needed to support the existence of a disability or the need for the requested services. SAS will then evaluate the student's request for services by determining whether the academic requirements related to the request are essential or whether a disability-related service would fundamentally alter a course, academic program, or University-sponsored, performance-based experience.

The Handbook provides that SAS will provide a letter of accommodation to a student, documenting approved services. If SAS determines the student is not eligible for services altogether or not eligible for the specific services requested, SAS will provide the student with timely, written notification of the denial and the reasons for the denial. The Handbook further states that SAS will notify the student in writing of the grievance process to be used to challenge such a denial. The specific grievance procedure can be found on the SAS websites for each campus.

The Handbook instructs students who are enrolled in a clinical experience or other performance-based educational experience to contact SAS, which will review the disability-related services identified in the approved letter of accommodation to determine whether they are appropriate and approved for the clinical experience in question. According to the Handbook, only SAS is authorized to approve disability-related services. If a student is having difficulties obtaining approved or agreed-upon services, the student is to notify SAS immediately, and SAS will resolve the issue in as timely a manner as possible. Similarly, if a service is not effective, the student is to notify SAS, and SAS staff will work with the student to resolve the problem.

OCR interviewed the xxxxxx xxxxxxxxxx who worked with the Student during the time period at issue in this complaint. She confirmed that the first step in the University's disability services process is for a student to disclose to someone that he/she has a documented disability. The student should then be directed to her office. She then asks for documentation of the disability and conducts an intake interview. The xxxxxxxx xxxxxxxx described the interview as an interactive process between herself and the student about what services the student thinks are necessary for the student to succeed. She compares the information from the student to the disability documentation to make sure services support the needs of that particular student.

The xxxxxxxx xxxxxxxx said that, once services have been established and a letter of accommodation is drafted, the SAS office notifies faculty members through the University's online information systems. Students are encouraged to meet with their professors to discuss how approved services will be implemented. The SAS office also communicates its decisions

about services to the student and the course professor through an accommodation letter as well as through a discussion.

The xxxxxxxx xxxxxxxxxx told OCR that disability-related services are available for clinical work, depending on the specific student and the situation. She said that the interactive process--the discussion between a professor and a student--is critical to determining services for a course that involves a clinical component. She stated that she acts as a resource during that process. The participants discuss at length what skills are intrinsic to the course and how they will be applied in the clinical situation. She stated that skills that are intrinsic need not be accommodated. She defined "intrinsic" as an essential function of the course and said that program directors decide whether a certain skill is intrinsic to the course.

According to the xxxxxxxx xxxxxxxxxx, this discussion takes place at all points in the process--before a course begins, as the course is occurring, and when the course is completed. It is the student's responsibility to notify someone in the SAS office if a service is not working. If that happens, SAS staff members start the interactive process to identify an alternative service that will preserve the essential functions of the course.

A student can appeal the denial of a disability-related service either by speaking to the xxxxxxxx xxxxxxxxxx or by following appeal language in the handbook.

- Alleged Discrimination

[xx paragraph xx]

[xx paragraph xx]

After learning the ten skills taught in the clinical lab portion of the course on campus, the students are placed in the field at an off-campus clinical site, such as a skilled nursing home. The Lab Coordinator explained to OCR that students need to demonstrate skills competency in the on-campus lab, according to the schedule set forth in the course curriculum, to a level of proficiency appropriate for starting to work with patients in the real world. If a student has not passed a test for performing a certain skill before moving on to field placement, the student would not be allowed to complete a required skill-based assignment at the clinical site and would receive a U or Needs Improvement grade for that day. The xxxxx xxxxxxxx said it would be very unusual for a student who has not passed all ten required skills to be permitted to move out to field placement but that, if this did happen, it would more likely have been because the student failed a skill such as medication math rather than a skill such as measuring blood pressure or vital signs.

[xx paragraph xx]

Applicable Legal Standards

The Section 504 implementing regulation at 34 C.F.R. §104.4 and the Title II implementing regulation at 28 C.F.R. § 35.130 prohibit postsecondary institutions subject to those laws from

excluding qualified persons with disabilities from participation in, denying them the benefits of, or otherwise subjected them to discrimination in the institutions' programs or activities. The Section 504 regulation also provides, at 34 C.F.R. § 104.44(a), that a recipient institution shall make such modifications to its 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. Similarly, Title II requires public entities, such as public education institutions, to make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability. 28 C.F.R. § 35.130(b)(7). Title II's implementing regulation, at 28 C.F.R. § 35.130(a)(1), also requires that public entities such as the University take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others. These legal requirements apply to clinical as well as to non-clinical programs.

Under both Section 504 and Title II, recipients are not required to make modifications that would fundamentally alter the nature of the service, program or activity. While a postsecondary institution such as a university must modify course or other academic requirements to the needs of individual students with disabilities, academic requirements that can be demonstrated by the institution to be essential to its program of instruction or to particular degrees need not be eliminated. 34 C.F.R. § 104.44(a); 28 C.F.R. § 130(b)(7). With regard to whether a requested academic adjustment or auxiliary aid would fundamentally alter an essential program requirement, courts and OCR give deference to an institution's academic decision-making. In order to receive such deference, however, relevant officials within the institution are required to have engaged in a reasoned deliberation, including a diligent assessment of available options. An institution can show that it has fulfilled this duty by demonstrating through undisputed facts that relevant officials within the institution--a group of people who are trained, knowledgeable, and experienced in the relevant areas--considered alternative means, their feasibility, and effect on the academic program, and came to a rationally justifiable conclusion that the available alternatives would result either in lowering academic standards or in requiring fundamental program alteration. A postsecondary institution may not permit professors to unilaterally deny academic adjustments that have been approved by its disability services office. Further, while a course professor may be included in the process of determining what requirements are essential to participation in a course or program, allowing an individual professor to have ultimate decision-making authority is not in keeping with the diligent, well-reasoned, collaborative process that warrants accordance of deference by OCR to the judgments of academic institutions. In addition, while removal of a requirement that would lower academic standards or require fundamental program alteration is not required, an institution is still required to provide any needed and appropriate academic adjustments and auxiliary aids and services to a student in the performance of an essential requirement that do not result in fundamental alteration or lowering of essential academic standards.

Finally, technological advances continue to enhance opportunities for persons with disabilities. A postsecondary institution has a duty to undertake a diligent search for and assessment of available options and to determine if any disability-related services exist that might result in a student being able to meet essential academic and technical standards necessary for participation in a program.

Analysis and Conclusion

[xx paragraph xx]

[xx paragraph xx]

[xx paragraph xx]

[xx paragraph xx]

In addition, the evidence demonstrates that the xxxxxxxx notified the Student xxxxx xxxxxx xxxxxx xxxxxxxx. This blanket statement does not comport with the provisions of Section 504 and Title II that require institutions to provide academic adjustments, based on a case-by-case analysis, to avoid discrimination, unless academic requirements can be demonstrated by an institution to be essential to its program of instruction and providing modifications of such requirements would lower academic standards or fundamentally alter an institution’s program. OCR gives some deference to decisions made by an institution about whether an academic adjustment would fundamentally alter an essential program requirement. However, in order to receive such deference, relevant officials within the institution are required to have engaged in a reasoned deliberation, including a diligent assessment of available options. An institution also has an affirmative duty to attempt to identify such options.

Section 504 and Title II also require that institutions must also provide auxiliary aids and services that are effective, unless the auxiliary aids/services pose an undue financial or administrative burden or unless an auxiliary aid/service constitutes a fundamental alteration to the institution’s program. In such a case, an institution still must provide services to the maximum extent appropriate.

[xx paragraph xx]

[xx paragraph xx]

Finally, the evidence showed that the University did not respond, either by granting or denying, to the Student’s requests to document approved services in writing. As demonstrated through the evidence gathered during this investigation, the University’s failure to specify, in writing, what particular academic adjustments and auxiliary aids and services the University had approved or denied for the Student’s xxxxxx xxxxxxxx xxxxxxxx xxxxxxxx xxxxxx xxxxxxxx xxxxxxxx xxxxxxxx. The evidence thus supports that the University did not communicate information to her effectively.

Based on the above, OCR finds, by a preponderance of the evidence, that the evidence is sufficient for OCR to conclude that the University violated Section 504 and Title II with respect to the Student’s participation in the xxxxxxxx xxxxxxxxxx xx xxxxxx xxxxxxxx xxx xxxxxxxx.

OCR notes that the University’s policies and procedures are already under review in a separate case, OCR docket number 15-08-2026, and that the resolution agreement for that complaint

requires that the University develop and implement a method for training faculty and relevant staff on providing academic adjustments and auxiliary aids and services to students with disabilities. However, during its processing of this complaint, OCR noted that the University's SAS webpage includes a "Documentation and Forms" webpage. That webpage includes a link to a description and a form for those who are xxxx xx xxxxx xxxx xxxxxx. On that form, the University asks the documentation provider, among other things, to describe the auxiliary aids and assistive listening devices the student is currently using, which is not necessary to describe the student's disability and functional capacity, which the provider may not be familiar with, and which a student should be able to explain more accurately; to "list current medication(s), dosage, frequency and possible adverse side effects as related to academic performance, if applicable," which could inappropriately reveal information about disabilities unrelated to disabilities for which services were being sought; and to "list any recommendations for accommodations you have for this student in an academic setting." The latter appears to be a required type of information, but it presupposes that the diagnosing professional will be familiar with possible academic adjustments and auxiliary aids and services, as well as with the recipient's program. While an institution may ask a documentation provider for such suggestions, this cannot be required.

Complaint Resolution

To resolve the compliance issues identified, the University submitted the enclosed resolution agreement (the Agreement). The proposed Agreement requires the University to reimburse the Student xxx xxxxxxxx xxxxxxxx xxxxxxxx xxxxxxxxxxxxxx xxxxxxxx xxxxxxx xxxxx xxxxx xxxxx xxxxx. The Agreement also requires the University to remove reference to the courses on the Student's transcript, to revise its documentation requirements for students who are xxxxx xx xxxxx xxx xxxxxx, to notify relevant individuals of that revision, and to document those actions for OCR.

Conclusion

This concludes OCR's investigation of the complaint and 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.

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, a complainant may file another complaint alleging such treatment.

A complainant may file a private suit in federal court, whether or not OCR finds a violation.

OCR appreciates your cooperation and that of the University during the investigation and resolution of this complaint. If you have any questions about this letter or OCR's resolution of this case, please contact me at xxxxxxxx xxxxxxxx. Xxxxxxx xxxxx xxxxxx xxxxxx xxxxx xxxxx xxxxxxxxxxxxxx xxxxxx. OCR looks forward to receiving the University's first monitoring report by October 30, 2015.

Sincerely,

Xxxx x xxxxxxxxxxxx
Supervisory Attorney/Team Leader

Enclosure