



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
32 OLD STAIR, 26TH FLOOR
NEW YORK, NEW YORK 10008

TIMOTHY C. J. BLANCHARD
DIRECTOR
NEW YORK OFFICE

June 26, 2012

Peter Magrath
Interim President
State University of New York at Binghamton
P.O. Box 6000
Binghamton, New York 13902

Re: Case No. 02-12-2023
State University of New York at Binghamton

Dear President Magrath:

This letter is to notify you of the determination made by the U.S. Department of Education, New York Office for Civil Rights (OCR), in the above-referenced complaint filed against the State University of New York at Binghamton. The complainant alleged that the University discriminated against him, on the basis of his disability, by denying him readmission to its Master of Public Administration (MPA) program on or about June 24, 2011.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs or activities receiving financial assistance from the U.S. Department of Education (the Department). OCR also is responsible for enforcing Title II of the Americans with Disabilities Acts of 1990 (ADA), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35. Under the ADA, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The University is a recipient of financial assistance from the Department, and is a public postsecondary education institution. Therefore, OCR has jurisdictional authority to investigate this complaint under both Section 504 and the ADA.

In its investigation, OCR interviewed the complainant and University staff. OCR also reviewed documentation the complainant and the University submitted. OCR made the following determinations.

The complainant alleged that the University discriminated against him, on the basis of his disability ^{(b)(7)(C)} by denying him readmission to its MPA program on or about June 24, 2011. The complainant alleged that the University denied him readmission to the MPA Program after he revealed his disability to University staff.

OCR determined that on March 31, 2011, the complainant filed an application for readmission to the MPA program. OCR determined that the complainant's application for readmission included (1) his original MPA program application (as directed by the MPA program); (2) core MPA course grades; (3) a personal statement; (4) work experiences; and (5) letters of recommendation. OCR further determined that in his personal statement, the complainant noted that his disability (Asperger's Syndrome) affects his verbal and social skills, and therefore, he may be perceived as disinterested or inappropriate. OCR determined that on or about June 24, 2011, the University denied the complainant's application for readmission.³

OCR determined that the University's readmission policy states, "Students applying for readmission to a graduate program are subject to the rules, procedures, curriculum, and standards in effect at the time of readmission. Readmission is not automatic and may be subject to additional conditions set by the department or school or by the dean of the graduate school." The University informed OCR that it has no specific written policy regarding readmission into the MPA program, but considers applicants' likelihood of success in MPA program if readmitted.

OCR determined that a committee, consisting of the Chair and the Assistant Director, in consultation with Professor 1, made the determination to deny the complainant's readmission application.⁴ The readmission committee members acknowledged that prior to applying for readmission to the MPA program, the complainant informed them that he has Asperger's syndrome; but denied that the complainant was not readmitted based on his having a disability. Rather, the readmission committee members stated that they did not readmit the complainant to the MPA program because they did not believe that he had a likelihood of success in the program upon readmission.

The Chair stated that in determining the complainant's likelihood of success in the MPA program, he and the Assistant Director reviewed the complainant's readmission application.⁵ The University, however, informed OCR that it was unable to locate and provide OCR with copies of the complainant's readmission scores or score sheets.⁶ The Chair stated that he and the Assistant Director considered the complainant's grades in the core courses (i.e., two Bs and one B-, for a cumulative GPA of 2.89, at the end of the fall 2010 semester; and two Bs in the spring 2011 semester). The Chair stated that he and the Assistant Director also relied heavily upon Professor 1's judgment regarding whether the complainant was likely to succeed in the MPA program, because Professor 1 was tenured; had taught at the School for 10 years; and knew what it took to succeed in the University's MPA program. Further, the Chair stated that the

³ The University stated it was unable to provide OCR with a copy of the denial email it sent to the complainant regarding his readmission application, because it did not retain a copy.

⁴ The Assistant Director stated that she and the Chair did not consult Professor 2, because Professor 2, as an adjunct professor, could not attest to the complainant's likelihood of success in the program.

⁵ OCR determined that in the email to the complainant, dated January 18, 2011, the Chair stated, "Our goal in the readmission process is to determine whether we believe you are likely to succeed in the program based on any experiences you have after you were severed from it. Other experiences would be course work, professional employment or any relevant volunteer or other activities. If the only change in your readmission application was that you passed the Logic of Inquiry course with a "B," I'm not convinced that accomplishment would demonstrate to me that you were a strong candidate for future success in the program. Higher grades, new experiences and references that attest to your readiness to the program would be more persuasive."

⁶ OCR determined that the complainant's initial admission score was 3.08.

complainant did not exhibit a strong interest in public service. OCR determined, however, that in an email to the complainant, dated January 20, 2011, the Chair stated, "I do not doubt your interest in public policy at all. The experiences you describe [i.e., interning for United States and New York State congressmen, and working for a rent-control agency for the last three summers] reflects a clear interest in public policy issues – that's great."⁷ Further, OCR determined that in his personal statement, the complainant stated that his interest in the MPA program was to further his desire to pursue a career in public service that he gained while interning for the congressmen.

The Assistant Director stated that she, the Chair, and Professor 1 focused on the complainant's academic record, and deferred to Professor 1's judgment regarding the complainant because of his status as a tenured professor who has taught many courses in the MPA program. The Assistant Director further noted that the complainant only received a B grade after retaking the PAFF – 510 course, in which he previously received a B- grade.

Professor 1 stated that he spoke with the Assistant Director regarding the complainant's application for readmission, but did not recall the specific details of his conversation with her. Professor 1 stated that he believed he informed the Assistant Director that the complainant was a marginal student, at best; and about the complainant's performance when working on a group project that required teamwork. Professor 1 stated that he informed the Assistant Director that the complainant has "trust issues," was not engaged, and had difficulty working in groups.⁸ Professor 1 stated that the complainant had problems working in a team setting, and the ability to work in groups is essential for a person who wants to work in public administration. Professor 1 informed OCR that he believed that the complainant's behavior might have been related to his disability. Professor 1 stated that he shared his concerns about the complainant's behavior with the Assistant Director, but never informed the Assistant Director that he related the complainant's behaviors with his disability in recommending that the complainant's readmission application be denied.

Professor 1 stated that he also believed that the complainant should not be readmitted because the complainant did not have a strong public service ethic of which he was aware. Professor 1 also noted that on one occasion during class, the complainant told him that he had not completed the assigned reading due for that class session; and sometimes, when he called on the complainant, the complainant's responses indicated that he "had not completed the readings and did not provide much of an answer." Professor 1 acknowledged to OCR, however, that the complainant sometimes "was a good writer" and volunteered to participate. Professor 1 also stated that other students had come to class unprepared, but said that the complainant was unique in his honesty about it.

⁷ The Chair further stated that an additional internship or work experience was not a requirement for readmission.

⁸ Professor 1 explained that at the end of the semester, the group of students with whom the complainant was assigned to work in his fall 2010 PAFF 521 course told Professor 1 that the complainant had "trust issues," and that it was very challenging working with the complainant. Professor 1 also stated that the complainant often would "hide" his work on the screen of his computer from others, including Professor 1. Professor 1 stated that he did not share this concern with the complainant at any time.

The University informed OCR that in the past six years, only one other student (Student A), who is not disabled, had applied for readmission to the MPA program. OCR determined that Student A's core MPA program courses and grades for the fall 2009 semester were as follows: (1) PAFF 510 – Logic of Inquiry (4 credits), B-; (2) PAFF 521 – Foundations of Public Service (4 credits), B; and (3) PAFF 537 – Organizational Behavior (4 credits), B. OCR determined that Student A's GPA for the core MPA courses was 2.9. OCR determined that in or around fall 2009, Student A was severed from the MPA program for failing to earn at least a B grade in each of his first 12 credits that count toward the MPA degree.⁹ OCR further determined that Student A (like the complainant) received a B- grade in PAFF 510 before being severed from the program, and received a B grade upon retaking the course as a non-matriculated student. OCR also determined that in his fall 2009 mid-semester review, the Assistant Director identified the following areas of concern regarding Student A's academic performance: communication – class participation and analytical skills.

In spring 2010, Student A applied for readmission to the MPA program. OCR determined that the readmission committee, consisting of the former Chair and the Assistant Director, with input from Professor 1, reviewed Student A's readmission application. The readmission committee gave Student A an adjusted readmission application score of 2.9; based on his GPA in the core MPA classes, personal statement, work experience, and letters of recommendation. OCR determined that in or around June 2010, the readmission committee conditionally readmitted Student A into the MPA program for the fall 2010 semester.¹⁰

The former Chair stated that at the time, she agreed to readmit Student A because despite his retaking the PAFF 510 course and receiving only a B, he received a strong grade (A-) in the winter session 2009 China Study Abroad Program (the Study Abroad Program) led by Professor 1; and Professor 1 had advocated on Student A's behalf. The Assistant Director stated that she also agreed to readmit Student A based on his performance in the Study Abroad Program with Professor 1. Professor 1 stated that he advocated for Student A's readmission because he felt Student A had demonstrated a strong public service ethic, based on conversations with Student A and his service as a volunteer firefighter. Professor 1 also stated that Student A had demonstrated academic progress, pointing to Student A's grade of A- in that course.¹¹ Professor 1 acknowledged to OCR, however, that Student A was "never was a strong student, and that was an understatement." Professor 1 stated that in retrospect, he would not have supported Student A's readmission. Professor 1 also acknowledged that Student A received a C+ on the research paper, and his overall grade was bolstered by the class participation and his blog.¹² Student A's professor for the PAFF 510 course he retook in spring 2010 (Professor 3) stated that Student A just passed her course with a B grade. Professor 3 also stated that prior to Student A's readmission, during a faculty meeting the Assistant Director attended, she voiced her doubts

⁹ OCR determined that Student A attempted 15 credits during his first semester; however, 3 of the credits were for two basic skills courses that did not count toward the MPA degree.

¹⁰ OCR determined that Student A's original admission score also was 2.9. OCR determined that upon readmission, Student A again was required to take a basic skills writing course (Writing Workshop PAFF 539A).

¹¹ OCR further determined that Student A's transcript incorrectly indicates that Student A received 4 credits of a 4.0 (A) in this course, instead of an A-. OCR determined that Student A's transcript should have indicated that he received an A-, i.e., 3.575 and not a 4.0 in the course.

¹² Professor 1 informed OCR that the students' grades for the Study Abroad Program were calculated as follows: 50% for class participation; 25% for writing a blog; and 25% for a research paper.

about whether Student A would be successful if readmitted to the MPA program. The former Chair also stated that the decision to readmit Student A was wrong, as he struggled terribly for the rest of his time in the MPA program. OCR determined that Student A was ultimately severed from the MPA program in or around fall 2011.

Based on the evidence (including witness interviews, OCR's review of the documentation submitted, and the absence of admissions documentation for the complainant), OCR determined that the University did not proffer solely legitimate, non-discriminatory reasons for the MPA program faculty's decision not to readmit the complainant to the MPA program. Specifically, the readmission committee members stated that they did not readmit the complainant to the MPA program because of his academic performance; however, they readmitted Student A to the MPA program, although he (like the complainant) received a B- in PAFF 510 before being severed from the program, and received only a B after retaking the course. Professor 3 informed OCR that she had expressed doubts to faculty, including the Assistant Director, about Student A's likelihood of success if readmitted; and Professor 1 acknowledged that Student A was never a strong student. OCR determined that the University originally admitted the complainant to the program without conditions, and gave him an admission score of 3.08; whereas the University admitted Student A conditionally, and gave him an admission score of 2.9. The University did not provide OCR with the complainant's readmission scores. OCR determined that Student A's readmission score did not increase, and remained 2.9; and the University readmitted Student A to the program, but again only conditionally. OCR further determined that despite having similar academic deficiencies, the University did not afford the complainant the opportunity for conditional readmission, as it had for Student A. Additionally, the Chair's and Professor 1's evaluations of the complainant's interest in public service were inconsistent with the evidence; namely, the complainant had participated in congressional and public service agency internships, and the Chair had previously stated that he did not doubt the complainant's interest in public policy. Moreover, the Chair and Assistant Director stated that they deferred to Professor 1's assessment of the complainant, which included Professor 1's consideration that the complainant's "trust issues" and difficulty with group work were related to the complainant's disability.

On June 26, 2012, the University voluntarily signed an agreement, a copy of which is enclosed herewith, which when fully implemented will resolve the aforementioned concerns regarding the allegation. OCR will monitor the implementation of the resolution agreement. If the University fails to implement the terms of the agreement, OCR will immediately resume its investigation.

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.

It is unlawful to harass or intimidate an individual who has filed a complaint or participated in actions to secure protected rights. If this should occur, the complainant may file a separate complaint with OCR alleging these acts.

Under the Freedom of Information Act, 5 U.S.C. § 552, it may be necessary to release this letter and related correspondence and records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personally identifiable information that if released could constitute an unwarranted invasion of personal privacy.

If you have questions about OCR's determination, please contact Jeanette Tejada Bustos, Compliance Team Attorney, at (646) 428-3777 or jeanette.tejadabustos@ed.gov; or Gina Damasco, Compliance Team Attorney, at (646) 428-3924 or gina.damasco@ed.gov.

Sincerely,



Timothy C. J. Blanchard
Regional Director

Encl.
cc:

(b)(7)(C)



RESOLUTION AGREEMENT

The State University of New York, Binghamton University
Case No. 02-12-2023

In order to resolve the allegation in Case No. 02-12-2023, The State University of New York at Binghamton University (the University) assures the U.S. Department of Education, New York Office for Civil Rights (OCR), that it will take the following actions pursuant to the requirements of Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794 and its implementing regulation at 34 C.F.R. Part 104, and Title II of the Americans with Disabilities Act of 1990 (the ADA), 42 U.S.C. § 12131 et seq., and its implementing regulation at 28 C.F.R. Part 35:

Action Item 1:

By July 1, 2012, the University will send a letter to the complainant offering him readmission into the University's Graduate School of Public Administration for the fall 2012 term.

Reporting Requirements:

- a. By July 1, 2012, the University will provide OCR with a copy of the offer letter.
- b. By August 30, 2012, the University will notify OCR whether the complainant reenrolled for the fall 2012 term.

Action Item 2:

By September 30, 2012, the University will provide training to all administrators and faculty involved with making admissions and readmissions decisions with respect to the Graduate School of Public Administration (including the Chair of the Masters in Public Administration (MPA) program, the Assistant Director of Graduate Studies, and tenured faculty) regarding the requirements of Section 504 and the ADA as applied to admissions and readmissions, including the prohibition on using disability as a factor in denying admission or readmission.

Reporting Requirement: By September 30, 2012, the University will provide documentation demonstrating that the training referenced in Action Item 2 was provided to all applicable administrators and faculty. This documentation will include, but will not be limited to, the date(s) of the training; the name and credentials of the trainer; copies of any training materials used, including any handouts, guides, or other materials; and proof of attendance by administrators and staff.

No Admission of Liability or Wrongdoing

By agreeing to the terms of this Resolution Agreement, neither the University nor any of its officials, officers, employees, agents or representatives admit to any liability or wrongdoing, and nothing herein shall be construed as an admission of liability or wrongdoing.

The University understands that OCR will not close the monitoring of this agreement until OCR determines that the recipient has fulfilled the terms of this agreement and is in compliance with the regulations implementing Section 504, at 34 C.F.R. § 104.42 and §104.43, and the ADA, at 28 C.F.R. § 35.130, which were at issue in this case. The University also understands that by signing this agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this agreement. Further the University understands that during the monitoring of this agreement, if necessary, OCR may visit the University, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the University has fulfilled the terms of this agreement and is in compliance with the regulations implementing Section 504, at 34 C.F.R. § 104.42 and § 104.43, and the ADA, at 28 C.F.R. § 35.130, which were at issue in this case.

Date: 6/26/2012 Signature: Harvey Stenger
Harvey Stenger
President
University at Binghamton
The State University of New York