



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVE. S.W.,
WASHINGTON, DC 20202-1475

REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, D.C.

February 14, 2012

President Ralph Reavis
Virginia University of Lynchburg
2058 Garfield Avenue
Lynchburg, VA 24501

RE: OCR Complaint No. 11-12-2006
Letter of Findings

Dear President Reavis:

The purpose of this letter is to inform you of our disposition of the above-referenced complaint, which was filed with the District of Columbia Office of the Office for Civil Rights (OCR), U.S. Department of Education (the Department), on October 12, 2011, against the Virginia University of Lynchburg (the University). The Complainant alleged that, during a telephone conversation on August 26, 2011, the University discriminated against her son (the Student) on the basis of disability^{(b)(7)(C)}

^{(b)(7)(C)} by instructing her not to bring the Student to the University because it could not meet the Student's disability-related needs.

OCR is responsible for enforcing certain Federal civil rights statutes and regulations, including Section 504 of the Rehabilitation Act of 1973 (Section 504), 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 and activities that receive Federal financial assistance from the Department. Because the University receives Federal financial assistance from the Department, it is subject to Section 504 and we have jurisdiction over it. Because the Complainant has alleged discrimination under Section 504, we have jurisdiction over the allegation.

In making our determination concerning the allegation, we evaluated the information provided by the Complainant and the University in submissions and during telephone

interviews. What follows is a discussion of our findings and conclusions regarding the allegation and additional compliance concerns that arose during the course of the investigation.

Findings and Conclusions on the Allegation

As stated above, the Complainant alleged that the University discriminated the Student on the basis of disability by instructing her not to bring the Student to the University because it could not meet the Student's disability-related needs.

The legal standard applicable to the allegation is that Section 504 prohibits the University from discriminating against individuals with disabilities in its programs and activities, and requires the University to timely provide qualified students with disabilities with such academic adjustments or accommodations (AAs) as are necessary to ensure that the University's academic requirements do not discriminate or have the effect of discriminating against students on the basis of disability.¹ In applying these standards to the allegation, we will first determine whether there is sufficient evidence to establish an initial or prima facie case of discrimination, that is, whether the University took an adverse action against the Student, and whether there is evidence indicating that his disability may have been a factor in that adverse action. If these elements are present, we will then determine whether the University had a legitimate, nondiscriminatory reason for its adverse action and, if so, whether the reason given by the University is a pretext or excuse for discriminating against the Student.

In its November 18, 2011, email response to OCR's notification letter, the University stated that, during an August 29, 2011, telephone conversation with the Complainant, a staff person had verbally instructed her " . . . not to bring him [the Student] to School." In that same response, the University also stated that it had decided "not to enroll him [the Student] for the Fall semester." We find that both of these actions constitute adverse actions against the Student. Additionally, based on the University's stated reasons for its actions (see discussion, immediately below), we find that the Student's disability was the basis for the adverse actions.

We now look to whether the University had a legitimate, nondiscriminatory reason for its adverse actions. In its November 18th response, the University provided the following reasons for its actions.

¹ 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 enrollment or participation in a recipient's education program or activity.

On July 22, 2011 during a telephone conversation with [another individual and the Complainant], we learned that [the Student] was on medication for (b)(7)(C) and that he had previously been on a 504 plan. We did not receive an accommodation request from the student, however we learned from the Psycho-Educational report which was sent to us by [the Complainant] on July 15, 2011, that the student refuses to take medication, but the student's signed Virginia University of Lynchburg medical form indicated that he was not on medication. The student entered "none" to the question "List any medications you are currently taking on a regular basis." Also, [the Complainant] had said during a telephone conversation with the Admissions Director that her son was on medication for (b)(7)(C). The son [and] mother had no further communication with the school, nor did they attend orientation sessions for new students until a telephone call on August 29, 2011, which was five days before the beginning of the Fall Semester. In that telephone conversation, [the Complainant] asked if she could bring her son to school. It was at that time that we told her not to bring him to school.

Our decision not to enroll him for the Fall semester was based on not receiving the accommodation request and the concerns we had regarding whether he would take his medication, as prescribed.

Neither the Student's use or non-use of medication, the failure of the Complainant or Student to submit to the University a request for AAs, nor the fact that the telephone call took place about five days prior to the semester constitutes a legitimate, nondiscriminatory reason for instructing the Complainant not to bring the Student to the University and to deny the Student enrollment for the Fall 2011 semester. While the Student may have been prescribed medication, he apparently answered truthfully that he was not taking it on a regular basis. Under Section 504, a student is only required to submit a request for AAs if he or she wants them. The failure to admit the student because he did not submit such a request is equivalent to discrimination based on disability – the University had no information indicating that the Student would not be able to participate in the educational program or was otherwise not qualified.²

² However, we note that: (1) the University does have a right, consistent with Section 504, to take disciplinary action against students with disabilities for misconduct related to their disabilities who have failed or refused to take medication prescribed for them for their disabilities; and (2) the University is not required to provide AAs at the beginning of a semester to those students who have failed to provide the University with reasonable notice of their need for identified AAs.

Because the University has not provided a legitimate, nondiscriminatory reason for instructing the Complainant not to bring the Student to the University and to deny the Student enrollment for the Fall 2011 semester, we need not determine whether the reasons provided were a pretext or excuse for discriminating against the Student on the basis of disability. For this same reason, we conclude that the University is in violation of Section 504 with respect to the allegation. To address our compliance concerns, the University has signed the enclosed Resolution Agreement, pursuant to which it has committed to reimburse the Complainant \$245.38 for expenses directly incurred as a result of the University's conduct, and discontinue its policy and/or practice of, in any way, dissuading students with disabilities from attending, or denying them admission to or enrollment in, the University, whether because the student is late in requesting AAs or for any other reasons.

Additional Compliance Concerns

In the course of our investigation, we discovered an additional compliance concern relating solely to Section 504: requiring students with [REDACTED] but not students without disabilities, to have their medication administered to them by health care providers. We also discovered the following three concerns regarding the University's compliance with Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.* (Title IX), and its implementing regulation, at 34 C.F.R. Part 106; the Age Discrimination Act of 1975, 42 U.S.C. § 6101 *et seq.* (the Age Discrimination Act), and its implementing regulation, at 34 C.F.R. Part 110; and Section 504, and its implementing regulation: (a) the lack of trained employees to coordinate (Coordinators) and support its efforts to comply with these laws, including employees to assist individuals with disabilities to obtain AAs under Section 504; (b) the failure to include in its publications and on its website proper notifications of nondiscrimination; and (c) the failure to adopt proper grievance procedures for allegations of violations of these laws. What follows is a discussion of each of these concerns.

1. Requirement Concerning the Administration of Medication to Students with Disabilities

Legal Standard

Section 504 prohibits the University from discriminating against individuals with disabilities in its programs and activities. During a November 18, 2011, call with the University's Provost, she stated that, because the University had had an [REDACTED] student who had failed to take her medication and she had serious behavioral issues, it now requires students with [REDACTED], but not students without disabilities, to agree to local Community Services agency staff coming to the campus daily to administer their

medication. This is not a legitimate, nondiscriminatory reason for treating students with (b)(7)(C) differently from students without disabilities. The University's decision was based on an assumption that, because one student with (b)(7)(C) didn't take her medication and had behavioral issues, other students with (b)(7)(C) would not take their medication and/or would have behavioral issues; the University offered no evidence to support this assumption.

Because the University has not provided a legitimate, nondiscriminatory reason for treating students with (b)(7)(C) less favorably than students without disabilities, we need not determine whether the reasons provided were a pretext or excuse for discriminating against students with (b)(7)(C) on the basis of disability. For this same reason, we conclude that the University is in violation of Section 504 with respect to this compliance concern.

To address this compliance concern, in the enclosed Agreement, the University has agreed to discontinue its policy and/or practice of requiring students with (b)(7)(C) to take medication for their disabilities and/or have it administered to them from a particular health care provider, and will not adopt such a policy and/or practice in the future with respect to such students or any students with disabilities.

2. Lack of Qualified Disability Employees

Title IX, the Age Discrimination Act, and Section 504 require that the University designate at least one employee to coordinate its efforts to comply with these laws. We interpret these laws to also mandate that the University adequately train Coordinators and such additional employees as are needed to ensure compliance with these laws.

In a November 21, 2011, email, and other submissions, the University indicated that it has no Coordinators or trained support employees to ensure compliance with the above laws.

To address this compliance concern, in the enclosed Agreement, the University has agreed that it will designate a University Coordinator or Coordinators to ensure compliance with the above laws,³ and make certain that the Coordinators and additional support employees attend periodic training on civil rights issues (including

³ We note that, at least with respect to Section 504, this individual and the additional staff referenced in this paragraph should not be from the Admissions Office, as disability-related contacts between that Office and applicants could constitute pre-admission inquiries into disability status, which are unlawful.

sex, age, disability, race, color, and national origin issues) in the context of education, including the provision of AAs to students with disabilities under Section 504.

3. Failure to Adequately Publish Proper Notifications of Nondiscrimination

Title IX, the Age Discrimination Act, and Section 504 require that the University include in its publications a notification that it does not discriminate on the bases, respectively, of sex, age, and disability in any of its programs and activities, and to include in that notification information on how to contact the individuals who coordinate its efforts to comply with these laws. Because many recipients prefer to utilize one notice of non-discrimination (a “combined notice”) for all of the laws enforced by OCR, and these laws contain minor differences relating to the required content of recipient notices of non-discrimination and the methods used to publish them, OCR has developed the following two standards for combined notices:

1. They must contain a general statement that the recipient does not discriminate on the basis of race, color, national origin, sex, disability, or age in any of its programs or activities (neither the specific laws nor particular programs need be identified); and
2. They must provide the name and/or title, address and telephone number of the employee or employees responsible for coordinating the recipient's compliance efforts regarding the laws OCR enforces.

Additionally, adequate notices of nondiscrimination should be included in all appropriate publications and on all appropriate webpages, including hard copy and website versions of University handbooks, catalogs, and recruitment and application materials, the University's home webpage, and all other publications and webpage in which notices of nondiscrimination are normally included.

The University initially submitted only one copy of a notice of nondiscrimination, and we were unable to locate any other notices of nondiscrimination in the University's submissions or on its website. This notice it submitted states the following.

Virginia University of Lynchburg does not discriminate based on race, sex, color, religion, nationality, origin, age, disability or veteran status in providing educational or employment opportunities or benefits.

The nondiscrimination notice quoted above complies with neither of the above standards, as it does not apply to all of its programs and activities (only to “educational or employment opportunities or benefits”) and does not “. . . provide the name and/or title, address and telephone number of the employee or employees responsible for

coordinating the recipient's compliance efforts regarding the laws OCR enforces." Additionally, the University asserted, in its November 21st email, the following.

All publications of Virginia University of Lynchburg include the University's nondiscrimination notice, and they are as follows: admissions application, Student Handbook, Employee Manual, Board of Trustees Manual, Library Manual, Safety and Security Manual, IT Manual, Faculty Manual, Off Campus Teaching Site Manual, and the Policies and Procedures Manual.

However, the University's submissions indicate that none of the notices (all of which are combined notices) included on its hard copy publications comply with the above two standards, and we were unable to locate any compliant notices on the University's website.

To address these concerns, the enclosed Agreement includes a commitment by the University that it will adopt and publish revised notices that comply with the above standards, and will publish them in all appropriate publications and on all appropriate webpages, including University handbooks, catalogs, recruitment and application materials, the University's home webpage and other most frequently accessed webpages, and all other publications in which notices of nondiscrimination are normally included.

4. Failure to Adopt Proper Grievance Procedures

Title IX, the Age Discrimination Act, and Section 504 require that the University adopt grievance procedures that incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints alleging any action prohibited by these laws. In determining whether a recipient's grievance procedures governing allegations of violations of these laws are prompt and equitable under these laws, OCR looks to whether the procedures provide for:

1. Adequate notice of the procedures, including with whom grievances should be filed;
2. The adequate, reliable, and impartial investigation of grievances, including the opportunity to present witnesses and evidence;
3. Designated and reasonably prompt timeframes for the major stages of the grievance process; and
4. Notice to the parties of the outcome of the grievance process.

Although not explicitly required, OCR also looks to whether the recipient provides an opportunity to appeal the findings, remedy, or both, and whether the recipient prohibits retaliation against any individual who files a grievance or participates in a grievance process.

In the University's submissions, website, and statements indicate that it has no grievance procedures. Consequently, the enclosed Agreement includes commitments that the University will adopt and publish grievance procedures that meet the standards included in the Agreement for grievances that include allegations of discrimination prohibited by the laws OCR enforces (see Agreement).

Based on the above findings, concerns, and conclusions, and the enclosed Agreement, we are closing our investigation of the complaint effective the date of this letter. However, we will monitor the University's implementation of the Agreement to ensure that it fully complies with it and thereby resolves the allegation and all compliance issues identified in this letter. We will be happy to provide you with any technical assistance and advice you seek in implementing the Agreement.

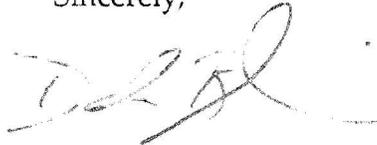
We remind you that no person is permitted to intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the laws OCR enforces. If any individual is harassed or intimidated because of filing a complaint or participating in any aspect of OCR case resolution, the individual may file a complaint alleging such treatment.

This is a letter of findings issued by OCR to address an individual OCR case. Letters of findings contain fact-specific investigative findings and dispositions of individual cases. Letters of findings are not formal statements of OCR policy and they 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.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If we receive such a request, we will seek to protect, to the extent provided by law, personally identifiable information that, if released, could constitute an unwarranted invasion of personal privacy.

We wish to thank you and University staff for your cooperation in resolving this complaint. If you have any questions regarding this letter, please contact Peter Gelissen, the attorney assigned to this case, at (202) 453-5912 or at peter.gelissen@ed.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Dale Rhines", with a horizontal line extending to the right.

Dale Rhines
Acting Team Leader, Team IV
District of Columbia Office
Office for Civil Rights

RESOLUTION AGREEMENT

Virginia University of Lynchburg

OCR Case No. 11-12-2006

The Virginia University of Lynchburg (the University) agrees to fully implement this Resolution Agreement (Agreement) to resolve OCR Complaint No. 11-12-2006.

A. SUBSTANTIVE PROVISIONS

1. The University will immediately discontinue its policy and/or practice of, in any way, dissuading students with disabilities from attending, or denying them admission to or enrollment in, the University, based on disability, whether because the student is late in requesting academic adjustments and/or auxiliary aids (AAs) or for any other reasons, and will not adopt such a policy and/or practice in the future. This Provision does not require the University to provide AAs at the beginning of a semester to those students who have failed to provide the University with reasonable notice of their need for identified AAs.
2. The University will immediately discontinue its policy and/or practice of requiring students with (b)(7)(C) to take medication for their disabilities and/or have it administered to them from a health care provider, and will not adopt such a policy and/or practice in the future with respect to such students or any students with disabilities. This Provision does not alter the University's right, consistent with Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, to take disciplinary action against students with disabilities for misconduct related to their disabilities, including when that misconduct may be the result of their failure or refusal to take medication prescribed for them for their disabilities.
3. The University will immediately pay the Complainant \$245.38 for expenses directly incurred as a result of the University's conduct.
4. By February 29, 2012, the University will designate a University Coordinator or Coordinators to ensure compliance with all applicable Federal civil rights laws, and make certain that the Coordinators and additional support employees attend training on: Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.* (Title IX), and its implementing regulation, at 34 C.F.R. Part 106; the Age Discrimination Act of 1975, 42 U.S.C. § 6101 *et seq.* (the Age Discrimination Act), and its implementing regulation, at 34 C.F.R. Part 110; Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d, and its implementing regulation, at

34 C.F.R. Part 100; and Section 504, and its implementing regulation, at 34 C.F.R. Part 104, including training on the provision of AAs to students with disabilities.

5. The University employees referenced in Provision A4, above, will attend the training referenced in that Provision in 2012 and every second year thereafter, except that newly hired employees will attend such training within their first year of University employment and every second year thereafter.
6. By February 29, 2012, the University will adopt notices of nondiscrimination that:
 - a. Contain a general statement that the University does not discriminate on the basis of race, color, national origin, sex, disability, or age (and any additional bases it wishes to include) in *any* of its programs; and
 - b. Provide the name and/or title, address and telephone number of the employee or employees responsible for coordinating the University's compliance efforts regarding the laws referenced in provision A4, above.
7. By April 27, 2012, the University will publish the notices of nondiscrimination it has adopted pursuant to Provision A6, above, in all appropriate publications and on all appropriate webpages, including hard copy and website versions of University handbooks, catalogs, and recruitment and application materials, the University's home webpage, and all other publications and webpages in which notices of nondiscrimination are normally included.
8. By March 30, 2012, the University will submit for OCR approval grievance procedures that incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints alleging any action prohibited by the laws cited in Provision 4, above, more specifically:
 - a. Adequate notice of the procedures, including with whom grievances should be filed;
 - b. The adequate, reliable, and impartial investigation of grievances, including the opportunity to present and cross-examine witnesses and submit and rebut evidence;
 - c. Designated and reasonably prompt timeframes for the major stages of the grievance process;
 - d. Notice to the parties of the outcome of the grievance process;
 - e. An opportunity to appeal the findings, remedy, or both; and
 - f. The prohibition of retaliation against any individual who files a grievance or participates in a grievance process.

The University may adopt separate grievance procedures for different types of grievances, e.g., for grievances in which sexual harassment under Title IX is

alleged versus those in which disability discrimination under Section 504 is alleged.

9. Within one month of its receipt of the OCR approval referenced in Provision 8, above, the University will adopt the grievance procedures, as approved by OCR.
10. Within two months of its receipt of the OCR approval referenced in Provision 9, above, the University will publish the approved grievance procedures in all appropriate publications, including University handbooks, catalogs, webpages, and all other publications in which grievance procedures are normally included.
11. The University will maintain such documentation of its efforts regarding the above commitments as is needed to demonstrate that it has fulfilled them.

B. REPORTING PROVISIONS

12. By May 31, 2012, the University will provide OCR with a report on its compliance with Provisions 1 through 7, and include with its report: (a) a description of and related documentation regarding the discontinuation of the policies and/or practices referenced in Provisions 1 and 2; (b) the names of the organizations from which the training referenced in Provision 4 was or will be received, and documentation of the substance of the training taken or to be taken; (c) the names and titles of the University employees who took or will take the training (Provision 5); and (d) a copy of the notice of nondiscrimination referenced in Provision 6 and a copy of the first page of each document in which it has been included and the page on which it appears in each document, and copies of the webpages on and/or webpage addresses for the documents in which the notice appears.
13. By August 31, 2012, the University will provide OCR with a report on its compliance with Provision 10, and include with its report a copy of the published grievance procedures, and a copy of the first page of each document in which they have been included and the pages on which they appear in each document, and copies of the webpages on and/or webpage addresses for the documents in which they appear.

By: Ralph Reavis
Ralph Reavis, President
Virginia University of Lynchburg

February 8, 2012
Date