



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
32 OLD STEEL 26TH FLOOR
NEW YORK, NEW YORK 10005

TIMOTHY C. J. BLANCHARD
DIRECTOR
NEW YORK OFFICE

November 17, 2011

Rev. Joseph M. McShane, S.J.
President
Fordham University
441 East Fordham Road
Bronx, New York 10458

Re: Case No. 02-10-2013
Fordham University

Dear Rev. McShane:

This letter is to notify you of the determination made by the U.S. Department of Education, New York Office for Civil Rights (OCR) with respect to the above-referenced complaint filed against Fordham University (the University). The complainant alleged that after he requested to voluntarily withdraw for medical reasons during the Spring 2009 semester, the University regarded him as disabled, and as a condition of readmission required him to: (a) submit excessive medical documentation from mental health professionals; (b) agree to attend periodic counseling; and (c) sign a waiver permitting the University to review his medical records.

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). The University is a recipient of financial assistance from the Department, and is a public elementary and secondary education system. Therefore, OCR has jurisdictional authority to investigate this complaint under Section 504.

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

OCR determined that during academic year 2008-2009, the complainant was enrolled at the University as a sophomore. The complainant did not identify himself as a student with a disability by registering with the University's Office of Disability Services prior to or during his enrollment.

OCR determined that in February 2009, the complainant requested a medical withdrawal due to complications he was experiencing from chronic fatigue syndrome. OCR determined that the

University does not have a specific policy regarding medical withdrawals; rather, the University has only a general policy for withdrawals. Once withdrawn, a student must apply for readmission through the Office of Admission.

With his request for a withdrawal, the complainant submitted medical documentation, which stated that in addition to chronic fatigue syndrome, he was suffering from panic attacks and was seeking help from a psychiatrist. By letter, dated February 27, 2009, the Assistant Dean for Sophomores (Assistant Dean) approved the complainant's medical withdrawal. The letter stated that "medical documentation must be submitted before readmission is considered," but did not describe the medical documentation required, or provide any other information about the requirements for readmission.

OCR determined that on June 10, 2009, the complainant sent an electronic mail message (email) to the Dean of Students requesting to return to school for the fall 2009 semester. OCR determined that the University does not have a written policy specifically pertaining to applications for readmission to the University following medical withdrawals. The University asserted that its practice is that all students who return from a medical withdrawal of any kind must provide documentation establishing that they are ready to return. With respect to students returning from a medical withdrawal related to mental health concerns, University staff acknowledged that its practice is to require all such students to satisfy the following conditions for readmission: (1) provide written responses from two mental health professionals to a list of questions;¹ (2) participate in an in-person evaluation by the consulting psychologist at the University's Counseling and Psychological Services (CPS); (3) submit a signed Statement of Expectations (SOE); and (4) provide a waiver permitting the University to review the student's medical records.²

Based on the above practice regarding students returning from a medical withdrawal related to mental health concerns, in emails dated June 16, 2009, the University informed the complainant that to be readmitted, he would have to provide written responses to a series of questions from both a psychologist and a psychiatrist whom he had seen at least twice. In addition, the University informed the complainant that he would have to meet with someone from CPS.

OCR determined that on August 3, 2009, the complainant submitted to the University his treating physician's response to the questionnaire. The complainant's physician, an osteopath, indicated that she met with the complainant to address his "panic disorders [and] depression" on June 8, 2007, and April 6, 2009; that his medical/psychological condition had improved; and that she did

¹ The questions include a request for a treatment summary, DSM-IV diagnosis, an opinion on whether the student's medical/psychological condition had improved, and a statement as to whether the student has "suicidal thoughts or behaviors, homicidal thoughts, self-injurious behaviors, substance abuse behaviors, eating disorder, impairment upon initial presentation."

² The University acknowledged that students returning from a medical leave because of a physical condition or injury are rarely required to submit to an evaluation by University medical or counseling personnel, or to sign an SOE. University staff informed OCR that the University's standard practice is to require a student returning from a medical leave because of a physical condition or injury to provide documentation demonstrating that the student is medically able to return and to fulfill the fundamental responsibilities of academic and residential life, if applicable. The University stated that the extent of the documentation required of a student returning from a medical leave because of a physical condition or injury is determined on a case by case basis.

not anticipate any difficulties should he return to campus full-time. The physician stated that the student did not have suicidal thoughts or behaviors, homicidal thoughts, self-injurious behaviors, substance abuse behaviors or eating disorders, and that his symptoms were currently controlled. She also stated that his panic disorder and depression had improved, and that she recommended that he continue to take Lexapro and be re-evaluated regularly for continued need. On that same date, the University informed the complainant that the documentation provided was not sufficient; specifically, it was not on official letterhead, did not give any detail or a specific DSM diagnosis, and did not include the doctor's signature. The physician refused the University's request to elaborate on her response and provide more information on signed letterhead, stating that she had already answered all their questions and did not have the time or resources to do more.

On August 5, 2009, the University requested that the complainant provide a psychiatrist's response to the same series of questions that his osteopath had answered.³ The complainant's former therapist refused to provide the requested information, so the University referred the complainant to a private social worker, who evaluated him and provided a letter to the University dated August 26, 2009, recommending that the complainant be readmitted.⁴ Following its receipt of the social worker's letter, the University also required the complainant to undergo a psychological evaluation from CPS. On August 28, 2009, CPS evaluated the complainant and found that "there appear to be no manifest impediments at this time to his clearance to re-enter the university." CPS also recommended that the complainant pursue psychotherapy, but stated that it "should not be required as a criterion for re-entry."

On September 1, 2009, the University presented the complainant with an SOE, which he was required to sign as a condition of his return to the University. The SOE included a requirement that the complainant engage in a semester of therapy with a counselor at CPS. The complainant objected to this requirement and refused to sign the SOE. On September 2, 2009, the complainant signed a revised SOE that stated that the complainant would engage in counseling with a clinical psychologist of his choice; and signed a consent form which would allow the treating psychologist to disclose his treatment data to the University. The Student matriculated on September 15, 2009. The complainant later objected to the counseling requirement in the SOE, dated September 2, 2009; and signed a revised SOE on October 9, 2009, specifying that he would adhere to his current regime of anti-depressant medication and would consider pursuing regular psychotherapy of his own initiation.

OCR reviewed the University's records for eleven students who applied for readmission after taking a medical withdrawal for reasons related to mental health concerns⁵ or substance abuse

³ The University informed the Student that even though they typically required a response from a psychologist and a psychiatrist, they would consider the osteopath's responses because she had been the only doctor to see the Student and had been the one who prescribed him an anti-depressant.

⁴ The social worker noted in her evaluation that the complainant was experiencing a low-grade depression related to his CFS; that "he did not describe his symptoms in a way that would warrant concern about a more serious form of depression;" and that she found his denial of active suicidal or homicidal thoughts to be credible. This social worker recommended that the complainant return to the University with a reduced course load, and that he meet with someone in the University Counseling Service "just to get acquainted in case he later has difficulty."

⁵ The University indicated that these students had the following diagnoses or symptoms: major depressive disorder; anxiety; mania; generalized anxiety disorder; bipolar disorder; alcohol dependence; adjustment reaction with

during academic years 2008-2009 and 2009-2010.⁶ OCR determined that each of the students, regardless of the nature or severity of their condition, was required to provide responses to the University's standard questions regarding their mental health from both a psychiatrist and psychologist;⁷ obtain an evaluation from CPS; sign an SOE; and sign a waiver granting permission for the University to review their medical records.⁸

Based on the documentation the University requested that the complainant provide prior to re-enrolling in the University, OCR determined that the University regarded the complainant as having a mental impairment that substantially limited one or more major life activities. OCR determined that the University categorically requires all students with actual or perceived mental health conditions, regardless of the nature or severity of their condition, to provide responses to the University's standard questions regarding their mental health from both a psychiatrist and psychologist; obtain an evaluation from CPS; sign an SOE; and sign a waiver granting permission for the University to review their medical records. OCR determined that the University does not evaluate students individually to determine whether all of these requirements are necessary for each student in order to support their readmission following a withdrawal for an actual or perceived mental health issue, regardless of the nature or severity of the student's condition. In contrast, OCR determined that for students seeking readmission after a medical withdrawal for a physical condition or injury, the University determines on a case-by-case basis what documentation is required to demonstrate that the student is medically able to return and to fulfill the fundamental responsibilities of academic and residential life, if applicable.

The regulation implementing Section 504, at 34 C.F.R. §104.4(b)(4), prohibits a recipient from utilizing criteria or methods of administration that have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability. In the case of the Student, OCR determined that his original request for a medical withdrawal was because of chronic fatigue syndrome. OCR determined that even after the Student's physician and the social worker who evaluated him reported to the University that there was no suicidal or homicidal ideation, or any indication that readmission would be inappropriate for the Student, the University required that the Student undergo a CPS evaluation because it was the University's standard practice. Moreover, even after the CPS evaluation concluded that there were no mental health issues that would impede the Student's re-enrollment, and stated that pursuing psychotherapy should not be a prerequisite for the Student's readmission, the University initially required the Student to sign an SOE that stated that he would pursue psychotherapy.

depressed and anxious mood - rule out major depression; eating disorder; suicidal ideation with a preliminary diagnosis of limbic encephalitis; and mood disorder.

⁶ The University was unable to identify any students who took a medical leave of absence due to physical disability during the same timeframe.

⁷ OCR determined that the complainant was the only student who provided a response from an osteopath and social worker, rather than a psychiatrist and psychologist.

⁸ The Dean of Students stated to OCR that the University requires students to sign an SOE only if it is "specific and appropriate to the particular student;" however, the documentation the University submitted to OCR indicates that all students seeking readmission after a withdrawal related to a mental health concern were required to sign SOEs.

On November 14, 2011, the University agreed to implement the enclosed resolution agreement. OCR will monitor implementation of the resolution agreement.⁹ If the University fails to implement the terms of the resolution agreement, OCR will resume its investigation.

This letter is not intended, nor should it be construed, to cover any issues regarding the School's compliance with Section 504 that may exist and are not discussed herein. This letter is intended to address this 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 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 a 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.

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 any questions regarding OCR's determination in this matter, please contact Miriam Nunberg, Compliance Team Attorney, at 646-428-3830 or Miriam.Nunberg@ed.gov, or or Felice A. Bowen, Compliance Team Leader at (646) 428-3806 or felice.bowen@ed.gov.

Sincerely,



Timothy C. J. Blanchard

Encl.

cc:

Nonresponsive

⁹ OCR has concluded that there is no individual remedy necessary for the complainant, since he was permitted to attend classes at the beginning of the semester while the SOE was being worked out.

2011-1715
FD. B

Resolution Agreement

Fordham University

Case No. 02-10-2013

In order to resolve the allegation in Case No. 02-10-2013, Fordham 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.

Action Item 1:

By November 30, 2011, the University will establish a written procedure for reviewing students' requests for readmission following a medical withdrawal, which ensures that the University determines on a case-by-case basis what documentation is required to demonstrate that the student is medically able to return and to fulfill the fundamental responsibilities of academic and residential life, if applicable. This written procedure will be applicable to all requests for readmission following a medical withdrawal, including for an actual or perceived mental health condition, or a physical condition or injury.

Reporting Requirements:

- a) By November 30, 2011, the University will provide a copy of the procedure for reviewing students' requests for readmission following a medical withdrawal for OCR's review and approval.
- b) Within fifteen (15) days of the University's receipt of OCR's approval, the University will provide OCR with documentation to substantiate that it has formally adopted the OCR-approved procedure; updated its printed publications and on-line publications with the procedure (inserts may be used pending reprinting of these publications); and electronically disseminated the procedures to students. This documentation will include at a minimum (i) printouts or a link to all on-line publications containing the procedure; (ii) evidence of the electronic dissemination of the procedure to students; and (iii) if not yet finalized, copies of inserts for printed publications.
- c) By January 15, 2012, the University will provide to OCR copies of the printed versions of all publications disseminated to students and employees containing the procedure.

Action Item 2:

By February 1, 2012, and annually thereafter, the University will provide training to its officials and administrators, including but not limited to University deans and assistant deans, who will be directly involved in processing requests for readmission after a medical withdrawal. The

University's training will cover the University's procedures for reviewing and processing such requests.

Reporting Requirement:

By February 1, 2012, the University will provide to OCR copies of all training materials used, including all handouts or guides, and proof of attendance by appropriate officials and administrators.

Action Item 3:

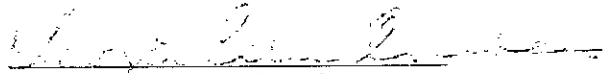
The University will ensure that the procedure developed in accordance with Action Item (1) above is applied to all students, regardless of the nature or severity of their actual or perceived disability.

Reporting Requirement:

By December 31, 2012, the University will provide OCR with documentation regarding any students who applied for readmission during the Spring and Fall 2012 semesters. This documentation will include a complete record of the student's withdrawal request and reapplication, including, but not limited to, the student's withdrawal request and supporting medical documentation, the student's request for readmission and all supporting documentation, and all notices, letters, emails and other correspondence from the University provided to the student in response to the request for readmission.

The University understands that OCR will not close the monitoring of this agreement until OCR determines that the University has fulfilled the terms of this agreement and is in compliance with the regulation implementing Section 504, at 34 C.F.R. §§ 104.4, which was 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 regulation implementing Section 504, at 34 C.F.R. §§ 104.4, which was at issue in this case.

Date


Dr. Georgina Calia-Arendacs
Director of Equity / Equal Opportunity
Fordham University