



**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
CLEVELAND OFFICE
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CLEVELAND, OHIO 44114-2611**

DEC 16 2010

Diane Y. Bower, Esq.
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145 South Jackson Street
P.O. Box 787
Jackson, Michigan 49204

Re: OCR Docket #15-10-2098

Dear Ms. Bower:

This letter is to advise you of the disposition of the above-referenced complaint filed with the U.S. Department of Education (the Department), Office for Civil Rights (OCR), on June 21, 2010, against Spring Arbor University (the University), alleging discrimination on the basis of disability. Specifically, the complaint alleged that on June [REDACTED] the University discriminated against a student (the Complainant) based on a disability [REDACTED] when the University would not permit the Complainant to re-enroll in school until he provided a Section 504 plan and a letter from his therapist and obtained permission to re-enroll from each of the University's departments. The complaint also alleged that, when the Complainant attempted to reenroll, the University discriminated against him by refusing to modify its housing policy so that he could live in off-campus housing, which was necessary because of his disability.

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, including recipients of such assistance from the Department. As a recipient of Federal financial assistance from the Department, the University is subject to Section 504. Therefore, OCR had jurisdiction to investigate this complaint.

Based on the complaint allegations, OCR investigated the issue of whether a qualified person with a disability was, on the basis of disability, excluded from participation in, denied the benefits of, or otherwise subjected to discrimination by the University, or was on the basis of disability denied admission or subjected to discrimination in admission by the University, in violation of the Section 504 implementing regulation at 34 C.F.R. §§ 104.4(a) and 104.42(a). During the investigation, OCR also reviewed the University's compliance with the provisions of the Section 504 regulation, at 34 C.F.R. §§ 104.7(a) and 104.7(b), which require the University to designate an employee to coordinate its compliance with Section 504 and to adopt grievance procedures regarding Section 504 complaints.

During the investigation of this complaint, OCR interviewed the Complainant and University personnel. OCR also reviewed documents submitted by the Complainant and the University, including the Complainant's academic, admissions, and readmissions files, notes concerning the Complainant and his October [REDACTED] withdrawal from the University, e-mail correspondence concerning the Complainant and his application for readmission to the University, and the University's grievance procedures. After a careful analysis of the information obtained, OCR determined that the University discriminated against the Complainant as alleged. The basis for that determination is set forth below.

Alleged Disability Discrimination

Summary of OCR's Investigation

The Complainant enrolled at the University as a transfer student in January [REDACTED] (the Winter [REDACTED] semester), and maintained his enrollment through October [REDACTED]. The Complainant asserted that, at the time he enrolled, he and his mother notified his admissions representative that he had a disability and inquired about a 504 plan for him that would provide him with extra time on tests, extensions on assignments and alternative testing spaces. The Complainant asserted that the admissions representative did not refer the Complainant to the University's disabilities services office. The Complainant said he was diagnosed with [REDACTED] during the summer of [REDACTED]. The Complainant explained to OCR that, during the first few months following his diagnosis, he struggled with mood swings and depression because he was adjusting to new medications. During that time period, the Complainant cut himself, wept uncontrollably, discussed his problems with other students, and did all of this publicly at times. He acknowledged that he did not notify anyone at the University of his diagnosis when he returned to campus in August [REDACTED] nor did he formally identify himself as a student with disabilities or request academic adjustments through the disabilities service office at any time during his enrollment at the University.

The Complainant told OCR that on October [REDACTED] his residential director instructed him to attend a meeting with the vice president of student development, the assistant vice president of student development, and the residential director, to discuss his success as a student. The Complainant asserted, and the University did not dispute, that he was told he was not in trouble and the meeting was not ostensibly a discipline meeting. The

Complainant told OCR that the resident director of his dorm assured him twice that the purpose of the meeting was to discuss the Complainant's success at the University. However, when he arrived at the meeting the vice president told the Complainant that the University had received complaints about him from other students and presented him with a behavior contract that would require him to meet with specific individuals on campus if he were having a crisis. He said he became very upset at the meeting. Within the first ten minutes of the meeting, the Complainant stated that he wanted to withdraw from the University based on medical necessity. The University provided the Complainant with the necessary form to withdraw. The University did not give the Complainant any information about returning to school or applying for readmission. At the time he withdrew, the Complainant had a balance on his University account of approximately \$1200, for which he was responsible. The Complainant said that the vice president told him that she would "go to bat for him" to get that balance waived.

The Complainant applied for readmission to the University on May 3, [REDACTED]. The University's transfer and admissions representative initially told the Complainant that he needed to pay the balance on his account in order to enroll in classes. The Complainant said he then spoke with the vice president about having the fee waived. He told OCR that during the conversation with the vice president he explained that he had bipolar disorder and described his medical progress and his plan for future success at the University. The Complainant also requested off-campus housing upon his return, as an accommodation for his disability. The Complainant said that the vice president told him that she did not think he was ready to return to the University. She told him that, to be readmitted, he would have to submit a 504 plan and a letter from his therapist, and each department would need to sign off on his readmission. The Complainant also asserted that she said the University could not waive his balance and denied his request for off-campus housing. The University's admissions representative told the Complainant that other students applying for readmission do not have to submit 504 plans or letters from their therapists in order to be readmitted.

The Complainant was in good academic standing at the University when he withdrew, and had not been charged with any code of conduct violations while enrolled at the University.

In response to the allegations, the University informed OCR that, when the Complainant first applied to the University in November [REDACTED], he disclosed information in his admissions packet to indicate that he had a history of psychiatric problems in high school. Additionally, at the time of his application, the Complainant's mother notified the University's admissions office that the Complainant had anxiety and depression for which he took medication, and previously had an eating disorder.

University staff explained that during the [REDACTED] fall term the Complainant was cutting himself and showing his wounds to students in the dorm who did not know him very well, talking to them for hours. The staff told OCR that the October [REDACTED] meeting was to attempt to have the Complainant sign a behavior contract to address his disruptive behavior. The behavior contract was not disciplinary, nor was the October [REDACTED] meeting

a discipline meeting. University personnel stated that they were not aware of any discipline issues with the Complainant. The assistant vice president said that, instead, the October [REDACTED] meeting and the behavior contract were designed to address the Complainant's cutting and to prevent him from discussing his emotional issues with other students. University personnel told OCR that they believed the Complainant's behavior was manipulative, burdensome, and distressing to other students. They asserted that the purpose behind the behavior contract was to encourage the Complainant, in moments of crisis, to see the assistant vice president, the dorm director, or the vice president.

The behavior contract provided that the Complainant would do the following: (1) enter into or maintain a relationship with a counselor; (2) request a letter from the therapist sent directly to the vice president, confirming that he was a client and regularly under care; (3) sign a *Release of Information* form allowing Director of the Holton Health Center to discuss his case with a provider mentioned above; (4) abide by all recommendations of a counselor including taking prescribed medication and behavioral modifications; (5) keep his composure during class periods (noting that emotional outbursts are not appropriate in the classroom and create distractions for the professor and students); (6) avoid social situations that may contribute to his stress and eventual crisis (he was instructed that if he felt a crisis was imminent then he was to contact his resident director, the vice president, the assistant vice president, the University chaplain, or the director of the Holton Health Center); and (7) because of the complexity of the issues that he seemed to grapple with on a frequent basis, they asked that, at the times he was experiencing a crisis, he share his thoughts and feelings only with a member of the faculty, staff or administration.

The vice president said she believed the conditions in the behavior contract were necessary because by cutting himself the Complainant was a threat to himself, and his behavior was erratic. The vice president drafted the behavior contract without having any substantial interaction with the Complainant, other than having seen him several times on campus, and possibly having briefly spoken with him during his enrollment at the University.

The University acknowledged that within ten minutes of meeting on October [REDACTED], the Complainant expressed a desire to withdraw from the University based on medical necessity. The assistant vice president said he left the meeting briefly to obtain a withdrawal form and then provided the Complainant with the form he needed to complete his withdrawal. The vice president reviewed the form with him, and asked him if he had, or would like to, discuss the decision with his family. No one at the meeting could recall discussing with the Complainant the consequences of his decision to withdraw from the University, or the requirements for his readmission. The meeting lasted between five and ten minutes.

The University does not distinguish between types of withdrawals, nor are its readmission requirements based on whether the student withdrew for medical reasons or otherwise. The University did not place any restrictions on the Complainant's return to the University.

According to the assistant vice president, after the Complainant withdrew from the University on October [REDACTED] the Complainant's mother informed the vice president and the assistant vice president that the Complainant had bipolar disorder and had been on a 504 plan in high school.

The Complainant submitted his application for readmission to the University on May [REDACTED]. The University asserted to OCR that its readmission policy provides that, if a student has attended the University's main campus in the past and wishes to return, the student will be reviewed for readmission using the following process:

1. Complete the Application for Readmission. This can be completed online at www.arbor.edu/applyonline or the student can contact his or her Admission Representative for a paper application. An Admission Representative can also complete the Application for Readmission over the phone with the student.
2. Submit official transcripts from all colleges attended since leaving the University.
3. Submit a completed Release of Information form. (This is only required if the last college attended since leaving the University was a four-year college and the student lived on campus.)
4. Submit a completed Student Agreement form signed by the student.
5. Approval must be granted from all listed departments in order for the student to return to SAU. If any departments inform the Office of Admissions of a reason the student cannot be readmitted, the college will notify the student. It is the student's responsibility to contact those departments and take care of any items standing in the way of their readmission:

Registrar
Business Office
Financial Aid
Student Development and Learning
Perkins Loan Office
6. Once the student is approved by all departments listed above, the student will be accepted for readmission to the University and is eligible to move forward with the financial aid and registration processes.

The University's written readmission policy does not include a requirement that an applicant submit documentation of medical treatment, letters from therapists, or Section 504 plans. Neither the University's transfer and admissions representative nor the

University's counsel knew whether this readmissions policy was published anywhere in the University's materials. OCR could not locate a copy of this policy on the University's website. The University has a one-paragraph "Readmit Policy" in its [REDACTED] Student Handbook that provides:

The University reserves the right to deny continued enrollment or re-admittance to any student whose personal history indicates that his or her presence at the University would endanger the health, safety or welfare of themselves or of the members of the SAU community.

OCR notes that this policy was not included in the University's [REDACTED] Student Handbook, which was effective during the time the Complainant withdrew from the University and applied for readmission.

The director of the business office at the University told OCR that the University will not readmit students until their account balances are paid in full, and will not waive amounts owed unless they result from University error.

The Complainant's application for readmission includes a chart at the bottom listing the five departments that must approve his application before the University could readmit him. On the Complainant's application, the Business Office, Perkins Loan, and Student Development were checked off "no" under the approval column of the chart. The Business Office and Perkins Loan departments had information that the Complainant owed a balance, and the Student Development department had information that the Complainant needed "documentation/504 plan first."

A transfer and admissions office representative confirmed that she spoke with the Complainant about his readmission application on May [REDACTED]. The transfer and readmissions representative is responsible for notifying applicants of any requirements they need to satisfy in order to be readmitted to the University. On May [REDACTED] the representative told the Complainant that he needed only to pay his balance in order to be readmitted. The representative told OCR that at that time she was not aware of any other requirements that the Complainant had to satisfy for readmission.

The vice president, who was responsible for approving students for readmission, also confirmed that she met with the Complainant as alleged, on May [REDACTED], and the Complainant asked her to waive his account balance so that he could be readmitted. She said that she told him it may be too late to waive the account balance. During that meeting, the Complainant notified the vice president that he had bipolar disorder and requested off-campus housing upon his return. The vice president told the Complainant that he must submit his 504 plan before he could be readmitted. She also told him that in order to be considered for off-campus housing, he must submit a housing petition and documentation to support his request.

On May [REDACTED] the vice president conveyed by e-mail to the admissions office that the Complainant must submit a 504 plan as a requirement to be readmitted to the University. Specifically, in a May [REDACTED] e-mail to the Admissions Office, the vice president asked: “Do you know if [the Complainant] has submitted a 504 Plan with his readmission materials?” In response to the Admissions Office e-mail inquiry regarding the 504 Plan, the vice president stated, “[Complainant] and his mother both know that SAU needs the 504 Plan they continue to reference when I speak to them but they have yet to submit that to SAU.” (emphasis added)

The transfer and readmissions representative told OCR that, after the e-mail exchange with the vice president, it was her understanding that the University required the Complainant to submit a 504 plan in order to be readmitted. She said she conveyed that requirement to the Complainant by phone on several occasions, and it is supported in the phone log the University provided. The transfer and readmissions representative told OCR that she had never before been told to require a 504 plan for readmission applicants. The vice president, assistant vice president, and resident director all confirmed that the Complainant’s application for readmission was never considered because he did not submit a 504 plan.

The vice president explained to OCR that she did not require the Complainant to necessarily provide a 504 plan, but she did require some evidence or other documentation that the Complainant had a disability, and that his problems were being treated, before she made a decision about his readmission. Specifically, the vice president wanted documentation and information from the Complainant that demonstrated that he would be able handle a full-time course load, live on or off campus, and be successful at the University if he were readmitted. She said she thought the 504 plan might also provide information about what academic adjustments the Complainant might need also. The vice president told OCR that she told the Admissions Office that the Complainant needed to provide a 504 plan because she did not want to reveal that he had a psychiatric disability.

The vice president acknowledged that the University had only required students to provide documentation regarding their medical history in two instances that she could think of, each time when the students posed a threat to themselves or others. She said she has never requested such documentation from students with non-psychiatric impairments or disabilities who had withdrawn from the University for medical reasons. She explained that she has requested documentation from students’ therapists stating that the students were ready to return and had been seeking treatment during their absence from the University when it was deemed that the students were a threat to themselves or others. However, the University provided OCR with documentation of only one other instance in which the University required medical records or information as a condition for a student’s reenrollment. In that instance, the University required a student to provide documentation of a psychiatric evaluation and a recommendation from the provider that the student was able to return to the University before the student could reenroll.

The University never determined that the Complainant was a threat to others. The vice president told OCR that the Complainant had demonstrated he was a threat to himself because he was cutting himself. On May [REDACTED] two days after the Complainant submitted his application for readmission, the vice president and assistant vice president discussed “not allowing” the Complainant’s admission in an e-mail exchange because, the assistant vice president noted, the Complainant “was a disaster from an emotional control standpoint...” The assistant vice president stated that the University could assert the position that the Complainant was a danger to himself and disruptive to others. The assistant vice president raised the University’s concern that the Complaint could possibly hurt someone else for the first time in an affidavit dated October [REDACTED], submitted to OCR as part of its investigation.

The University has turned over the Complainant’s account to a financial collections agency. As of December [REDACTED], the University records reflect the Complainant’s balance as \$1352.00.

Applicable Legal Standards

The regulation implementing Section 504, at 34 C.F.R. § 104.3(j)(1), defines an individual with a disability as any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such an impairment. Section 504, at 34 C.F.R. § 104.3(j)(2)(iv), further provides that a person is regarded as having an impairment when the person: has a physical or mental impairment that does not substantially limit major life activities but who is treated by a recipient as constituting such a limitation; has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or has none of the impairments defined by the regulation, but is treated by a recipient as having such an impairment. As of January 1, 2009, the date the Americans with Disabilities Amendments Act of 2008 took effect, a person is regarded as having a disability if he or she has been subjected to an action prohibited under Section 504 because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity. Accordingly, OCR’s analysis focuses on whether a recipient of Federal financial assistance perceives that an individual has a physical or a mental impairment, without considering whether the recipient perceives that individual to be limited in a major life activity.

With regard to postsecondary students, a “qualified” individual with a disability is one who meets the institution’s academic and technical standards for admission or participation in the academic program. See 34 C.F.R. § 104.3(l)(3).

The regulation implementing Section 504, at 34 C.F.R. § 104.4(a), also provides that no qualified person with a disability shall, on the basis of a disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any recipient’s program or activity. The regulation implementing Section 504, at 34 C.F.R.

§ 104.42(a), further provides that a qualified person with a disability may not, on the basis of disability, be denied admission or be subjected to discrimination in admission by a postsecondary institution that is a recipient of Federal financial assistance.

To determine whether an individual has been subjected to disability-based discrimination in admission, OCR generally considers whether the individual is a qualified person with a disability, whether the individual was subjected to an adverse admission action, and whether the adverse action was based on the individual's disability. OCR examines the recipient's standards for readmission and how they were applied to the complainant. Absent overtly discriminatory policies, OCR considers whether there are other circumstances that may raise an inference of discrimination. OCR may examine whether the institution failed to follow established procedures or practices, whether the institution treated the applicant with a disability differently than similarly-situated non-disabled applicants, or whether there is other evidence of discrimination. If different treatment can be inferred from any such circumstances, OCR considers whether the institution has provided a legitimate, non-discriminatory reason for its action. If such a reason is presented, OCR considers whether the reason is merely a pretext for discrimination.

Under Section 504, the "direct threat" standard applies to situations where a university proposes to take adverse action against a student whose disability poses a significant risk to the health or safety of others. A significant risk constitutes a high probability of substantial harm and not just a slightly increased, speculative, or remote risk. In determining whether a student poses a direct threat, the university must make an individualized assessment, based on a reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures will sufficiently mitigate the risk. The student must not be subject to adverse action on the basis of unfounded fear, prejudice and stereotypes.

Under OCR policy, nothing in Section 504 prevents educational institutions from addressing the dangers posed by an individual who represents a "direct threat" to the health and safety of others, even if such an individual is a person with a disability, as that individual may no longer be qualified for a particular educational program or activity under 34 C.F.R. § 104.3(k)(3). Following a proper determination that a student poses a direct threat, an educational institution may require as a precondition to a student's return that the student provide documentation that the student has taken steps to reduce the previous threat (e.g., followed a treatment plan, submitted periodic reports, granted permission for the institution to talk to the treating professional). However, educational institutions cannot require that a student's disability-related behavior no longer occur, unless that behavior creates a direct threat that cannot be eliminated through reasonable modifications.

Analysis and Conclusion

In the instant case, the evidence established that, although the Complainant never identified himself as a student with a disability with the University's disability services office, the University perceived the Complainant to be an individual with a mental impairment. In addition to the notice the University received from the Complainant's mother that he suffered from [REDACTED] and [REDACTED] the Complainant made the University aware of his psychiatric history in his admissions essay. Based on what the University described as behavior that was distressful to other students, the University created a behavior contract that indicated its belief that the Complainant had a mental impairment. Specifically, the University attempted to require the Complainant to seek counseling from a therapist and to agree to take all prescribed medications. The University also attempted to require the Complainant to provide access to his therapist so that the University could stay informed of his care. The University subsequently imposed the same conditions that were in the October [REDACTED] behavior contract on the Complainant's readmission in May [REDACTED] and specifically requested a 504 plan. The vice president maintained that the Complainant needed to provide her with a 504 plan or at least the same information about his medical condition and treatment that she previously sought in the behavior contract so that she could determine whether he could successfully live on or off campus and attend classes full time. Additionally, when the Complainant applied for readmission, the assistant vice president described the Complainant as a "disaster from an emotional control standpoint." OCR has determined that the University's behavior contract and its conditions for the Complainant's return to the University demonstrated that the University perceived him to be an individual with a disability, pursuant to 34 C.F.R. § 104.3(j)(1)(iii).

Moreover, the Complainant established that he was qualified. He was accepted into the program and had successfully completed one term as a full-time student. There is no dispute that the Complainant voluntarily withdrew from the University. The University acknowledged that the Complainant did not have any disciplinary or academic issues while he was enrolled as a student. The University also acknowledged that it had no intention of dismissing the Complainant or disciplining him when it presented him with a behavior contract in October [REDACTED]. Rather, the University said it drafted his behavior contract to help him be successful. Based on OCR's review of the evidence provided, OCR has determined that the Complainant was a qualified individual with a disability because he met the University's standards for admission and continued participation in the program, and his withdrawal was a voluntary withdrawal unrelated to any factors that would have disqualified him, such as academic or disciplinary issues.

OCR next determined whether the University imposed a requirement on the Complainant for his readmission that it did not impose on students who were not considered to have a disability because he has or was perceived to be an individual with a disability. There is no dispute that the University required the Complainant to provide documentation of his medical condition and confirmation that he was getting treatment, which could include his 504 plan, before the University would consider his application for reenrollment. Although the Complainant also had a balance due that precluded his readmission, the vice

president and assistant vice president stated that they would not consider the Complainant's application until he submitted a 504 plan or medical documentation regarding his mental health. The Complainant was denied readmission, therefore, because he did not provide the University with his 504 plan or other documentation regarding the status of his mental health. The University's readmission policy does not require an applicant to provide a 504 plan or other medical documentation regarding the status of a disability, or status of any health condition. The vice president acknowledged that, in her history in her position, she had only required two students to provide medical documentation regarding their condition and treatment prior to readmission, when it was deemed that those students were a threat to themselves or others. According to the documents provided by the University, the University required only one other student to provide medical documentation, specifically evidence of that student's psychiatric condition, before the student could continue enrollment at the University. This evidence is sufficient to show that the University imposed an additional requirement for reenrollment on the Complainant that it does not require of reenrollment applicants who are not individuals with disabilities, and are not perceived to be.

The University represented that it conditioned the Complainant's reenrollment on his ability to demonstrate that he could handle a full-time course load, live on or off campus, and be successful at the University. The Complainant had not given cause for the University to require a showing that he could be successful. His withdrawal was voluntary, he had been in good standing academically, and the University had never disciplined him. OCR found, therefore, that this was not a legitimate, nondiscriminatory basis for the additional requirement the University imposed on the Complainant.

The University implied, in its affidavit submitted by the assistant vice president, that when the Complainant withdrew, the University considered the student to possibly pose a direct threat. The assistant vice president said "although we had not been provided with any information or other documentation about this student having a disability, we were becoming concerned about him hurting himself, and possibly hurting someone else."

OCR found that the University had taken no measures to determine whether the Complainant represented a direct threat to others. Specifically, there is no evidence that the University made an individualized assessment, based on a reasonable judgment that relied on current medical knowledge or on the best available objective evidence, to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury would actually occur; and whether reasonable modifications of policies, practices, or procedures would sufficiently mitigate the risk. Testimony from University personnel indicated that they believed the Complainant was manipulative, burdensome and distressing to other students. In an e-mail exchange contemporaneous with the Complainant's application for readmission, University personnel described the Complainant as disruptive, and not as a threat to others. The vice president, who as vice president of Student Development would make a determination as to that office's approval of his application for readmission, had not had any substantial interactions with the Complainant prior to the October [REDACTED] meeting when the Complainant withdrew.

There is no evidence that the University believed he posed a significant risk or high probability of harm to anyone, or made such a determination.

Thus, in this instance, OCR finds that the evidence is sufficient to support a finding that the University discriminated against the Complainant on the basis of disability in violation of 34 C.F.R. § 104.4(a) and 34 C.F.R. § 104.42(a) when it conditioned his ability to remain enrolled at the University upon signing the behavior contract, and then refused to consider his readmission until he provided medical documentation to establish his condition and treatment. Although the matter concerning the behavior contract was untimely because the complaint was filed more than 180 days after the October 9, 2009, meeting, it is instructive to OCR's conclusions on the allegation regarding the Complainant's application for readmission.

The Complainant also alleged that the University discriminated against him by refusing to modify its housing policy so that he could live in off-campus housing, which was necessary because of his disability. However, the University never considered the Complainant's request for off-campus housing because he was never readmitted to the University. Therefore, OCR did no additional investigation of this allegation.

Section 504 Grievance Procedures

Summary of Investigation

Although the Complainant did not raise an issue regarding the University's Section 504 grievance procedures, OCR learned during the course of its investigation that the University did not have Section 504 grievance procedures. On July [REDACTED] the Complainant questioned the transfer and readmissions representative about why he was required to submit a 504 plan given that the same requirement was not imposed on all other applicants for readmission. The Complainant told the transfer and readmissions representative that he believed the University's imposition of the 504 plan requirement on him was discriminatory because he had a disability. The transfer and readmissions representative did not refer the Complainant to the University's Section 504 Coordinator or its grievance procedure for disability discrimination complaints. Nor did the transfer and readmissions representative report her conversation with the Complainant about his claim of disability discrimination to the vice president.

OCR reviewed the University's Section 504 grievance procedure which appears to be published only in a faculty and staff handbook. The University's Section 504 Coordinator did not know where students or visitors could find the University's Section 504 grievance procedure. OCR notes that the University's [REDACTED] Student Handbook includes a "Student Complaints" procedure that requires students to seek information about resolution of complaints with appropriate University officials, and if necessary submit complaints to the appropriate University vice president. This complaint procedure was not included in the [REDACTED] Student Handbook that was in effect while the Complainant was enrolled at the University or during the period of time he applied for readmission.

The Section 504 coordinator told OCR that she was not involved in disability discrimination complaints or grievances. She explained that any grievances related to disability discrimination were referred to the University's assistant vice president for human resources. OCR found that the University's Section 504 grievance procedure requires the accused individual to provide the written response to the grievance to both the grievant and the assistant vice president for human resources. The procedure provides timelines for completion of each phase of the investigation. The procedure also provides for notice of the disposition of the complaint to the parties by the assistant vice president for human resources. The procedure also provides that a grievant may appeal the decision to an appeals committee and subsequently to the president. The procedure does not include a process for adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence. Rather, the assistant vice president for human resources only investigates grievances "as appropriate." The procedure also does not provide contact information, such as a phone number, name or title, or address, for the assistant vice president of human resources.

Applicable Regulatory Standards

The Section 504 regulation, at 34 C.F.R. § 104.7(b), states, in part, that a recipient shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504. When evaluating a recipient's grievance procedures under Section 504, OCR considers a number of factors in evaluating whether a recipient's grievance procedures meet regulatory requirements, including: whether the procedures provide for notice of the procedures, including where complaints may be filed; application of the procedure to complaints alleging discrimination carried out by employees, other students, or third parties; adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence; designated and reasonably prompt timeframes for the major stages of the complaint process; notice to the parties of the outcome of the complaint; and an assurance that the school will take steps to prevent recurrence of any harassment and to correct discriminatory effects on the complainant and others, if appropriate.

Analysis and Conclusion

OCR found that the University has adopted a Section 504 grievance procedure which is published in the University's faculty and staff handbook. The grievance procedure indicates which office complaints are to be filed with (the Assistant Vice President of Human Resources), provides prompt timeframes for all stages of the investigation of all complaints, and provides that complainants will be provided with notice of the outcome of the investigation. Further, complainants have the right to an appeal. The appeal process provides complainants an opportunity to identify relevant information and establishes clear and reasonable timeframes for processing the appeal. Finally, the appeal procedure provides that the complainant will be provided notice of the appeal decision in writing.

However, the University's Section 504 Coordinator did not know how students or visitors are notified of the grievance procedure, nor could OCR locate a copy of the grievance procedure in the Student Handbook. Additionally, the University's Section 504 grievance procedure does not incorporate appropriate due process standards. Specifically, the grievance procedure does not indicate how complaints should be filed, does not provide complainants an opportunity to identify witnesses and other relevant information during the investigation, does not provide complainants with written notice of the outcome of the investigation, does not explain that complaints to be filed pursuant to the procedure include allegations of disability discrimination, including disability harassment, carried out by employees, other students, or third parties, does not include the address, and telephone number of the University employee with whom complaints should be filed and provide for an alternate person if the person with whom the complaint is filed is alleged to have been involved in the discrimination/harassment, and does not include an assurance that, in cases of disability harassment, the University will take steps to prevent recurrence of any harassment and to correct discriminatory effects on the complainant and others, if appropriate. The University's Section 504 Coordinator also plays no role in addressing complainants of disability discrimination. Therefore, OCR found that the University's Section 504 grievance procedures do not meet all of the requirements of the Section 504 regulation, at 34 C.F.R. § 104.7(b).

To resolve this matter, the University submitted the enclosed Resolution Agreement, signed December 10, 2010. Pursuant to the Agreement, the University will: (1) waive the Complainant's balance in the amount of \$1352.00 that the University turned over to a collections agency and remove the hold on the Complainant's transcripts; (2) reimburse the Complainant for his cost of tuition for course credits that did not transfer from the University to the post-secondary institution he enrolled in immediately after May 2010, provided that the Complainant submits documentation to the University of such costs; (3) revise its Section 504 grievance procedure; and (4) publish the revised Section 504 grievance procedure in the Student Handbook and on the University's website.

The University should revise its Section 504 grievance procedure as described below and provide adequate notice of the procedures. The revised procedures will include the following: (1) clarification that the procedure applies to students and employees, (2) clarification about how complaints can be filed (e.g. in writing), (3) clarification that complaints to be filed pursuant to the procedure include allegations of disability discrimination, including disability harassment, carried out by employees, other students, or third parties, (4) notice of the address and telephone number of the University employee with whom complaints should be filed and provide for an alternate person if the person with whom the complaint is filed is alleged to have been involved in the discrimination/harassment, (5) provision of adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence, (6) inclusion of the University Section 504 Coordinator in the University's investigation of grievances, (7) assurance that, in cases of disability harassment, the University will

take steps to prevent recurrence of any harassment and to correct discriminatory effects on the complainant and others, if appropriate, and (8) notice that retaliation against individuals who file disability discrimination complaints or participate in the grievance process is prohibited.

This concludes our investigation of this matter. We will continue to monitor the University's implementation of the agreement. If the University does not implement the actions outlined in the agreement, OCR will immediately resume our efforts to secure the University's compliance with applicable Federal laws. Also, please be aware that a complainant may file a private suit in Federal court whether or not OCR finds a violation.

This letter 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.

We appreciate the courtesy shown by and your staff during the investigation of this complaint. We look forward to receiving your first monitoring report, which is due on January 21, 2011. If you have any questions or concerns about the resolution of this complaint, please contact Mr. Donald S. Yarab, Team Leader, at (216) 522-7634.

Sincerely,

A handwritten signature in black ink, appearing to read "Catherine D. Criswell". The signature is fluid and cursive, with the first name being the most prominent.

Catherine D. Criswell
Director

Enclosure

**Resolution Agreement
Spring Arbor University
OCR Docket No. 15-10-2098**

Spring Arbor University (the University) submits the following agreement to the U.S. Department of Education, Office for Civil Rights (OCR), to ensure the University's compliance with 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. Accordingly, the University agrees to take the following actions to resolve the above-referenced complaint:

I. Individual Remedies

- A. By January 7, 2011, the University will waive any and all amounts [REDACTED] (the Student) has due and owing to the University resulting from his enrollment at the University from January 2009 through October 2009 and will notify the collection agency responsible for collecting the amount owed that the balance of the account has been waived. By the same date, the University will remove the hold on the Student's transcripts.
- B. By January 7, 2011, the University will notify the Student that it has taken the actions set forth in item I.A.

REPORTING REQUIREMENT: By January 21, 2011, the University will provide OCR with documentation to verify that it has implemented item I.A and B, including documentation showing that the University waived the balance due on the Student's account and notified the Student and the collection agency that it has done so and removed any hold on the Student's transcripts.

- C. By January 7, 2011, the University will offer, in writing, to reimburse the Student for his cost of tuition for course credits that did not transfer from the University to the post-secondary institution he enrolled in immediately after May [REDACTED]

REPORTING REQUIREMENT: By January 21, 2011, the University will provide OCR with documentation to verify that it has notified the Student as required in item I.C, including a copy of the written offer.

- D. Within two weeks of the Student's submission of documentation to establish the specific dollar amount of such costs, but by no later than May 13, 2011, the University will reimburse the Student for the expenses described in item I.C.

REPORTING REQUIREMENT: By May 27, 2011, the University will provide OCR with documentation to verify that it has reimbursed the Student by certified check for his costs, if any, as required in item I.D.

II. Revisions to Section 504 Grievance Procedures

- A. By January 14, 2011, the University will revise its grievance procedures to ensure that they provide, at a minimum:
1. notice to students and employees of the procedure, including where complaints may be filed and how they may be filed (in writing, e.g.);
 2. clarification that complaints of disability discrimination, including disability harassment, carried out by employees, other students, or third parties may be filed under the University's Section 504 grievance procedure;
 3. notice of the address and telephone number of the University employee with whom complaints should be filed and notice of an alternate person if the person with whom the complaint is filed is alleged to have been involved in the discrimination/harassment;
 4. adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence;
 5. involvement of the University's Section 504 Coordinator in the University's investigation of grievances, to ensure the University's adherence to the requirements of Section 504 and its implementing regulation;
 6. assurance that, in cases of disability harassment, the University will take steps to prevent recurrence of any harassment and to correct discriminatory effects on the complainant and others, if appropriate; and
 7. notice that retaliation against individuals who file disability discrimination complaints or participate in the grievance process is prohibited.

REPORTING REQUIREMENT: By January 28, 2011, the University will provide OCR with a draft of its revised Section 504 grievance procedure, and within calendar 30 days after receiving written notification from OCR that the grievance procedure, as revised in accordance with Item II.A.1-7 above, is consistent with the requirements of Section 504, the University will submit documentation to OCR to verify that it has implemented Item II.A.1-7, including adoption of the grievance procedure.

III. Notification, Publication, and Training

- A. Within calendar 60 days after adopting the revised grievance procedure, the University will publish its revised grievance procedure in its Student Handbook, Employee Handbook, and on the University website.
- B. Within calendar 90 days after adopting the revised grievance procedure, the University will effectively publish a notice to all students and employees that the University's procedures for reporting disability discrimination have been revised and where copies may be obtained; and provide training to its Section 504 Coordinator, all University administrators, and any staff who will be involved in responding to reports of disability discrimination regarding the University's obligation to promptly respond to Section 504 grievances, as well as the University's revised procedures for how such complaints should be reported and how they will be investigated.

REPORTING REQUIREMENT: Within 90 calendar days after the University has adopted the revised grievance procedure, drafted pursuant to item II.A.1-7, the University will submit to OCR documentation to verify that it implemented items III.A and B above, including but not limited to a copy of the notice sent to students and faculty, a copy of the revised Student Handbook and Employee Handbook, the link to the grievance procedure on the University's website, and any agendas, outlines, handouts, and sign-in sheets from the training(s) provided to faculty and staff.

The University understands that OCR will not close the monitoring of the Agreement until OCR determines that the recipient has fulfilled the terms of the Agreement and is in compliance with the regulation implementing Section 504, at 34 C.F.R. §§ 104.4, 104.7, and 104.42, which were at issue in this case.

The University understands that by signing the Agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of the Agreement. Further, the University understands that during the monitoring of the 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 the Agreement and is in compliance with the regulation implementing Section 504, at 34 C.F.R. §§ 104.4, 104.7, and 104.42, which were at issue in this case.

Spring Arbor University



President or authorized designee
Charles H. Webb, President

12-10-10

Date