



UNITED STATES DEPARTMENT OF EDUCATION
REGION I
JOHN W. MCCORMACK POST OFFICE AND COURTHOUSE, ROOM 222
POST OFFICE SQUARE
BOSTON, MASSACHUSETTS 02109

OFFICE FOR
CIVIL RIGHTS

AUG 25 2000

Mr. Jon Westling
President
Boston University
145 Bay State Road
Boston, Massachusetts 02215

RE: Complaint No. 01-99-2130

Dear President Westling:

The Office for Civil Rights (OCR) has completed its investigation of the above-referenced complaint filed by (b)(7)(C) Civil Rights Advocate, Massachusetts Office of Disability, on the behalf of (b)(7)(C) a former Student (Complainant) against the School of Social Work (SSW) at Boston University (University). The Complainant alleged that the University discriminated against him on the basis of disability, permanent left wrist impairment and learning disability, by denying his request for academic accommodations and dismissing him from its Master of Social Work (MSW) program.

We accepted this complaint for resolution because it contains allegations that fall under the jurisdiction of Section 504 of the Rehabilitation Act of 1973 (Section 504). Section 504 prohibits discrimination on the basis of disability in programs or activities receiving or benefiting from Federal financial assistance from the U. S. Department of Education (Department). The University is subject to provisions and requirements of Section 504 because it receives Federal financial assistance from the Department.

Legal Standards

To qualify for the protection afforded by Section 504, the person has to have a disability that falls within the regulatory definitions. Under the regulation, a person with a disability is a person who has a physical or mental impairment that substantially limits one or more major life activities such as walking, seeing, hearing, speaking, learning, and neurological and psychological disorders. The person with a disability may perceive his or herself as being a disabled person or be viewed by others as having a disability. Also, medical records or a medical evaluation can confirm that a person has a disability and/or document the limitations imposed by the condition.

Post-secondary institutions, such as the University, are subject to a number of regulatory requirements. For example, the University is required to publicize its nondiscrimination policy, grievance procedures and section 504 Coordinator as well as the availability of academic adjustments, auxiliary aids and services. In some cases the student may be required to provide the results of medical, psychological or educational evaluations, diagnostic tests and recommendations or information regarding prescriptions to receive academic adjustments, auxiliary aids and services. The University is obligated to provide the student with the aids and services necessary to afford the student an equally effective opportunity to benefit from the program or activity. To be equally effective, however, the aids and services are not required to produce identical results.

As part of our investigation, we interviewed the Complainant, his advocate and the University's representative. We also reviewed and analyzed data and documents submitted by the Complainant and the University. Based on this information, OCR has determined that there is insufficient evidence to support a violation of Section 504 by the University. The bases for our conclusions are presented below.

Finding of Facts

The University's School of Social Work offers a Master of Social Work (MSW) degree at three locations in Massachusetts: the Charles River Campus in Boston, University of Massachusetts in North Dartmouth and, at the University's Corporate Education Center in Tyngsboro. The School of Social Work Student Handbook (Student Handbook) provides detailed information about the full-time and part-time programs available at the Charles River Campus and the part-time programs at North Dartmouth and Tyngsboro. The two-year full-time program at the Charles River Campus is based on a four-semester schedule. The Charles River Campus part-time program is organized on the same semester schedule as the full-time program, but degree candidates take less than twelve credit hours per semester, and degree requirements are completed in three to three and a half years instead of two. According to the revised 1999 Student Handbook, three and four-year program plans, with or without summer sessions, became available to part-time degree candidates at the Charles River Campus in September 1999.

Course schedule information for the off-campus part-time programs is listed by semesters in the Student Handbook. However, classes are actually conducted over four to five weekend sessions (Friday evenings and Saturday mornings) during an 11-month academic year. Degree requirements are usually completed in three years.

To be provided with services, the student must first submit an application for, which consists of two parts, to the University's Office of Disability Services (DS). In that application, the student must specify the kinds of accommodations being requested and attach documentation of the disability, usually a copy of the evaluation completed within the past three years. The application also indicates what that evaluation must contain in order for DS staff to make an appropriate decision. Assuming no additional information is required, the DS staff informs the student of the outcome of the University's assessment and, once approved, is recognized and adopted for three years after the date of the diagnosis. A student needs to submit the application at the beginning of the academic year and if requesting accommodations for courses each semester, should resubmit part one of the application (which indicates the accommodations being requested) at the beginning of each semester. In its various publications, the University encourages students to make a request for accommodations "as soon as possible after receiving registration confirmation." Specifically, the request to DS should be made while attending the University or when offered admission to the University. The University urges students to "plan ahead to insure that . . . accommodations are approved before" they are needed because "the application process could take several weeks." OCR is informed that it is standard practice for the University that when an acceptance letter is sent to potential students, among other things, information about the services available at DS is included in the acceptance package. Absent evidence to the contrary, it is reasonable to believe that the Complainant received information about DS when he was notified of his acceptance in June 1997. OCR obtained a copy of the notice that is sent to potential students. OCR has found that upon a thorough review of the University's policy regarding accommodations to students with disabilities, the policy, on its face, appears to be nondiscriminatory.

The Complainant and the University confirmed that during the admissions process he indicated in his application to the SSW that he had a learning disability as a result of dyslexia and that he had incurred a severe injury to his left wrist. In addition, contained in a letter of reference and in his Personal Biographical Statement were references to these conditions. Furthermore, a psychologist from the Office of Veteran Affairs, on the Complainant's behalf, requested that the SSW waive the required Graduate Record Examination (GRE) and the Miller Analogy Test for his admission to the SSW. Documents submitted by the Complainant during the admission process indicate that indeed, the waiver was granted as he did not take the GRE. In a letter dated June 5, 1997, the University informed the Complainant of his acceptance for enrollment in the University's Southeastern Massachusetts part-time (MSW) program (SEMA) at the University of Massachusetts Dartmouth Campus beginning in the Fall 1997 session. The Complainant began taking courses in September 1997. The Complainant states that shortly thereafter, he received a copy of the Student Handbook but admits that he does not recall reading any information about DS.

During September and December 1997, the Complainant enrolled in two courses: HB720 - Human Behavior I and, SR 743 - Introduction to Social Work Research I (Research I). HB 720 began on September 6 and concluded on October 18; Research I began on October 31 and concluded on December 12. Records indicate the Complainant received a grade of "B" in HB 720 and a grade of "C-" in Research I. According to the University, students in the degree program are required to maintain an average of a "B" grade or better. Consequently, in order to take Research II (SR 744), the Complainant was required to re-take Research I and receive at least a grade of "B".

Based on documents provided by the University and the Complainant's statements to OCR, he did not request accommodation of his disability through the University's DS until November 13, 1997. Documents indicate that the Complainant contacted the DS on that date seeking information on obtaining accommodations. The University's DS responded by sending him the application form and apparently after some conversation with a staff member, encouraged him to obtain his most recent evaluation from the VA. OCR has determined that the information then provided to the Complainant, was consistent with the information contained in the Student Handbook and the University Life Book as well as the document sent to potential students with their notice of acceptance to the University.

Documents also indicate that on November 22, 1997, the Complainant approached the Director of SEMA, to request accommodations in two of his social work courses. The Director advised him that in order to receive accommodations, he had to provide documentation of his disability and apply to the DS. Documents also indicate that on November 24, 1997, the Director contacted DS on behalf of the Complainant and was informed that DS was aware of the Complainant's request through the November 22nd conversation with the Complainant and was awaiting the two-part application and documentation of the disability from the Complainant. In addition, it appears that prior to speaking with the Director of SEMA, the Complainant upon experiencing difficulty in his courses approached his instructors to obtain accommodations but was informed that they were individually unaware of his disability. Consequently, the Complainant sought the assistance of the Director.

Under Section 504, a student has the responsibility to identify a disability and to request accommodations. The University had an established procedure for obtaining accommodations. Presumably, upon notice of his acceptance to the SSW, the Complainant obtained information about the University's DS. Even if he did not or he did not read the information, by his own

admission, he received a copy of the Student Handbook in September 1997 when he began taking courses. The procedure is clear and as stated previously, nondiscriminatory on its face.

Notwithstanding the fact that the University was on notice of the Complainant's disability during the admissions process, absent an application consistent with its published procedures, it is not obligated to provide services that are not requested. The Complainant, fully aware of his own abilities, was to affirmatively request or seek accommodations and to inform the University of the specific accommodations he would need to successfully complete his course work. The Complainant did not do so until mid-November. The University followed the published procedures when it requested that the Complainant submit the application containing suggestions as to the appropriate accommodations along with the most recent evaluation. Documents submitted by the parties indicate that the Complainant did not return his portion of the application until December 18, 1997. In fact, the VA, had sent the evaluation documenting his disability directly to the University's DS, but the Complainant failed to complete his portion of the application which specified the particular accommodations he was seeking. Finally, after being reminded by the University, the Complainant submitted his portion of the application, unfortunately one week after classes ended. Upon receipt of the completed application, the University's DS promptly commenced its review of the Complainant's request.

Upon close review of the documents and statements by the parties, OCR has determined that the University's response to the Complainant's request for accommodation was timely. Students seeking accommodations are advised in the materials disseminated by the University's DS, that the process could take approximately one month; consequently, they should apply for accommodations before they are needed. Here, the Complainant did not make such a request until he was well into his semester and did not complete the application process until his Fall courses had ended.

The parties agree that the Complainant requested as an accommodation, among other things, a note-taker, modified or reduced course work, extended time to complete written assignments, tutoring through the University of Massachusetts Dartmouth and continued use of a voice-activated computer. By letter dated January 12, 1998, the Clinical Director, Office of Disability Services advised the Complainant that her recommendation to the Dean of SSW would consist of time-and-a-half for in-class examinations and the ability to use a spell-checker for essay examinations. The Director also stated that she could not recommend the other academic adjustment requested because the testing documentation provided by the Complainant did not show that he required them for his identified learning disabilities involving written expression and math. The Complainant was informed that if he wished to pursue his request for additional supports, he was required to "submit the results of a *comprehensive* assessment of academic abilities, including writing." OCR did not receive any evidence that he did. Furthermore, according to the University, at no point did the Complainant request an accommodation for the injury to his left hand and wrist, however, he was already using his own voice-activated computer.

Documents provided to OCR indicate that in January 1998, the Complainant expressed to his academic advisor that he received a grade of "C-" in his Research I course because the instructor did not like him. Specifically, the instructor allegedly spoke to the Complainant in an "unprofessional manner in class and discriminated against him because of his learning disability." Because of that grade, the Complainant was prevented from enrolling in Social Work Research II until he repeated the course and received a grade of "C" or better. Due to the seriousness of the allegations, on February 9, 1998, the University conducted a Problem Resolution Meeting in

accordance with the procedures contained in the Student Handbook. The following recommendations resulted from that meeting:

1. The Complainant's final grade for SR743 - Social Work Research I will remain a C-.
2. The Complainant would be unable to enroll in SR 744- Social Work Research II during the Spring 1998 semester.
3. The Complainant would be unable to continue in the SEMA Program with other courses.
4. The Complainant would repeat the SR 743 - Social Work Research I either at SEMA during the Fall 1998 semester or, at the Charles River Campus at a later date. It was recommended that the Complainant consider taking the course at the Charles River Campus because it was offered in the more traditional style (14-weeks) as opposed to the accelerated 4 ½ week-weekend style of the SEMA program.
5. The Complainant would contact the Director of Disability Services at Boston University to discuss his concerns about Section 504 accommodations and the standards of Boston University regarding students with learning abilities.

Accordingly, the Complainant re-enrolled in Research I in the Fall 1998 semester. Consistent with the University's procedures, the Complainant also re-submitted his request for accommodations supported by additional assessment information. Among other accommodations, the Complainant requested additional time for completing outside written assignments for the course. In a letter dated October 29, 1998, the Clinical Director informed the Complainant that after discussions with the instructor and the Dean and a review of the course syllabus, she was unable to recommend time extensions for outside written assignments. She stated that given the accelerated nature of the program, "permitting extensions . . . would result in the student always being several assignments in arrears and in the position of catching up while the class is moving forward. Given the time demands of the accelerated program [she] found this to be a clinically unsound recommendation for a student with a disability." As an alternative, the Complainant was strongly encouraged to consider enrolling in the regular program at the Charles River Campus on a part-time basis as the length of the semester would have the effect of reducing the time demands on outside written assignments. The Complainant received a final grade of B- when he repeated the Research I course and was allowed to take the next course in the sequence.

In the Spring 1999 semester, the Complainant enrolled in only one course, SR 744- Social Work Research II, the second required research course in the program sequence. He received a failing grade causing his GPA to be 2.18, well below the 3.0 that is required. At the request of his faculty advisor and with notice to the Complainant, a Status Review hearing was immediately scheduled but was deferred until Fall 1999 and the Complainant's request. The hearing was held and documents indicate that two disability advocates accompanied the Complainant. A letter dated September 16, 1999, informed the Complainant that the Status Review Committee decided that he could not continue in the MSW degree program. Among the reasons cited for the decision was that his academic performance indicated "a failure to master the material at the level expected of an MSW student." The committee also felt that, based in part on a review of the work he produced in the Research II course, there appeared to be an over-reliance on his tutor "leaving in question the amount of material . . . mastered" in the course, and also his final grade of F. Further, according to the committee, observations of the Complainant's communication skills left little doubt about his inability to effectively assist clients, were he to enter the field of social work. The committee also believed that the Complainant's demonstrated problem-solving skills were well below that expected of a graduate student in the MSW program. Finally, the committee recognized a pattern of externalizing responsibility rather than accepting the consequences of his actions and decisions. The Complainant appealed the committee's decision

and in a letter dated July 27, 1999, was informed that the decision regarding accommodation was appropriate, justified and therefore, final.

In general, OCR affords a high degree of deference to the decisions of educational institutions that involve curriculum and standards. When, as here, the Complainant alleges a violation of Section 504, OCR is obligated to review the facts in their entirety. OCR examined whether the University has provided undisputed facts demonstrating that the relevant officials within the University considered among other factors, alternative means, their feasibility, and the effect on the academic program, here the MSW program. Further, those deliberating officials must come to a rationally justifiable conclusion that the available alternatives would result either in lowering the academic standards of the program or requiring substantial program alteration. In the end, the University has met its duty of seeking reasonable accommodations to effectively meet the student's needs.

OCR found the University has procedures for requesting accommodation of disabilities that are published and disseminated to all students. Potential students customarily receive notice of the University's DS along with their letter of acceptance, receive information through the University's Life Book and as published in the Student Handbook. The Complainant not only identified himself as a person with disabilities during the admissions process, but also requested and received the accommodation effectively waiving the GRE requirement for admission. The University does not dispute the fact that the Complainant provided instructors informal notice by seeking accommodations from individual instructors for each class. However, as required by the three publications students receive, the Complainant was required to apply for accommodations through the office charged with the responsibility of addressing the individual needs of students requesting them. The Complainant did not initiate his request until well into the semester on November 13, 1997 after he had began experiencing difficulty in his courses. Further, the formal process required, in addition to the student's request, documentation in the form of an evaluation and testing, and the Complainant did not ensure that such documentation was provided until after classes had ended for the Fall semester.

OCR found that recommendations for accommodations are only granted after the Clinical Director of the Office of Disability Services, an experienced, licensed clinician, with doctoral and postdoctoral training, reviews all testing and evaluation information. OCR also determined that not only were the established procedures nondiscriminatory, the University's actions in response to the Complainant's formal request, timely, appropriate and consistent with their procedures. Moreover, recognizing that the appropriate accommodations may be more effective had the Complainant not been in the accelerated program, the Clinical Director's strongly urged him to consider the more traditional program as further accommodation aimed at increasing his chances of successful completion of the MSW program. OCR cannot speculate as to whether that recommendation, combined with the accommodations, would have resulted in academic success, it was nonetheless an alternative which the University made available to the Complainant. Based on the documents and statements provided during the investigation, the offer made to the Complainant to enroll at the Charles River Campus, which offered the identical program in the traditional 14-week semester, was a reasonable alternative. The Complainant reported that he declined that option because of the stress he experienced driving to and in city traffic and painful joints.

It is the University's position that it is not required to make accommodations that would have the effect of lowering academic standards or otherwise impose undue burden. Here, based on the documents submitted by the parties, it appears that the Complainant, in the form of accommodations, expected a less stringent academic standard from other students in the program.

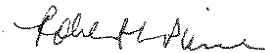
As part of his accommodation request, the Complainant asked that he be allowed to produce two research papers instead of the required three for the course. In addition, he argued that the C- grade he received in the Research I course was equivalent to a B grade that any other student produced given his learning disability and that his grade should be changed to reflect his circumstances. Arguably, these requests can be considered a request for a substantial change in the academic standards of the program. These are not what Section 504 regulations intended to be reasonable accommodations.

The University encouraged the Complainant to utilize its published due process mechanisms which were available within the MSW program (the Problem Resolution Meeting and the Status Review Committee) and the University's hierarchy (appeal to the Office of the Vice President and Dean of Students). These procedures and avenues of redress were published, disseminated and shared with the Complainant both orally and in writing.

On these facts, OCR found insufficient evidence to establish that the University discriminated against the Complainant because of his disability by dismissing him from the program. OCR also found insufficient evidence to substantiate that the Complainant was denied appropriate accommodations of his learning disability.

We wish to thank you and your staff for your cooperation in this matter. If you have questions about this letter please contact Esther Walters, Equal Opportunity Specialist, at (617) 223-9682, or Donna L. Russell, Team Leader/General Attorney, at (617) 223-9701.

Sincerely,



Robert L. Pierce
Program Manager