



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
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TIMOTHY C. J. BLANCHARD
DIRECTOR
NEW YORK OFFICE

January 14, 2011

Thomas J. Schwarz
President
State University of New York
Purchase College
735 Anderson Hill Road
Purchase, New York 10577

Re: Case No. 02-10-2181
Purchase College, State University of New York

Dear Mr. Schwarz:

This letter is to notify you of the determination made by the U.S. Department of Education, New York Office for Civil Rights (OCR) in the above-referenced complaint filed against Purchase College, State University of New York (the College). The complainant alleged that the College discriminated against him, on the basis of his disability, by placing him on an involuntary medical leave of absence on 2010, when he attempted to return to the College after emergency medical treatment for a psychiatric crisis that occurred on or about 2009 (Allegation 1). The complainant also alleged that the College failed to designate a person to coordinate its efforts to comply with Section 504 of the Rehabilitation Act of 1973 (as amended), 29 U.S.C. §794, and its implementing regulation at 34 C.F.R. Part 104 (Allegation 2).

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. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35. Under the ADA, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The College is a recipient of financial assistance from the Department, and is a public education system. Therefore, OCR has jurisdictional authority to investigate this complaint under Section 504 and the ADA.

In its investigation, OCR interviewed the complainant's representative and College staff. OCR also reviewed documentation the complainant's representative and the College submitted. OCR made the following determinations.

With respect to Allegation 1, the complainant alleged that the College discriminated against him, on the basis of his disability, by placing him on an involuntary medical leave of absence on 2010, when he attempted to return to the College after emergency medical treatment for a psychiatric crisis that occurred on or about 2009. Specifically, the complainant alleged that the College's involuntary medical leave of absence policy discriminates against him and other students with disabilities in that this policy does not require the College to determine whether the student poses a significant threat to himself/herself or others before removal. The complainant further alleged that the College failed to consider information from the complainant's treating medical providers outside of the College. Additionally, the complainant alleged that the College failed to afford him the right to appeal the decision to place him on an involuntary medical leave of absence.

OCR determined that the College has two policies and procedures regarding involuntary removal of a student from campus for behavioral reasons: "Interim Suspension and Interim Residence Suspension" (Policy 1), and "Involuntary Medical Leaves of Absence" (Policy 2). Policy 1 applies to any student who presents an immediate danger to the fulfillment of the mission of the College or to the life, health, welfare, safety or property of any member of the College community; including those involved in physical or sexual violence, drugs, or other controlled substances. Policy 2 applies to any student whose behavior renders them unable to effectively function in the residential or College community without harming themselves, others, or disrupting the College community and who refuse and/or cannot be helped by emotional and/or medical treatment. Under both policies, prior to removal, a recommendation for removal is made to the Vice President for Student Affairs or his/her designee. The Vice President for Student Affairs or designee reviews the recommendation and gathers and considers whatever additional information may be needed. The additional information needed may include a mandatory medical assessment by a member of the counseling or health center. Following this review, the Vice President for Student Affairs or designee makes the determination regarding whether removal is warranted, and notifies the student. A student may appeal a determination by writing to the Vice President for Student Affairs/Associate Provost for Integrative Learning. OCR determined that both Policy 1 and Policy 2 apply to any student, not just students with disabilities. As written, neither policy is discriminatory on the basis of disability.¹

OCR determined that the complainant is diagnosed with a bipolar disorder. OCR determined that on or about 2009, the complainant experienced a psychiatric crisis and was admitted to the hospital following police intervention. The Associate Dean informed OCR that the College received a police report describing the incident, which stated that the complainant had "apparently taken pills and was rushed to the hospital."²

OCR determined that the College has a "Policy Regarding Return to Campus After Emergency Medical Evaluation/Treatment" (Policy 3). Specifically, Policy 3 requires that any student who needed an emergency medical evaluation and/or treatment and requests to return to campus must

¹ An individual with a disability is defined by the regulations implementing Section 504 and the ADA as an individual having a physical or mental impairment that substantially limits one or more major life activities.

² The police report also stated that the parents of the complainant's girlfriend telephoned the police to report that the complainant was "possibly attempting to commit suicide," and that the complainant had told his girlfriend that he was depressed and was "possibly going to take a bunch of pills."

either contact the College's Counseling Center (if the student required emergency medical evaluation and/or treatment because of a psychological/psychiatric incident or alcohol/drug-related incident) or the College's Health Services Center (if the student required emergency medical evaluation and/or treatment because of a traumatic injury, accident or illness). Policy 3 also states that the College will determine each student's "appropriateness to return to the academic and/or residential environments, including planning for needed follow-up care, arranging for the completion of missed academic work, and assuring the safety and well-being of the whole campus community." OCR determined that Policy 3 applies to any student, not just students with disabilities. As written, Policy 3 is not discriminatory on the basis of disability.

The Associate Dean informed OCR that she sent the complainant an electronic mail message (email) on [redacted] 2009, stating that he must contact the College's counseling center to schedule a mandatory assessment, as required by College policy, to be eligible to request re-entry to the College upon returning from his emergency medical treatment and hospitalization. OCR determined that the complainant replied to the Associate Dean via email on [redacted] 2009, requesting a return to campus. The Associate Dean replied to the complainant's email on [redacted] 2009, asking him to complete a re-entry assessment at the College's counseling center by [redacted] 2010. The Associate Dean stated that the complainant signed the release on [redacted] 2010; and that same day, a psychologist at the College's counseling center (the psychologist) conducted the complainant's mandatory assessment.

The psychologist informed OCR that in completing her assessment of the complainant, she relied on information gleaned during a lengthy interview with the complainant on [redacted] 2010 (assessment interview); her review of a self-assessment the complainant completed³; an evaluation report provided to the College by the complainant's private psychiatrist (the psychiatrist), who treated him in a partial hospital program upon his referral from emergency care; as well as the hospital discharge records relating to the complainant's episode on [redacted] 2009.

The psychologist noted that the complainant stated in his self-assessment that some pitfalls to his emotional state were marijuana use and stressors, but the psychologist determined that he was continuing to use marijuana and his academics and his girlfriend were still stressors. The psychologist further stated that she considered the psychiatrist's report, but concluded that it attempted to paint an "artificially rosy" picture of the complainant's mental health, as it contained statements that the complainant himself contradicted during his assessment interview, and unrealistic conclusions.⁴

³ The complainant completed the self-assessment on [redacted] 2010. It included the "Beck Anxiety Inventory" (a standardized psychological test designed to measure anxiety levels) and a questionnaire regarding his mental health history.

⁴ For example, the psychiatrist's report stated that the complainant had been abstinent from using marijuana, while the complainant stated during the assessment interview that he had resumed using marijuana as recently as three days earlier. The report also recommended that the complainant receive regularly-scheduled psychotherapy, but the complainant reported to the psychologist that he did not believe in seeing a psychotherapist. The report also stated that the complainant had mastered coping skills in a partial treatment hospital program, using dialectical behavioral therapy, which helps control impulsivity, while the complainant denied to the psychologist that the treatment program had been helpful. The report further stated that the complainant had made significant strides into insight of his own behavior, while the psychologist observed that the complainant continued to minimize the impact of his own behavior on the difficulties he was facing, an observation supported by the complainant's self-assessment.

OCR determined that upon completion of her assessment, the psychologist issued a written evaluation report to the Associate Dean⁵ in accordance with the College's policies.⁶ The report stated that the complainant should not be allowed to return to the College until he had demonstrated a significant period of psychological stability and the ability to manage life stressors. OCR determined that the psychologist's report stated that she did not believe that the complainant had mastered sufficient coping skills or the emotional self-regulation to enable him to deal effectively and safely with intense anger. The report also recommended that the complainant continue to see two treating therapists on a regular basis and abide by their recommended therapeutic regimens; and participate in a partial hospitalization program in order to solidify his coping skills.⁷

The Associate Dean informed OCR that she reviewed the psychologist's evaluation report and determined that the report's conclusions were substantiated by the information the psychologist's considered.⁸ OCR determined that the Associate Dean advised the complainant by email, dated _____, 2010, that she had decided to place him on a medical leave of absence. The Associate Dean further stated that if the complainant agreed, his records would show that the medical leave was voluntary in nature; if he disagreed, it would show that it was involuntary. Additionally, the Associate Dean advised the complainant in the email that he could appeal the decision by making an appointment with the Interim Vice President for Student Affairs/Associate Provost for Integrative Learning by _____ 2010. The Associate Dean informed OCR that she received a follow-up email from the complainant shortly thereafter informing her that he agreed with her determination and wished to accept the leave as voluntary. OCR determined that the complainant did not appeal the Associate Dean's determination.

Based on the above, OCR concluded that in reaching its determination that the complainant should be placed on a medical leave of absence after his emergency medical treatment for a psychiatric crisis that occurred on or about _____ 2009, the College made an individualized determination regarding the complainant pursuant to its policies. Additionally, OCR determined

⁵ OCR determined that the Vice President of Student Affairs has designated the Associate Dean of Student Affairs (the Associate Dean) to make determinations with respect to involuntary medical leaves of absence, and the VP is responsible for handling any appeals of the Associate Dean's initial determinations.

⁶ The complainant's representative asserted that the psychologist's report incorrectly stated that the complainant had experienced a previous psychiatric incident in which he allegedly shaved off all his hair, carved "sorry" into his arm, and walked to the hospital, when it was the complainant's mother, not the complainant himself, who had engaged in the behavior. The psychologist stated that the complainant informed her that he had taken these actions; but she asserted that even if the incident had been erroneously attributed to the complainant, it would not change her finding. She stated that her evaluation was also based on other instances of self-injurious behavior and acting out by the complainant; specifically, his use of a "nutmeg concoction," and a prior suicide attempt in 2003 that the psychiatrist had referred to as a "cursory gesture," despite the fact that the complainant himself informed the psychologist that it was a genuine suicide attempt.

⁷ The psychologist also informed OCR that she discussed her assessment with the Director of the Counseling Center, and that the Director concurred with her assessment. The psychologist informed OCR that the Director had spoken with another psychiatrist who had sporadically treated the complainant previously, but this psychiatrist did not provide any additional pertinent information regarding the complainant.

⁸ The Associate Dean further stated that she found credible the psychologist's observation that the complainant did not appreciate the gravity of his actions, as she had received emails from the complainant corroborating this point, including one in which the complainant claimed that the police report concerning his psychiatric crisis on _____ 2009, arose from an "overreaction by his girlfriend" and a "misunderstanding."

that the College considered the information provided by the complainant's treating medical providers, and notified him of his right to appeal. OCR determined that similarly situated non-disabled students are treated similarly under both Policies 1 and 2. Accordingly, OCR determined that the evidence was insufficient to indicate that the College discriminated against the complainant, on the basis of his disability, with respect to its determination to place the complainant on a medical leave of absence. Therefore, OCR will take no further action regarding Allegation 1.

With respect to Allegation 2, the complainant alleged that the College failed to designate a person to coordinate its efforts to comply with Section 504 of the Rehabilitation Act of 1973 (as amended), 29 U.S.C. §794, and its implementing regulation at 34 C.F.R. Part 104. The complainant further alleged that the College failed to identify a Section 504 Coordinator in its student handbook or other publications.

The regulation implementing Section 504, at 34 C.F.R. § 104.7(a), provides that recipients that employ fifteen or more persons must designate at least one person to coordinate compliance with Section 504. The regulation implementing Section 504, at 34 C.F.R. § 104.8, requires identification of the responsible employee in notices of nondiscrimination and in any publications or materials containing general information that it makes available to participants, beneficiaries, applicants, or employees. The regulation implementing the ADA, at 28 C.F.R. § 35.107(a), provides that public entities that employ 50 or more persons must designate at least one person to coordinate compliance with the ADA. The regulation implementing the ADA also requires public entities to make available to all interested individuals the name, office address, and telephone number of the designated employee or employees.

The College informed OCR that the Vice President for Student Affairs coordinates its efforts to comply with Section 504 and the ADA, and that this information was publicly available on the College's website. OCR determined that that the College's website states in two places, under Student Affairs Policies and Special Student Services, that "[t]he Vice President for Student Affairs serves as the ADA 504 Compliance Officer;" however, OCR determined that the VP's name, office address and telephone number are not provided on the College's website.⁹ OCR determined that the Student Handbook, which is available on the College's website and in printed format, also only provides the title of the designated employee. The College was unable to provide OCR with any other publications identifying its Section 504 and ADA Compliance Officer and providing the Compliance Officer's office address and telephone number.

In accordance with OCR policy, identifying the responsible employee, without providing information on how to contact that person, does not constitute an effective notice under Section 504 or the ADA; accordingly, the institution must also provide the name or title, address and telephone number of the responsible employee to comply with Section 504 and the ADA. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in recipients' publications, and distribution of memoranda or other written communications. See 34 C.F.R. § 104.8(a).

⁹ The specific links to the sections of the College's website identifying the Section 504 Coordinator are as follows:
<https://www.purchase.edu/Departments/StudentAffairs/Policies/disabilities.aspx>;
<https://www.purchase.edu/Departments/SpecialStudentServices/default.aspx>.

Based on the foregoing, OCR determined that the College has not provided sufficient identification of the employee designated to coordinate its efforts to comply with Section 504 and the ADA. Accordingly, OCR determined that the College has failed to satisfy the requirements of the ADA and OCR policy applicable to Section 504.

On January 13, 2011, the College agreed to implement the enclosed resolution agreement, which addresses the above-mentioned compliance concern. OCR will monitor implementation of the resolution agreement. Failure to implement the written resolution agreement will result in the immediate resumption of OCR's investigation.

This letter is not intended, nor should it be construed, to cover any issues regarding the College's compliance with Section 504 and the ADA that may exist, but 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 questions about OCR's determination, please contact Eric Bueide, Compliance Team Attorney, at (646) 428-3851, or Eric.Bueide@ed.gov; or Emma Kim, Compliance Team Attorney, at (646) 428-3824, or Emma.Kim@ed.gov.

Sincerely,


for Timothy C.J. Blanchard

cc: Wendy Kowalczyk

Encl.

RESOLUTION AGREEMENT

SUNY-Purchase College

Case No. 02-10-2181

In order to resolve Case No. 02-10-2181, Purchase College State University of New York (the College) assures the U.S. Department of Education, New York Office for Civil Rights (OCR), that it will take the following actions pursuant to the requirements of Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794 and its implementing regulation at 34 C.F.R. Part 104, and Title II of the Americans with Disabilities Act of 1990 (the ADA), 29 U.S.C. § 12101 et seq., and its implementing regulation at 28 C.F.R. Part 35.

Action Items

- I. By February 15, 2011, the College will revise its website to identify its Section 504 and ADA Compliance Officer by name and title, and provide his or her office address and telephone number.

REPORTING REQUIREMENT: By February 15, 2011, the College will provide documentation to OCR demonstrating that it has revised its website to include the information concerning the Section 504 and ADA Compliance Officer, as described in Action Item I.

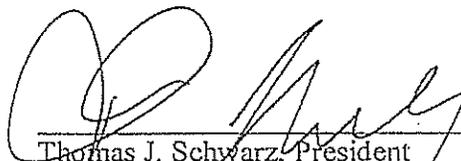
- II. By August 31, 2011, the College will revise the printed version of its Student Handbook for academic year 2011-2012, and any other relevant publications, to identify its Section 504 and ADA Compliance Officer by name and title, and provide his or her office address and telephone number.

REPORTING REQUIREMENT: By August 31, 2011, the College will provide documentation to OCR demonstrating that it revised the Student Handbook, and any other relevant publications, as described in Action Item II.

The College understands that OCR will not close the monitoring of this agreement until OCR determines that the recipient has fulfilled the terms of this agreement and is in compliance with the regulations implementing Section 504 and the ADA, at 34 C.F.R. § 104.7(a) and 104.8(a), and 28 C.F.R. § 35.107(a), which were at issue in this case. The College 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 College understands that during the monitoring of this agreement, if necessary, OCR may visit the College, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the College has fulfilled the terms of this agreement and is in compliance with the regulations implementing Section 504 and the ADA, at 34 C.F.R. § 104.7(a) and 104.8(a), and 28 C.F.R. § 35.107(a), which were at issue in this case.

Date

1/13/11



Thomas J. Schwarz, President

Purchase College State University of New York