

[Highly edited for educational purposes]

November 8, 1996
President
Gonzaga University

Re: Case No. 10952059

Dear President:

The Office for Civil Rights (OCR) has completed its investigation of the above-referenced complaint against Gonzaga University. In the complaint, it was alleged that the University discriminated against an applicant to the school of law by subjecting her to different treatment during the admissions process for 1994-95 academic year

Prior to applying to the law school in August 1993, the applicant disclosed information regarding her disabilities to the chairman of the University's board of trustees by letter dated April 9, 1993, in which the applicant expressed an interest in attending the University's law school and inquired about financial assistance. In the letter, the applicant described an 8-year history of health problems. The letter did not include specific information about her current disability status other than that she was permanently and totally disabled as defined by the Social Security Administration for determination of disability income. This letter was included in the applicant's admissions file.

By letter dated April 19, 1994, the professor who chaired the committee in that year (chairman) informed the applicant that because she had withdrawn her application for disability-related reasons, future reactivation of her application would require (1) a personal statement that she could begin and successfully complete law school with reasonable accommodation from the applicant, and (2) a comparable statement from a medical doctor to include recommendations for reasonable accommodation.

On both the original and supplemental applications for admission, the applicant answered affirmatively to the following question: "Do you have a physical disability, chronic health condition, or learning disability which requires special assistance?" Although the application form included a statement that responding to this question was optional, the application form did not include a statement regarding confidentiality or regulatory limits on the University's use of information related to self-disclosure of disability.

Analysis and Conclusion--Issue No. 1

The regulation implementing Section 504 at 34 CFR 104.42(b)(4) provides that in administering its admission policies, a recipient to which this subpart applies may not make preadmission inquiry into whether an applicant is a person with a disability but, after admission, may make inquiries on a confidential basis as to disabilities that may require accommodation. In addition, 34 CFR 104.42(b)(4) prohibits disability-related inquiries regarding the need for accommodations until after an applicant is admitted into a particular program.

Certain exceptions to the prohibition against preadmission inquiry are permitted by the regulation at 34 CFR 104.42(c) which states that recipients may invite applicants for admission to indicate whether and to what extent they are disabled only in situations wherein a recipient is taking remedial action to overcome the effects of past discrimination or is taking voluntary action to increase participation of students with disabilities. However, the regulation also requires recipients to clearly state on any written questionnaire used for this purpose or to make clear orally if no questionnaire is used that the information is being requested on a voluntary basis, that it will be kept confidential, that refusal to provide it will not subject the applicant to adverse treatment, and that it will be used only in accordance with the regulation.

In this case, the evidence established that the University made a preadmission inquiry to ascertain the exact nature and scope of the applicant's disability and, thus, made a determination regarding whether the applicant was qualified for admission into the law school program. Further, the evidence established that the University placed a requirement on the applicant to submit to a medical evaluation and to authorize the release of disability-related medical information as a condition to the University making a decision regarding whether to admit the applicant to the law school program.

Based on the above findings, OCR concludes that the University's processing of the applicant's application for the fall of 1995 was inconsistent with applicable regulatory standards because (a) the University was seeking disability-related information prior to rendering an admission decision for purposes other than those permitted by the regulation, (b) the University's request for disability-related information was not made on a voluntary basis because the University conditioned its admission decision on the receipt of such information, (c) the University was not seeking the information for the purposes excepted by the regulation regarding preadmission inquiries, and (d) the University did not inform the applicant, as required by the regulation, that providing the requested information was voluntary, that it would be kept confidential, that refusal to provide it would not subject the applicant to adverse treatment, or that it would be used only in accordance with the regulation. Therefore, OCR concludes that the University did not comply with 34 CFR 104.42(b) with respect to the issue investigated.

In addition to the compliance concern identified above, OCR also found that the application form used by the law school during the time of OCR's investigation made a disability-related inquiry which did not conform with the regulatory requirements of Section 504 at 34 CFR 104.42(c) because applicants were not advised that the requested information would be kept confidential and that it would be used only in accordance with the regulation. Based on this evidence, OCR determined that the University was not in compliance with 34 CFR 104.42(c) with respect to its law school application form. Following OCR's investigation, the University revised its law school application form consistent with applicable laws and regulations. Therefore, OCR concludes that the University is currently in compliance with 34 CFR 104.42(c) regarding this aspect of the issue.

Sincerely,
Director, Seattle Office
Western Division