

June 19, 1991

Dr. Kenneth P. Mortimer
President
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Bellingham, Washington 98225

This letter is to notify you that the Office for Civil Rights (OCR) has completed its investigation of the above-referenced complaint against Western Washington University (University). The complainant alleged that the University violated section 504 of the Rehabilitation Act of 1973 (Section 504) by discriminating against him on the basis of handicap. Specifically, the complainant alleged that the University discriminated against him on the basis of handicap by terminating his employment as a Resident Advisor at the University.

OCR conducted its investigation of the above-referenced complaint under the authority of Section 504 and its implementing regulations at 34 CFR Part 104, which prohibit discrimination on the basis of handicap in educational programs or activities that receive Federal financial assistance from the U.S. Department of Education. The issue investigated was:

Whether the University discriminated against a student on the basis of handicap by terminating his employment as a Resident Advisor. See 34 CFR 104.11, 104.12, and 104.46(c).

Based on the evidence and findings of fact established in our investigation, OCR identified an area of noncompliance with Section 504 regarding the investigated issue. However, the University has agreed to take the voluntary remedial actions as set forth in the enclosed Settlement Agreement (Agreement). OCR has concluded that upon full implementation of the Agreement, which OCR will monitor, the University will be in compliance with Section 504 concerning the issue investigated in this case.

The findings of fact and conclusion with respect to the issue investigated are set forth below:

Findings of Fact

1. Western Washington University was a recipient of Federal financial assistance from the U.S. Department of Education during the 1990-91 academic year.
2. The Resident Advisor job description provided by the University states that the Resident Advisor (RA) is a part-time employee of the University's Office of Residence Life (ORL), the department that has responsibility to coordinate student programs and activities in the residence halls. Each RA is responsible for the growth and welfare of the residents of the assigned living unit and is supervised by a Resident Director (RD). The four major areas of responsibility for an RA include: (1) community development, (2) working with individuals and groups, (3) coordination with the RD, and (4) administration.

3. The complainant was an RA during the 1989-90 academic year and was rehired as an RA for the 1990-91 academic year.
4. On October 1, 1990, the complainant was diagnosed as suffering from 'clinical depression' by the University's Chief of Medical Services who had prescribed anti-depressant medication for him.
5. On October 13, 1990, the complainant was admitted to the mental health unit of the community hospital after the University's Mental Health Professional was informed by the complainant's parents and a student that the complainant expressed a desire to commit suicide. The complainant was released from the hospital on October 16, 1990.
6. It was the testimony of the complainant's supervisor that the complainant had fulfilled the essential job requirements of the RA position up to the time of the complainant's hospitalization on October 13, 1990.
7. Following the complainant's release from the hospital on October 16, 1990, the University's Assistant Director of Residence Life (Assistant Director), in consultation with her supervisor, the Associate Director of University Residences for Residence Life (Associate Director), suspended the complainant from his RA duties with salary, pending the outcome of a student conduct hearing which was held on October 18, 1990, between the Assistant Director and the complainant. At this hearing, the circumstances surrounding the complainant's hospitalization on October 13, 1990, were discussed.
8. By letter dated October 19, 1990, the Assistant Director referred to the incident in which the complainant had expressed suicidal thoughts, expressed her concerns about his present ability to deal with the stress inherent in the RA position, and stated she needed some reassurance that he was 'psychologically able to fill the unique responsibilities of the RA position.' University officials testified that they were specifically concerned with the complainant's ability to serve as a role model, crisis intervener, and to provide support, advice, and information to students living in the residential units. The Assistant Director required the complainant to obtain a psychological evaluation as 'a condition of continued employment as a Resident Advisor.'
9. On October 23, 1990, the complainant appealed the condition of submitting a psychological evaluation (as set forth in the October 19, 1990, letter) to the Associate Director, who upheld the original decision, agreed to pay for the psychological evaluation, and extended the due date for receipt of the evaluation to November 9, 1990. The Associate Director informed the complainant that if the evaluation indicated the complainant had a 'manageable' mental health issue and was willing to follow through with all necessary medical and psychological treatment, he could continue in the RA position. The complainant next requested a higher level appeal from the Director of University Residences (Director).

10. On November 9, 1990, the complainant met with the Director and offered a letter written by the University's Chief of Medical Services, who had prescribed and monitored the complainant's anti-depressant medication. The letter stated, in pertinent part:

(The complainant) was referred to me by (the Emergency Mental Health Professional) for medication consultation for depression, 10/1/90. I agreed with the diagnosis of major depression and with (the complainant's) consent started Prozac 20 mg. daily. He followed up in one week with no change in symptoms. On 10/13/90 he experienced increasing suicidal ideation and was admitted involuntarily to (the community hospital). By 10/14/90 he was feeling markedly improved and was discharged 10/16/90, continuing on Prozac 20 mg. daily. He followed up with me as directed and has continued to improve symptomatically.

Clinical depression is a physiologic medical illness caused by neurotransmitter deficit in brain synapses. It responds readily to treatment as in the case in (the complainant), although a delay in the effectiveness of the medication is quite normal. (The complainant) has been consistently cooperative and compliant in returning for appointments, seeking counseling support, and taking prescribed medication.

In my opinion, there is no contra(in)dication to his continuing employment as a resident advisor given his excellent response to treatment.

This medical statement was rejected by the Director of University Residences as not satisfying the psychological evaluation requirement for the complainant's continued employment.

11. The complainant's position is that his suicidal statements resulted from a chemical imbalance, which was corrected by anti-depressant medication prescribed two weeks earlier by the University's Chief of Medical Services. His position is that the problems he experienced were due to the delay in the efficacy of the medication, and are chemical/medical in nature, not 'psychological.' Therefore, according to the complainant, the medical statement by the University's Chief of Medical Services stating that he is capable of resuming his RA duties should have been accepted by the University. The position of the University's Chief of Medical Services is that the complainant's clinical depression is the cause of his suicidal ideation.
12. The University's position is that the complainant was suspended from his RA duties, not because he was depressed or on medication for depression, but because of his behavior of contemplating suicide and the subsequent decision to hospitalize him. University officials added that the complainant's behavior, regardless of its cause, made the psychological evaluation necessary. The position of University administrators is that what they wanted was an extensive evaluation of the

complainant's mental and emotional stability by a qualified mental health professional, a licensed psychotherapist or psychiatrist, to indicate to them whether the complainant was emotionally stable and capable of returning to the responsibilities of his RA position. Their position is that a medical doctor is qualified to do a medical, but not a psychological, evaluation. However, University staff did not identify any information other than the suicidal thoughts and hospitalization, which were addressed by the physician's statement, that would indicate the complainant had an independent psychological problem that would make him unable to perform the essential duties of an RA.

13. On November 9, 1990, the Director notified the complainant that the Assistant Director's original decision would be upheld and extended the deadline for completion of the psychological evaluation to November 14, 1990. The complainant failed to submit the requested psychological evaluation.
14. By letter dated November 16, 1990, the University notified the complainant that his employment as an RA was terminated effective as of that date. The letter stated that the complainant had failed to comply with the condition of employment outlined in the October 19, 1990, letter and affirmed in subsequent appeals.
15. University officials testified that, after receipt of the letter by the complainant's treating physician, they possessed no new information beyond the complainant's earlier expression of suicidal thoughts and resultant hospitalization which indicated a continuing risk of suicidal behavior or which refuted the validity of the physician's opinion. University administrators did not obtain any additional information or clarification from the complainant's physician or another medical professional. At the time the complainant was discharged, the University administrators did not have information that would indicate the complainant was not capable of performing the essential functions of the RA position.

Analysis and Conclusion

The issue investigated in this case was whether the University discriminated against the complainant on the basis of handicap by terminating his employment as a University Resident Advisor.

The complainant alleged that he was discharged from his RA position after failing to meet the University's demand that he obtain a psychological evaluation pertaining to his emotional and mental fitness to continue in his job. During OCR's investigation, it was confirmed that the psychological evaluation was required of the complainant as a condition of continued employment after the complainant had expressed suicidal thoughts to his parents and another student on October 12, 1990.

Section 504 and its implementing regulation at 34 CFR Part 104 generally prohibits recipients of Federal financial assistance from discriminating against any qualified

handicapped person in any of its programs or activities, including those related to a recipient's employment practices. See 34 CFR 104.4 and 104.11.

In employment, a recipient has an affirmative obligation to make all decisions concerning employment in such a manner as to ensure that discrimination on the basis of handicap does not occur and may not limit, segregate, or classify employees in any way which adversely affects their opportunities or status because of handicap. See 104.11(a)(3).

As defined in Section 504, a 'handicapped person' means any person who has a physical or mental impairment which substantially limits a major life activity, has a record of such impairment, or is regarded as having such impairment. Mental or emotional illness and psychological disorders are included within the definition of handicap. See 34 CFR 104.3(j) and (i).

With respect to employment, a qualified handicapped person is defined as a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question. See 34 CFR 104.3(k)(i).

In this case, the complainant was medically diagnosed as having clinical depression. University officials did not assert, nor was there any evidence presented which would indicate, that the complainant had failed to fulfill the essential duties of an RA or that the suicidal ideation and resultant hospitalization adversely affected his actual job performance. As such, up to the time his employment was terminated, the complainant was a qualified handicapped person who was afforded the rights and protection of Section 504.

The psychological evaluation requirement was imposed after University administrators were informed of the complainant's expression of suicidal thoughts and consequent hospitalization. During OCR's investigation, University staff provided two justifications for the psychological evaluation requirement. The stated primary purpose of the evaluation was to ensure the well-being of the complainant by identifying the causes of the suicidal ideation and the treatment and precautionary measures necessary to avoid any suicide attempts. Additionally, staff expressed concerns that the complainant could be sufficiently emotionally unstable so that he would be unable to perform essential duties of the job, particularly in the job responsibility areas of community development and working with individuals and groups. These concerns specifically related to the complainant's ability to serve as a role model, crisis intervener, and to provide support, advice, and information to students living in the residential units.

In response to the University's request for a psychological evaluation, the complainant provided a letter from the University physician treating the complainant's clinical depression with an anti-depressant medication. The letter submitted to the University reflected a medical opinion that the suicidal thoughts were a manifestation of the complainant's clinical depression and noted that the medical treatment has controlled the complainant's depression to such a degree that there was no contraindication to his

continuing employment.

The University refused to accept the physician's letter as satisfying the evaluation requirement for the stated reason that a psychological evaluation was still needed to assess the complainant's emotional/mental stability. During its investigation, OCR sought to determine the University's rationale for rejecting the physician's letter, which on its face addresses the University's concerns about the complainant's suicidal ideation. According to University staff interviewed, there was no independent information to indicate the physician's statement was inaccurate or incomplete. No recurring behavior concerns were observed or reported of the complainant. No separate professional opinion was sought by University staff to inquire as to the validity or appropriateness of the physician's opinion and treatment, and University staff did not request permission from the complainant in order to consult with the treating physician to discuss any possible job performance concerns that may have existed. In sum, the evidence established that the University staff's failure or refusal to accept the professional opinion of the treating physician was based essentially on their belief that there could be a mental or psychological concern rather than, or in addition to, a physiological or chemical concern.

The University's continued insistence on the psychological evaluation and subsequent termination of the complainant's employment is inconsistent with Section 504. While the University did have a basis to be concerned with the complainant's behavior, information was provided to University officials which indicated that the behavioral manifestations of the complainant's handicapping condition were being effectively treated by medication and controlled to an extent which would have allowed the complainant to continue in the RA position. As such, the complainant's discharge due to his failure to provide a psychological evaluation was based upon the University's generalized assumptions about the complainant's suicidal ideation rather than on any reliable factual information pertaining to the complainant's ability to perform essential job functions, given the letter submitted by the complainant's physician. Therefore, the University's action in terminating the complainant's employment when he failed to provide the psychological evaluation was discriminatory on the basis of handicap. OCR concludes that the University discriminated against the complainant, based on handicap, by terminating his employment as an RA, inconsistent with Section 504 and its implementing regulations. See 34 CFR 104.11.

OCR and the University entered into discussions regarding the area of noncompliance identified above. As a result of these discussions, the University agreed to take voluntary corrective actions as set forth in the Agreement which Dr. Sandra Taylor, Vice President and Dean for Student Affairs, signed on June 14, 1991. I have signed the Agreement also, and a copy of the fully executed Agreement is enclosed.

OCR concludes that the University will be in compliance with 34 CFR 104.11, 104.12, and 104.46(c), with respect to this issue, upon full implementation of the actions and commitments contained in the Agreement. Therefore, based on the University's commitment to implement the actions specified in the enclosed Agreement, we are closing the above-referenced case effective

today.

This determination of compliance with Section 504 is contingent upon the University's implementation of commitments set forth in the Agreement. The University's failure to honor these commitments may result in further action by OCR with respect to this case.

This Letter of Findings is not intended, nor should it be construed, to cover any other issues regarding compliance with Section 504 that may exist and that are not discussed herein.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect, to the extent provided by law, personal information that, if released, could constitute an unwarranted invasion of privacy.

I would like to thank you for the cooperation extended to my staff during the investigation of this case. If you have any questions regarding this letter, please contact me or Felix E. Sandoval, Director, Compliance Division, at (206) 553-1930.

Gary D. Jackson
Regional Civil Rights Director
Region X