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Three days after the Student's suicide attempt, a University official (Official) spoke with the Student's mother and told her that the Student was being immediately withdrawn from the University. The Official told OCR that, in consultation with you, he made this decision based on the serious nature of the incident. In a letter to the Student dated five days after the suicide attempt, the Official stated that, "because of the behavior [the Student] exhibited," she was expected to immediately withdraw from the University and would be permitted on campus only to pick up her belongings. The letter stated that if the Student did not withdraw, the University would have no choice but to suspend her. The letter stated that it was in her best interest and that of the University that she leave the University and "receive the kind of professional help" not available at the school. Finally, the letter stated that if the Student wanted to return to the University, she would have to apply for readmission and submit information provided by "the appropriate counselors and/or doctors that [she is] fully capable of functioning as a student." In closing the letter, the Official again encouraged the Student to seek professional help. The Official did not contact any of the Student's treating physicians or counselors before sending this letter, nor did he contact the Student. He also did not review any of the Student's medical or counseling records in making this decision..

OCR's investigation revealed that the Student did not consent to the withdrawal and did not submit or sign any forms or statements suggesting her intent to withdraw from the University. There were no withdrawal papers in her student file, The only record the University could produce regarding the Student's withdrawal was an email from the Official to employees in the Registrar's office stating that the Student had been withdrawn from the University effective the date of his letter to the Student

Approximately one week after the Official sent the withdrawal letter to the Student, the Student's mental health counselor, a licensed social worker, sent a letter to the Official that stated that the Student was now able to cope with her mental illness and that she was no longer suicidal. The letter discussed the treatment anticipated for the Student and *informed* the University that the counselor had encouraged the Student to resume her studies and get back to her routine. The University made no attempt to contact the counselor after receipt of that letter and did not rescind its decision to withdraw the Student. The counselor also telephoned the Official shortly after her letter to discuss the Student's condition and anticipated treatment and to ask him to reconsider his decision. The Official told OCR that he refused to reconsider the decision and that he could not recall whether he had explained to the counselor what type of documentation the Student would need to submit to be able to return to the University. The Official stated to OCR that he was concerned that the Student would attempt suicide again.

That same week, the Student and her mother met with the Official and requested permission for the Student to return to the University immediately to finish the semester, which request the Official denied. The Official told OCR that, should the Student reapply to the University in the future, she would have to submit documentation from a medical professional indicating a diagnosis, treatment plan, and prognosis. He told OCR that he did not accept the information that the Student's mental health counselor, the

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Student, and her mother had provided but could not recall whether he explained to *the* Student or her mother what information would be sufficient or necessary for her to return,.

Following this meeting, the Complainant wrote several letters to the Official on the Student's behalf wherein she asserted that the University's actions in involuntarily withdrawing, the Student constituted disability discrimination. The University's response to the first letter was a one-paragraph letter stating that the Student's withdrawal was considered to be an emergency withdrawal and that she received a full refund of her tuition for the semester. The University responded to a second "letter from the Complainant by following up on the tuition refund and thanking the Complainant for sending information on the law concerning direct threat. OCR found that the University neither took any action to address the Complainant's allegations; that the actions taken by the University regarding the Student were discriminatory nor to advise the Complainant how to file a formal grievance. OCR's review of the University's Student Handbook revealed that it does not identify, by name or title, a responsible employee to coordinate its efforts to comply with Section 504 regulations and does not set forth any grievance procedures providing for the prompt and equitable resolution of disability discrimination complaints. The Official confirmed that the University has no specific grievance procedures for Section 504 complaints.

There is no provision in the Student Handbook, or in any of the documentation the University provided to OCR, that defines, describes, or mentions an emergency withdrawal or related procedures. The Student Handbook does set forth a judicial process for when a person is accused of violating an academic standard or violating the Honor System, giving students the right to a 72 hour notice of a charge and hearing and, if necessary, an appeal. However, the University did not give the Student the opportunity to use this process to appeal her withdrawal.

The Official could not recall for OCR any other instance where a student was required to withdraw from the University. Records the University provided for the 2002-2003 and 2003-,2004 academic years show that there were no emergency withdrawals or involuntary withdrawals for the 2002-2003 or 2003-2004 academic years. The Official did recall that a student who was seriously physically injured in an accident was once withdrawn from the University by her parent. This student was not required by the University to submit medical records, a treatment plan, or a prognosis upon her return. The Official could recall only one other instance where the University imposed the same requirements for return that were made for the Student's return. In that case, a student working at the University over the summer of 2003 began to exhibit what the Official deemed to be symptoms of mental illness and was asked to leave. That student was not allowed to return until he provided the University with documentation showing a diagnosis, a treatment plan, and a prognosis.

In addition, during the course of this investigation, OCR found that the University's policy concerning requests for modifications and accommodations for students with disabilities only applies on its face to students with learning disabilities. The Faculty Handbook does provide a more general definition of eligibility for disability services, but

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this is not distributed to students at the University. The policy found in the Student Handbook also does not specify the documentation that must be submitted to provide notice of a disability, nor to whom it must be submitted or when.

Applicable Regulatory Standards

Pursuant to the Section 504 implementing regulation, at 34 C.F.R. § 104.36(1), an individual with a disability is any person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. Under 34 C.F.R. § 104.3(j)(2)(i)(b), a physical or mental impairment includes any mental or psychological disorder, such as mental illness. Under 34 C.F.R. § 104.3(k)(3), a qualified individual with a disability, with respect to post-secondary education, is one who meets the academic and technical standards requisite to participation in the recipient's education program. 34 C.F.R. § 104.36(2)(iv) states that a person regarded as having a disability is a person who does not have a physical or mental impairment that substantially limits a major life activity but who is treated by others as having such a limitation. Further, pursuant to 34 C.F.R. § 104.43, no qualified student with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any postsecondary education program or activity.

OCR policy holds that 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 self or 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. However, recipients must take steps to ensure that disciplinary and other adverse actions against persons posing a direct threat are not a pretext or excuse for discrimination.

To rise to the level of a direct threat, there must be a high probability of substantial harm and not just a slightly increased, speculative, or remote risk. In a direct threat situation, a college needs to make an individualized and objective assessment of the student's ability to safely participate in the college's program, based on a reasonable medical judgment relying on the most current medical knowledge or the best available objective evidence. The assessment must determine; the nature, duration, and severity of the risk; the probability that the potentially threatening injury will actually occur; and whether reasonable modifications of policies, practices, or procedures will sufficiently mitigate the risk. Due process requires a college to adhere to procedures to ensure that students with disabilities are not subject to adverse action on the basis of unfounded fear, prejudice, or stereotypes. A nondiscriminatory belief will be based on a student's observed conduct, actions, and statements, not merely knowledge or belief that the student is an individual with a disability. In exceptional circumstances, such as situations where safety is of immediate concern, a college may take interim steps pending a final decision regarding adverse action against a student as long as minimal due process (such as notice and an initial opportunity to address the evidence) is provided in the interim and full due process (including a hearing and the right to appeal) is offered later.

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Finally, the Section 504 regulation, at 34 C.F.R. § 104.7 requires recipients with fifteen or more employees to designate a responsible employee to coordinate Section 504 compliance efforts and to adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of Section 504 complaints. The regulation, at 34 C.F.R. § 104.44(3), also requires postsecondary institutions to make such modifications to its academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating, on the basis of disability, against a qualified student with a disability.

Analysis

The Student was admitted to the University and, therefore, is qualified within the meaning of Section 504. The evidence supports that, although the Student had not been diagnosed as having bipolar disorder at the time she was involuntarily withdrawn, the University regarded her as having a mental disability that was substantially limiting. The University withdrew the Student following her suicide attempt because of its perception that she was mentally ill and incapable of functioning as a student, as evidenced by the letter the Official sent to the Student and OCR's interview of the Official concerning his decision. The University required the Student to submit evidence from a medical professional of her diagnosis, a treatment plan, and her prognosis before she would be eligible to reapply. This requirement has only been imposed on one other student at the University, a student who the same Official also regarded as mentally ill. Moreover, when the Student was seeking to return to the University, she advised the University that she was diagnosed as having bipolar disorder, and the University does not dispute that the Student has a disability. Thus, OCR finds that the Student is a qualified individual with a disability under Section, §504.

In withdrawing the Student from the University, the University did not afford the Student due process. Despite being notified of the Student's disability and receiving documentation and information concerning her ability to return to school from the counselor, the Student, and the Student's mother, the Official refused to reconsider the withdrawal decision. The Official could not recall whether he explained to the Student and her mother the documentation required for the Student to return. The evidence shows that the Official failed to consider the information about the Student's condition that was presented, did not explain what was insufficient about the submitted information to the Student and her mother, and would not allow the Student to return to school that semester.

The University did not *specifically* state that the Student posed a direct threat to herself or others as *its* reason for withdrawing the Student, OCR examined. this possible defense, however, because the University stated that the Student was removed because of a fear *that she* would attempt suicide again. OCR found that *the* evidence does not support a defense based on direct threat. The University did not consult with medical personnel, examine objective evidence, ascertain the nature, duration and severity of the risk to the student or other students, or consider mitigating the risk of injury to the Student or other

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students. *The University made the decision without providing the Student notice of a hearing or an opportunity to be heard. Rather, the evidence showed that the University made a determination to withdraw the Student within forty-eight hours of her attempted suicide based on a conversation between the Official and you.*

Finally, the *University does not have any format Section 504 grievance procedures addressing Section 504 grievances and, therefore, did not address the Complainant's disability discrimination allegations against the University. The University's policies also do not designate a specific Section 504 Coordinator as required by Section 504. In addition, the University's limited policies on students with disabilities only include learning disabilities and do not provide information for a student to be able to determine how to notify the University of a disability or need for academic adjustments or auxiliary aids and services.*

Commitment to Resolve

On December 15, 2004, the University agreed to implement the enclosed agreement to resolve the compliance issues identified during our investigation. Pursuant to the agreement, the University will: reimburse the Student for any room fees and books for spring semester 2004 that have not already been returned to her, develop a written policy establishing reasonable emergency removal and return conditions consistent with the direct threat standards explained above; develop policies and procedures that comply with Section 504 for the participation of students with disabilities in the University's programs and for the provision of necessary academic adjustments and auxiliary aids and services to students with disabilities; and develop grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging disability discrimination. OCR will monitor the implementation of the agreement"

Based on *the above, we are closing this complaint as of the date of this letter. OCR appreciates the courtesy and cooperation shown by your staff and counsel during the investigation and resolution of this complaint. We look forward to receiving your first monitoring report, which is due February 7, 2005. If you have any questions or concerns about the resolution of this complaint, please contact Ms. Ann Millette at (216) 522-2679 or by email at ann.millette@ed.gov.*

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Sincerely,

Yondaan
Team Leader, Cleveland Office
Midwestern Division

Enclosure

cc: Ms. Doreen Canton, Esq.