

Edited for educational purposes<sup>1</sup>

Complaint No. 05-91-2065

August 9, 1991

\*\*\*\*\*

President

Thomas M. Cooley Law School

\*\*\*\*\*

The Office for Civil Rights (OCR), U.S. Department of Education, has completed its investigation of the above referenced complaint filed on April 9, 1991. The complaint alleges Thomas M. Cooley Law School (Law School) discriminated against the complainant by denying her admission based on her handicap and by making improper preadmission inquiries about applicants' handicaps.

\*\*\*\*\*

OCR's investigation found the Law School violated Section 504 and its implementing regulation at 34 C.F.R. 104.42(a), (b)(4), and (c) when it denied the complainant admission based on her handicap and when it made improper preadmission inquiries about mental and physical handicaps. On July 15, 1991, however, the Law School voluntarily provided OCR with assurances that, when fully implemented, will resolve these areas of noncompliance.

During the investigation, OCR examined evidence submitted by both the complainant and the Law School and interviewed witnesses. The following discussion sets forth the basis for OCR's findings.

\*\*\*\*\*

The complainant has a history of depression and has been seeing a psychiatrist for the past two years. She indicated on her application form, however, that she is not debilitated by this mental illness, and she is able to manage her affairs. Admissions Committee members regarded the complainant as handicapped when they denied her admission to the Law School based on their belief that because of her mental illness she was not well enough to attend school. The complainant also has a history of dyslexia. OCR concludes the complainant is handicapped as defined by the Section 504 regulation.

A qualified handicapped person with respect to postsecondary education services is defined at 34 C.F.R. 104.3(k)(3) as a handicapped person who meets the academic and technical standards requisite for admission to or participation in the recipient's education program. The Law School admits applicants whose index score is 50 or above. The complainant met this requirement because she had an index score of 55. Therefore, OCR determined that the complainant is a qualified handicapped person under the Section 504 regulation at 34 C.F.R. 104.3(k)(3).

---

<sup>1</sup> The full text of this letter may be found at 2 NDLR p 130.

The Section 504 implementing regulation at 34 C.F.R. 104.42(a) provides that qualified handicapped persons may not, on the basis of handicap, be denied admission or be subjected to discrimination in admission or recruitment by a recipient. The regulation at 34 C.F.R. 104.42(b)(4) provides that a recipient may not make a preadmission inquiry as to whether an applicant is a handicapped person except as provided in paragraph (c) of 34 C.F.R. 104.42, but after admission may make inquiries on a confidential basis as to handicaps that may require accommodation. The regulation at 34 C.F.R. 104.42(c) allows a preadmission inquiry when a recipient is taking remedial action to correct the effects of past discrimination or when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in federally assisted programs or activities. Further, the regulation at 34 C.F.R. 104.42(c) states that a recipient may invite applicants for admission to indicate whether and to what extent they are handicapped provided that the recipient states clearly that the information is intended for use solely in connection with its remedial action obligations or its voluntary action efforts. In addition, the regulation at 34 C.F.R. 104.42(c)(2) requires a recipient to state clearly 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.

The Law School has an open admissions program based on an applicant's undergraduate grades and Law School Admission Test (LSAT) score. The Admissions Director has the authority to admit regular applicants who have an index score of 50 or above on the day she reviews applications. The Admissions Director calculates index scores by multiplying an applicant's undergraduate grade point average by 10 and adding that number to the applicant's LSAT score. Virtually all applicants who have an index score of 50 or above are admitted to the Law School in the order in which the Admissions Office receives applications.

Applicants who have an index score of 50 or above but who answer yes to questions 25 through 30 on the application form are placed in a special category for further review. Questions 25 through 30 ask whether an applicant has a mental illness, has a criminal history, has been fired from a job, or has been dismissed academically.

The Admissions Director requests additional information from applicants placed in the special category. For applicants who answer yes to question 29(a) and (b), which asks about an applicant's mental health, the Admissions Director requests a note from the applicant's physician describing the diagnosis, treatment, and prognosis. The Admissions Director submits special applications for consideration of the Admissions Committee, which meets three times a year.

In January 1991, the complainant applied to the Law School. She answered yes to question 29(a), which asks whether an applicant has had a mental illness. Also, the complainant submitted a letter from her psychiatrist indicating she has the character to handle the rigors of law school. The Admissions Director marked the complainant's application special because she answered yes to the mental health questions, even though she had an index score of 55. The Admissions Director also requested additional information from the complainant's psychiatrist regarding her diagnosis, treatment, and prognosis. The Admissions Director and the Chairman of the

Admissions Committee said the complainant would have been admitted to the Law School based on her index score if she had not answered yes to the mental health question.

The Admissions Committee reviewed the complainant's application during its March 18, 1991, meeting. The Chairman of the Admissions Committee said the Admissions Committee relies heavily on recommendations of applicants' physicians when evaluating special applicants who have a history of mental illness. The Admissions Director summarized information regarding the complainant's diagnosis, treatment, and prognosis and presented this information to the Committee. In his second letter, the complainant's psychiatrist indicated he is optimistic about the complainant's prognosis provided she continues her medication and treatment. The Committee, whose members were not physicians and did not have professional experience in the area of mental health, decided the complainant was unfit for studying law at that time, based mainly on its interpretation of her psychiatrist's evaluation. The Committee considered the psychiatrist's first letter a recommendation and disregarded it.

The Law School's imposition of additional conditions on the complainant because she answered yes to question 29(a) on the application form, which asks whether an applicant has had a mental illness, denied the complainant the opportunity to be admitted to Law School, even though she had an index score above the requirement normally necessary for admission. Although the complainant's physician submitted two letters in support of the complainant's application, the Admissions Committee, which scrutinized the complainant's application in view of her affirmative answer to question 29(a), denied the complainant's application. Therefore, the Law School was in violation of Section 504 and its implementing regulation at 34 C.F.R. 104.42(a) and (b)(4) when it improperly imposed additional conditions on the complainant and denied her admission to the Law School on the basis of her handicap.

In addition to the aforementioned impermissible inquiry on question 29(a) regarding an applicant's mental illness, the Law School requests further information about an applicant's mental condition on question 29(b) on the 1991 application form. The Law School uses information requested in question 29(a) and (b) improperly as a screening device during the admissions process. Also included on the 1991 application form is question 24, which asks whether an applicant has a physical handicap. The Admissions Director advised OCR that she requests information regarding applicants' physical handicaps to accommodate special needs for incoming students and that she does not use this question as a screening device.

Although 34 C.F.R. 104.42(c) allows for preadmission inquiries under certain stipulated conditions, such as overcoming effects of past discrimination or taking voluntary action to increase participation of handicapped students, the Dean of the Law School advised OCR, in a letter dated May 20, 1991, that he does not know of any court orders, arbitration decisions or other findings that the Law School has discriminated against handicapped individuals.

Further, the inclusion of the inquiries of questions 24 and 29 on the application form does not conform with the requirements of the regulation at 34 C.F.R. 104.42(c) because applicants are not advised that the requested information is voluntary, that the information will be kept confidential, that refusal to provide it will not subject an applicant to any adverse treatment and

that it will be used only in accordance with the regulation.

Also, at the time of OCR's investigation, the Admissions Director asked applicants why they took the LSAT under special conditions. The Admissions Director stated that she requested this information from applicants because the testing service no longer provides it. The Admissions Director learned about the complainant's dyslexia when she asked why the complainant took the LSAT under special conditions, but she claimed that knowledge of the complainant's learning disability did not influence her decision to place the complainant's application in a special category. The Admissions Director said that no applications are marked special when applicants indicate they have learning disabilities. However, the inquiry by the Admissions Director as to the reasons why applicants took the LSAT under special conditions does not conform with the requirements of 34 C.F.R. 104.42(c).

Given the Law School's practice of impermissibly inquiring about applicants' handicaps form and in the exploration of why applicants took the LSAT under special conditions, the Law School is in violation of 34 C.F.R. 104.42(b)(4) and (c).

Based upon the Law School's enclosed assurances, which are incorporated by reference into this Letter of Findings, OCR is closing this complaint investigation as of the date of this letter. Failure to implement the assurances may result in a finding of a violation and OCR's initiation of enforcement activity. As is our standard practice, OCR will monitor compliance with the assurances in accordance with the time frames established.

\*\*\*\*\*

We wish to thank [you] ... and your staff for the cooperation extended during our investigation and for the Law School's prompt compliance with OCR's findings in this investigation. If you have any questions regarding this letter, please contact me or .....

\*\*\*\*\*

Regional Director