



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
32 OLD SLIP, 26TH FLOOR
NEW YORK, NEW YORK 10005

TIMOTHY C. J. BLANCHARD
DIRECTOR
NEW YORK OFFICE

April 27, 2018

Robert Barchi, M.D., Ph.D.
President
Rutgers University
83 Somerset Street
New Brunswick, New Jersey 08901-1281

Re: Case No. 02-18-2006
Rutgers University – New Brunswick

Dear Dr. Barchi:

This letter is to advise you of the resolution of the above-referenced complaint filed with the U.S. Department of Education, Office for Civil Rights (OCR), against Rutgers University (the University). The complainant alleged that the University discriminated against her, on the basis of her disability, by involuntarily withdrawing her from the University on August 8, 2017 (Allegation 1); not permitting her to make up coursework that she missed in her Principles of Electrical Engineering II and Principles of Electrical Engineering II Lab courses due to disability-related hospitalizations during the spring semester 2017 (Allegation 2); and, denying her appeal of the involuntary withdrawal on August 25, 2017 (Allegation 3).

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 and activities receiving financial assistance from the U.S. Department of Education (the Department). OCR also is responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (the 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 University is a recipient of financial assistance from the Department, and is a post-secondary education system. Therefore, OCR has jurisdictional authority to investigate this complaint under both Section 504 and the ADA.

The regulation implementing Section 504, at 34 C.F.R. § 104.4(a), provides that no qualified person with a disability shall, on the basis of a disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives federal financial assistance. Further, the regulation implementing Section 504, at 34 C.F.R. § 104.4(b)(1)(i),(ii),(iv), and (vii), states that a recipient may not, on the basis of

disability, deny a qualified person with a disability the opportunity to participate in or benefit from an aid, benefit or service; afford them an opportunity to participate or benefit from an aid, benefit or service that is not equal to that afforded others; provide a different or separate aid, benefit, or service; or, otherwise limit a qualified person with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit or service. Additionally, the regulation implementing Section 504, at 34 C.F.R. § 104.4(b)(4), prohibits a recipient from utilizing criteria or methods of administration that have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability. The regulation implementing the ADA, at 28 C.F.R. § 35.130(a), provides that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity. The regulation implementing the ADA, at 28 C.F.R. § 35.130(b)(1)(i), provides that a public entity, in providing any aid, benefit, or service, may not deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service.

In its investigation, OCR reviewed information submitted by the complainant and policies submitted by the University.

For academic year 2016-2017, the complainant was enrolled in the University's School of Engineering (the school). OCR determined that during the spring 2017 semester, the complainant was enrolled in several courses, including Electrical Engineering II (the course) and Principles of Electrical Engineering II Lab (the lab). The complainant advised OCR that she was hospitalized on the following dates during the spring 2017 semester: March 25-April 11, 2017; April 13-20, 2017. Additionally, the complainant advised OCR that she was hospitalized in long-term care from in or around May 2017 until July 27, 2017.

OCR determined that in an electronic mail (email) message to the School's Undergraduate Program Director, dated July 29, 2017, the complainant inquired about having her grades changed to reflect approved absences after her hospitalizations. In a letter dated August 8, 2017, the University informed the complainant that she would be involuntarily withdrawn from the University, and outlined the complainant's right to seek an appeal of the Threat Assessment and Safety Committee's (TASC) decision.

OCR determined that the University has a Safety Intervention policy (the policy) that sets forth a process for safety intervention and involuntary withdrawal of students who pose a credible substantial risk of harm to individuals within the University or to the University community; or substantially impede the lawful activities, the educational process, or the proper activities or functions of other members of the University community. The policy establishes a procedure for an interim safety intervention or involuntary withdrawal where safety is an immediate concern; the TASC, which assists in evaluating whether students meet the criteria for a safety intervention and/or involuntary withdrawal; a process for a safety intervention and involuntary withdrawal; an appeal procedure; and, guidelines for a student's return to campus or readmission.

The policy provides that any member of the University community who has reason to believe that a student poses a credible substantial risk of harm to the University community and thus may

meet the criteria for safety intervention and/or involuntary withdrawal may contact the Chancellor or designee for their campus who will conduct an informal review of the information presented. Upon completion of the informal review, the Chancellor or designee for the campus may recommend that a student be subject to an intervention or involuntary withdrawal. In determining whether the student presents a credible substantial risk of harm to the University community, the Chancellor or designee for the campus is required to make an individualized assessment based on a reasonable judgement that relies upon current medical or other specialized knowledge or the best available evidence to ascertain: the nature, duration, and severity of the risk; the probability that potential injury and/or harm will occur; whether the student substantially impeded the educational process or functions of other members of the University community; and, whether reasonable modifications of policies, practices, or procedures significantly mitigate the risk. In making this individualized assessment, the Chancellor or designee for the campus may consult with the TASC. As part of the individualized assessment, the student may be required to undergo an evaluation, including a medical or psychological evaluation, by an independent and objective health professional. In addition, the Chancellor or designee for the campus will consider any medical or other relevant information the students submits.

Further, the policy provides that a student who is subject to an intervention or involuntarily withdrawn may appeal the determination by making a written request to the University Chancellor, or designee for an informal proceeding to review the determination. The policy sets forth the timeframes for the appeal process, and the rights of the student for participation in the process, including an informal hearing, the opportunity to receive a written statement, detailing the reasons for the intervention and/or involuntary withdrawal and review the evaluations relied upon by the University; the right to be assisted by appropriate counsel and/or legal counsel; and, the right to present witnesses and information.

OCR determined that the University's policy is neutral on its face, as it applies in the same manner regardless of whether a student has a disability; and, allows for individualized assessments. Further, nothing in the regulations implementing Section 504 or the ADA prohibit the University from imposing a temporary suspension and establishing guidelines, including requiring medical documentation, to determine fitness for return to campus.

OCR determined that on August 9, 2017, the complainant requested that the University permit her to make up missed assignments in the course and lab. The complainant advised OCR that the University ultimately permitted her to make up coursework in the course and lab; however, the professor imposed restrictions on the specific work that she could make up.

OCR determined that on August 10, 2017, the complainant met with the Vice Chancellor for Student Affairs to appeal her involuntary withdrawal. By letter dated August 25, 2017, the University informed the complainant that the appeal of her involuntary withdrawal was denied.

During the course of OCR's investigation, the University expressed its interest in entering into an agreement with OCR to voluntarily resolve the complainant's allegations under Section 302 of OCR's Case Processing Manual. On April 24, 2018, the University signed the attached resolution agreement (Agreement) to voluntarily resolve the complainant's allegations. OCR

will monitor the implementation of the Agreement. Upon the University's satisfaction of the commitments made under the Agreement, OCR will close the case.

This letter should not be interpreted to address the University's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement 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.

Please be advised that the University may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the individual may file a complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document 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 reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions regarding OCR's determination, please contact Jocelyn Panicali, Compliance Team Attorney, at (646) 428-3796 or jocelyn.panicali@ed.gov; Lisa Khandhar, Compliance Team Attorney, at (646) 428-3778 or lisa.khandhar@ed.gov; or Nadja Allen Gill, Compliance Team Leader, at (646) 428-3801 or nadja.r.allen.gill@ed.gov.

Sincerely,



Timothy C.J. Blanchard

Encl.

cc: Julianne M. Apostolopoulos, Esq.

VOLUNTARY RESOLUTION AGREEMENT

Rutgers University
Case No. 02-18-2006

In order to resolve Case No. 02-18-2006, Rutgers University (the University) assures the U.S. Department of Education, Office for Civil Rights (OCR), that it will take the actions detailed below 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), 42 U.S.C. § 12131 et seq., and its implementing regulation at 28 C.F.R. Part 35.

This resolution agreement has been entered into voluntarily and does not constitute an admission by the University that it committed any wrongdoing, including, but not limited to, a violation of Section 504, the ADA and/or their respective implementing regulations.

Action Item 1: Individualized Assessment of the Ability to Return to the University

By June 30, 2018, the University will conduct an individualized assessment to determine whether the complainant should be permitted to return or be readmitted to the University in accordance with University's policies and procedures, including University Policy 10.2.12, Safety Intervention Policy. This individualized assessment will consider the nature, duration, severity, and probability that any risk will recur. In making the individualized assessment, the University may request relevant medical information from the complainant to ascertain fitness and/or require the student to undergo an evaluation, including a medical or psychological evaluation, by an independent and objective health professional designated by the University, which may include the University's Counseling, ADAP & Psychiatric Services ("CAPS"). However, if the complainant declines to provide such information or participate in such evaluation within the time frame required by the University, the University may proceed with its individualized assessment based on the information currently in its possession. The University will also determine whether reasonable modifications of the University's policies, practices, or procedures or any reasonable accommodations could sufficiently mitigate any risk posed by the complainant. If the University concludes that the complainant no longer poses a risk, or that any risk can be mitigated by the provision of reasonable accommodations, the University will allow the complainant to re-enroll. In making this individualized assessment, the University will ensure that the complainant is treated similarly to other similarly situated students with or without disabilities. If the University determines that the complainant should not be permitted to return to the University, the University will provide the complainant with an opportunity to appeal this decision, in accordance with the appeals process set forth in University Policy 10.2.12. If the decision not to permit the complainant to return to the University is sustained on appeal, the University will be under no obligation to re-enroll the complainant in the University unless and until the University determines to do so pursuant to Section VII, "Return to Campus or Readmission," of Policy 10.2.12.

Reporting Requirement: By July 15, 2018, the University will provide documentation to OCR demonstrating that the University conducted the individualized assessment as

described in Action Item 1. This documentation should include, but is not limited to, the name(s) and title(s) of the individual(s) conducting the review; and, a detailed explanation of the outcome of the assessment. Following the receipt of this information, OCR will notify the University regarding whether the assessment is compliant with Section 504 and the ADA. If the University determines that the complainant no longer poses a risk, or that any risk can be mitigated by the provision of reasonable accommodations, the University will provide documentation to OCR demonstrating that it offered the complainant an opportunity to re-enroll in the University. If the University determines that the complainant should not be permitted to return to the University, the University will provide documentation to OCR demonstrating that it provided the complainant with an opportunity to appeal this decision, in accordance with the appeals process set forth in University Policy 10.2.12.

Action Item 2: Offer to Make-Up Coursework or Have Failing Grades Converted to “W”

By July 30, 2018, or within thirty days of the outcome of any appeal conducted pursuant to Action Item 1, above, whichever is later, the University will offer the complainant, in writing, one of the following options:

- a) If the University permits the complainant to reenroll in the University pursuant to Action Item 1, above, the University will offer the complainant, in writing, the option to make up missed coursework in the following courses in which she was enrolled during the spring 2017 semester: Principles of Electrical Engineering II (the Course) and Principles of Electrical Engineering II Lab (the Lab), consisting of: two exams in the Course, and two labs and corresponding two lab reports for the Lab. The University will provide a minimum of 30 days for the complainant to respond to the offer. If the complainant accepts this offer, the University will offer the complainant a minimum of two semesters in which to make up the work. The complainant will be responsible for coordinating with the Office of Disability Services and the Course and Lab instructor prior to the start of the Fall 2018 semester to schedule time to complete the specified outstanding coursework that must be performed on campus (i.e., exams and lab work), by the end of the Spring 2019 semester. In the event that the complainant requests an adjustment of the timeframes set forth in this paragraph, the University may request that the complainant submit appropriate documentation substantiating the need for such adjustment and assess whether the request is reasonable under the circumstances before determining whether to grant any such request as a reasonable accommodation. In the event that the complainant completes any of the outstanding coursework for the Course or the Lab pursuant to this paragraph, the University will provide the complainant with a grade for the Course and/or Lab, as applicable, based upon the work the complainant completes by the end of the Spring 2019 semester. The University is under no obligation to extend this offer with respect to any course in which the complainant either enrolled in the past or may enroll in the future other than the Course and Lab referenced above.
- b) If the University determines, pursuant to Action Item 1, that the complainant should not be permitted to return to the University at this time, the University will offer the complainant, in writing, the option to have the failing grades (“F”) she received in the

Course and the Lab referenced in subsection (a), above, converted to “W” grades, indicating a withdrawal from the Course and the Lab. The University will provide a minimum of 30 days for the complainant to respond to the offer. If the complainant chooses to accept this option, the University will convert the grades for the Course and the Lab to “W” grades within thirty (30) days of the complainant’s acceptance of the offer. If the complainant rejects this offer, the University will be under no obligation to extend this offer again in the future. The University is under no obligation to extend this offer with respect to any course in which the complainant either enrolled in the past or may enroll in the future other than the Course and Lab referenced above.

Reporting Requirements:

- (a) By August 30, 2018, or within sixty days of the outcome of any appeal conducted pursuant to Action Item 1, above, whichever is later, the University will provide documentation to OCR demonstrating that it has offered the complainant the applicable option consistent with Action Item 2; and, a copy of the complainant’s response, if any. If the complainant rejects or does not respond within thirty days to the University’s offer pursuant to Action Item 2(a) or 2(b), respectively, reporting requirements (b) and (c), below, will not apply.
- (b) If the University extends the complainant the offer pursuant to Action Item 2(a), above, the University will provide documentation to OCR by June 15, 2019 (i) regarding what, if any, coursework the complainant completed by the end of the Spring 2019 semester, and (ii) demonstrating that, if applicable, the complainant’s grades for the Course and/or Lab were revised appropriately. If the University adjusts the timeframes above upon a documented reasonable request made/legitimate need shown by the complainant, the University will provide documentation to OCR within thirty days following the expiration of the new timeframe for completion of the coursework.
- (c) If the University extends the complainant the offer pursuant to Action Item 2(b), above, and the complainant accepts such offer, within 30 days of the complainant’s acceptance of the University’s offer, the University will provide documentation to OCR demonstrating that the complainant’s grades for the Course and/or Lab were revised, appropriately.

The University understands that by signing this Agreement, it agrees to provide the foregoing information in a timely manner in accordance with the reporting requirements of this Agreement. Further, the University understands that during the monitoring of this Agreement, if necessary, OCR may visit the University, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the University has fulfilled the terms of this Agreement and is in compliance with Section 504 and its implementing regulation at 34 C.F.R. §104.4, and the ADA and its implementing regulation at 28 C.F.R. §35.130. Upon completion of the obligations under this Agreement, OCR will close this case. The University understands and acknowledges that OCR may initiate administrative enforcement or judicial proceedings to

enforce the specific terms and obligations of this Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce this Agreement, OCR will give the University written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

This Agreement will become effective immediately upon the signature of the University's representative below.

4/24/18
Date

Debra L. Maxindy
Authorized Representative
Rutgers University