



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

915 2ND AVE., SUITE 3310
SEATTLE, WA 98174-1099

April 25, 2014

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Dr. Randal Roberts
President
Western Seminary-Portland Campus
5511 SE Hawthorne Boulevard
Portland, Oregon 97215

Re: Western Seminary-Portland Campus
OCR Reference No. 10132035

Dear Dr. Roberts:

This is to inform you that the U.S. Department of Education, Office for Civil Rights (OCR) is discontinuing its investigation of the above-referenced discrimination complaint against Western Seminary-Portland Campus (seminary). The complaint alleged that:

1. the seminary discriminated against the applicant, on the basis of age and disability, when it denied him admission to the seminary's counseling program in November or December of 2012; and
2. the seminary discriminated against the applicant, on the basis of disability, when during the same time-period, it required the applicant to complete a mental health personality inventory and made unlawful pre-admission inquiries as part of the admissions process.

OCR accepted this complaint for resolution under the authority of the Age Discrimination Act of 1975 (Act) and its implementing regulation, which prohibits discrimination on the basis of age in programs and activities receiving federal financial assistance from the U.S. Department of Education and under the authority of section 504 of the Rehabilitation Act of 1973, and its implementing regulations. Section 504 prohibits discrimination on the basis of disability in programs and activities receiving federal financial assistance from the U.S. Department of Education. The seminary receives federal financial assistance from this Department.

In accordance with Section 302 of OCR's *Case Processing Manual* a complaint may be resolved at any time when, before the conclusion of an investigation, the recipient expresses an interest in resolving the complaint. Prior to the conclusion of OCR's investigation, the seminary, through its legal counsel, requested to resolve the complaint. Subsequent discussions with the seminary's legal counsel resulted in the seminary signing the enclosed Voluntary Resolution Agreement (agreement) which, when fully implemented, will resolve the issues raised in the complaint.

Applicable Legal Standards

Disability:

The Section 504 regulation, at 34 CFR 104.4(a) states that no qualified disabled person shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives federal financial assistance.

The regulations applicable to admissions and recruitment by postsecondary institutions, at 34 CFR 104.42, provide that a qualified person with a disability may not, on the basis of disability, be “denied admission or be subjected to discrimination in admission or recruitment by a recipient to which this subpart applies.” Subsection (b)(2) of that section provides that in administering its admissions policies a recipient may not “make use of any test or criterion for admission that has a disproportionate, adverse effect on [disabled] persons or any class of [disabled] persons unless (i) the test criterion, as used by the recipient, has been validated as a predictor of success in the education program or activity in question and (ii) alternate tests or criteria that have a less disproportionate, adverse effect are not shown by [OCR] to be available.” Subsection (b)(4) of that section provides that, except for inquiries that are made in order take remedial action to correct the effects of past discrimination, a recipient “may not make a pre-admission inquiry as to whether an applicant for admission is a [disabled] person . . .”

Age:

The Age Discrimination Act, 42 USC CHAPTER 76, section 6102 provides that “no person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving federal financial assistance.” Section 34 CFR 110.10(a) provides that “No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.” Under 34 CFR 110.12 through 110.14, a recipient is permitted to take an action otherwise prohibited under section 110.10 even though that action may have a disproportionate effect on persons of different ages, if the factor bears a direct and substantial relationship to the normal operation of the program or activity or to the achievement of a statutory objective, and the recipient has the burden of proving that an age distinction or other action falls within the exceptions outlined in 34 CFR 110.12 and 110.13.

OCR considers the allegations of this complaint resolved effective the date of this letter and will monitor the seminary’s implementation of the agreement. When OCR concludes the seminary has fully implemented the terms of the agreement, OCR will close the monitoring and close this case. If the seminary fails to implement the agreement, OCR may resume the investigation. We look forward to receiving the seminary’s first report on its implementation of the agreement by July 15, 2014.

Please be advised the seminary may not harass, coerce, intimidate or discriminate against any individual because he or she has filed complaint or participated in the complaint resolution process. If this happens, the complainant may file another 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, we will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Thank you for the cooperation that the seminary and its legal counsel extended to OCR in resolving this complaint. If you have any questions, please contact Timothy L. Sell, Senior Attorney, by telephone at (206) 607-1639, or by e-mail at timothy.sell@ed.gov.

Sincerely,

/ s /

Barbara Wery
Team Leader

Enclosure: Voluntary Resolution Agreement

cc: Senior Counsel