

December 31, 2015

Vinton Thompson, Ph.D.
President
Metropolitan College of New York
431 Canal Street
New York, New York 10013

Re: Case No. 02-15-2384
Metropolitan College of New York

Dear Dr. Thompson:

This letter is to notify you of the determination made by the U.S. Department of Education, New York Office for Civil Rights (OCR) regarding the above-referenced complaint filed against Metropolitan College of New York. The complainant alleged that the College discriminated against her, on the basis of her disability, by failing to respond appropriately to complaints she made in XXX 2014 (Allegation 1), and on or about XXX 2015 (Allegation 2), regarding ineffective technology constituting disability discrimination; and, on XXX 2015, regarding allegedly onerous requests from disability counselors for medical documentation to support requests she made for accommodations, and the College's alleged failure to grant certain requests she made for accommodations, including a voice activated computer (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). The College is a recipient of financial assistance from the Department. Therefore, OCR has jurisdictional authority to investigate this complaint under Section 504.

The regulation implementing Section 504, at 34 C.F.R. §104.7(a), states that a recipient that employs fifteen or more persons shall designate at least one person to coordinate its efforts to comply with the requirements of Section 504 and its implementing regulation. The regulation implementing Section 504, at 34 C.F.R. § 104.8, requires that recipients notify beneficiaries and others of its obligations under the regulation and state that it does not discriminate on the basis of disability.¹ Specifically, the regulation requires that the notification state, where appropriate, that

¹ In addition, the regulations implementing Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and the Boy Scouts of America Equal Access Act

the recipient does not discriminate in admission or access to, or treatment or employment in, its programs or activities. The notification is also required to include identification of the Section 504 coordinator. If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it must include its nondiscrimination notice in those materials or publications.

OCR determined that the College publishes its nondiscrimination notice on its Office for Student Services website articulating that “[i]t is the policy of MCNY that equitable consideration shall be given to all persons. The College does not discriminate on the basis of race, color, religion, sex, sexual orientation, national origin, age or disability in the administration of its admission, employment and educational policies or scholarship, loan, athletic and other school administered programs. MCNY affirms that it admits students and selects employees regardless of their race, color, creed or religion, sex, sexual orientation, national origin, age, disability and it accords for them all the rights and privileges generally available to students and employees of the school.” The College’s nondiscrimination notice names the “Title IX Coordinator” as the designee to address complaints; but in the College’s Code of Conduct, the College identifies the Director of Human Resources as the designee to answer questions regarding disability discrimination. Based on the foregoing, OCR determined that the College does not provide adequate notice of the identity of and contact information for the Section 504 coordinator, as required by the regulation implementing Section 504, at 34 C.F.R. §104.8(a). On December 29, 2015, the College agreed to implement the enclosed resolution agreement, which addresses this compliance issue.

The regulation implementing Section 504, at 34 C.F.R § 104.7(b), provides that recipients must adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504 and its implementing regulation. OCR has determined that the following elements are essential for determining if procedures are prompt and equitable: whether the procedures (a) provide for notice to students and employees of procedures, including where complaints can be filed; (b) apply to harassment by employees, students, and third parties; (c) provide for adequate, reliable and impartial investigation, including an opportunity to present witnesses and evidence; (d) have reasonably prompt timeframes for major stages of the grievance process; (e) provide for notice to the parties of the outcome; and (f) provide assurance that the institution will take steps to prevent further harassment and to correct its effects if appropriate.

The College advised OCR that its grievance procedure governing complaints of disability discrimination is located in its Code of Conduct, which is also published on its website. OCR reviewed the Code of Conduct and determined that the “Other Types of Harassment and Discrimination” section of the Code of Conduct governs the process for complaints of disability discrimination and harassment. That section states “just as sexual harassment is strictly prohibited, so is harassment on the basis of race, color, gender, ethnicity, disability, religion, national origin, age, veteran status, sexual orientation, or any other category protected by law.

contain similar requirements for recipients to notify beneficiaries and others of its obligations under the respective regulation and/or that it does not discriminate on the basis of race, color, national origin, sex, age, and certain patriotic youth groups covered by Title 36. (See 34 C.F.R. §§ 100.6(d), 106.9, 110.25, and 108.9, respectively.)

The College will not tolerate harassment or discrimination of applicants, employees, or students by anyone, including managers, supervisors, co-workers or students. Employees or students who believe they are being harassed or discriminated against on the basis of any of these factors should follow the same procedure outlined above in notifying the College. If you have any questions concerning the College's policy on sexual harassment, or other equal employment opportunity matters, please feel free to contact the Director of Human Resources." Based on the above, it is not evident which "procedure outlined above" a person who wants to file a complaint of disability discrimination or harassment should avail themselves of, the procedure for reporting sexual harassment and sexual assault or the general grievance procedure.²

To the extent that the College's general grievance procedure (the procedure) governs complaints of disability discrimination, which as stated above is unclear, OCR reviewed the procedure to determine whether it complies with Section 504 requirements. The procedure applies only to students, and does not apply to employees or third parties. Further, the procedure states that it applies to student issues or complaints against the College, but does not explicitly control complaints filed against students or third parties. The procedure "generally recommends" that students first attempt to informally resolve their issue by "discuss[ing] the matter with the individual most directly responsible." The procedure also permits students to file a formal complaint, in writing, with the Dean of Students (the dean). The procedure provides the mailing and electronic mail (email) address of the dean; however, it does not provide the dean's telephone number. The procedure states that the dean will then delegate the review of the student's issue to the appropriate administrative office or official for prompt review and determination of required action. The procedure states that the investigating official will promptly initiate an impartial investigation, which may include interviews or requests for written responses from any individual believed to have information relevant to the complaint. The procedure does not specifically state that parties have the opportunity to present witnesses and evidence; nor does the procedure provide any detail as to how a substantiated violation will be handled. The procedure establishes a 45 day timeframe by which the investigating official shall conclude his/her investigation; however, the procedure does not specify any timeframe for the other major stages of the grievance process. The procedure establishes that the complainant and the dean shall receive written notice of the outcome of the investigation; however, it does not require that written notice be provided to any party accused of discrimination. The procedure states that "[r]etaliation against any individual who brings a complaint or participates in the process is prohibited," and notes that any concerns about retaliation should be reported to the dean immediately; however, the procedure does not contain an assurance that the College will take steps to correct the discriminatory effects of any harassment on the complainant and others, if appropriate. Based on the foregoing, OCR determined that the procedure does not meet the requirements of the regulation implementing Section 504 to provide for the prompt and equitable resolution of complaints. On December 29, 2015, the College agreed to implement the enclosed resolution agreement, which addresses this compliance issue.

² The general grievance procedure section of the Code of Conduct notes that "[t]he general grievance procedure will apply to situations outside of the specific procedures outlined in this Handbook for grade appeals, harassment complaints, or disciplinary actions against students for misconduct"; however, the "Other Types of Harassment and Discrimination" section incorporates by reference acts of sexual harassment.

In its investigation of the complainant's individual allegations, OCR interviewed the complainant and College staff. OCR also reviewed information that the complainant and the College submitted. OCR made the following determinations.

OCR determined that the complainant was a graduate student in the College's Masters in Media Management program (the program) during the spring 2000 semester, and from the spring 2013 through the spring 2014 semesters.³ The complainant was registered with the College as a student with disabilities.

With respect to Allegation 1, the complainant alleged that the College discriminated against her, on the basis of her disability, by failing to respond appropriately to complaints she made in XXX 2014, regarding ineffective technology constituting disability discrimination. The complainant asserted that in or around XXX 2014, she complained orally to the president that ineffective technology provided at the College constituted disability discrimination. The complainant stated that the president referred her complaint to the Dean of the School of Business (the business dean), who met with her and other administrators in XXX 2014; however, the complainant alleged that no College staff addressed her complaint of disability discrimination made in XXX 2014.

The president denied the complainant's assertion that she complained to him of disability discrimination in or around XXX 2014, or that he had any communication with the complainant at that time about the quality of technology at the College. The business dean acknowledged that he met with the complainant in XXX 2014, and that during the meeting the complainant asserted that faulty technology at the College caused her poor performance in several classes; however, the business dean denied that the complainant ever raised any allegation of disability discrimination with him, or provided any information to indicate that she believed the College had discriminated against her in any way. The business dean stated that after meeting with the complainant, he contacted the complainant's professors to discuss the issue; and several allowed the complainant to resubmit assignments and ultimately changed her final grades.⁴

OCR must often weigh conflicting evidence in light of the facts and circumstances of each case and determine whether the preponderance of the evidence substantiates the allegation. Here, OCR did not find that the complainant's assertion that she complained to the president and/or the business dean about ineffective technology constituting disability discrimination in October 2014 was supported by a preponderance of the evidence.

Accordingly, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that the College discriminated against her, on the basis of her disability, by failing to respond appropriately to complaints she made in XXX 2014, regarding ineffective

³ Pursuant to the College's Student Handbook, in order to graduate from the program, students must complete all required coursework with a minimum 3.0 grade point average (GPA). At the conclusion of the spring 2014 semester, the complainant had attempted to complete all of the requisite coursework for the program; however, the complainant's GPA was below 3.0, and she was not eligible to graduate.

⁴ Specifically, on XXX 2014, the complainant's failing grades in Strategic Industry Analysis and Strategic Management were changed to a B- and C, respectively.

technology constituting disability discrimination. Therefore, OCR will take no further action regarding Allegation 1.

With respect to Allegation 2, the complainant alleged that the College discriminated against her, on the basis of her disability, by failing to respond appropriately to complaints she made on or about XXX 2015, regarding ineffective technology constituting disability discrimination. The complainant asserted that by letter dated XXX 2015, she complained to the president that the College's ineffective technology constituted disability discrimination. The complainant alleged that the president failed to take action to address her complaint.

The president informed OCR that he spoke to the complainant by telephone on XXX 2015, and that the complainant relayed a "complicated story" of grievances she suffered at the College. The president asked that the complainant submit her concerns to him in writing, and the complainant sent an email to the president later that day. OCR reviewed the email and determined that the complainant again complained about the College's faulty technology, but did not specifically state that she felt she was being discriminated against on the basis of her disability as a result.⁵ The complainant subsequently forwarded the email to the coordinator, one of her former professors (the professor), and other staff members on XXX 2015. The coordinator, the business dean, the professor, and the Student's XXX counselor (counselor 1) then met with the complainant on XXX 2015, to discuss her email. College staff OCR interviewed stated that the complainant did not raise any allegations of disability discrimination during this meeting, but instead continued to raise concerns about glitches with technology. The coordinator stated that College staff informed the complainant during this meeting that the technology about which she was complaining (Moodle) was not infected with a virus, as alleged by the complainant. The College also stated that they discussed permitting the complainant to make up work in her Global Business course, and the complainant stated that she had completed outstanding work and would submit it to Moodle.

On XXX 2015, the complainant sent another email to the president, and copied the business dean, counselor 1, the coordinator and the professor. In the email, the complainant again complained about issues with technology; however, she did not raise any allegations of alleged disability discrimination. On or about XXX and XXX 2015, both the coordinator and counselor 1 attempted to contact the complainant by telephone to discuss her concerns, but were unable to reach her. Accordingly, on XXX 2015, the coordinator sent the complainant an email summarizing the meeting that took place on XXX 2015.

Based on the above, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that she complained of disability discrimination in her email to the president on XXX 2015, or in a subsequent meeting she had with College staff on XXX 2015. Therefore, OCR will take no further action regarding Allegation 2.

With respect to Allegation 3, the complainant alleged that the College discriminated against her, on the basis of her disability, by failing to respond appropriately to complaints she made on XXX 2015, regarding allegedly onerous requests from disability counselors for medical

⁵ The complainant raised specific concerns regarding the College's Moodle online software. The College advised OCR that students who take online classes use Moodle to complete coursework, upload papers, and take exams.

documentation to support requests she made for accommodations, and the College's alleged failure to grant certain requests she made for accommodations, including a voice activated computer. OCR determined that the complainant sent an email to the coordinator on XXX 2015, stating that her previous disability counselors "felt none of my medical documents measured up to her requirements" and denied certain requests for accommodations, including for a voice activated computer.

By email dated XXX 2015, the coordinator told the complainant that she would look into the matter and get back to her. The coordinator acknowledged to OCR that she never investigated the matter or got back to the complainant.⁶ Based on the above, OCR determined that the College failed to respond to the complainant's complaint of disability discrimination, in violation of the regulation implementing Section 504, at 34 C.F.R § 104.7(b). On December 29, 2015, the College agreed to implement the enclosed resolution agreement, which addresses this compliance issue.

OCR will monitor implementation of the resolution agreement. If the College fails to comply with the terms of the resolution agreement, OCR will resume its investigation.

This letter should not be interpreted to address the College'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 the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the College 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 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, 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.

⁶ With respect to being denied accommodations due to insufficient medical documentation, OCR asked the complainant to provide more information regarding this assertion, including examples of any requested accommodations that College personnel denied due to insufficient medical documentation. The complainant stated that she could only recall one instance when one of her prior XXX counselors (counselor 2) told her that the documentation she submitted along with an accommodation request was "not up to par," and stated that counselor 2 nevertheless granted the request for the accommodation. With respect to the voice activated computer, the complainant alleged that she verbally made a request for a voice activated computer from another XXX counselor (counselor 3) in 2014, but counselor 3 did not entertain the request and told her the College does not offer this particular accommodation. The complainant stated that she needed a voice activated computer because she has trouble operating a calculator, and not because of any issue with alleged faulty technology at the College. College personnel advised OCR that the complainant was approved for all accommodations she requested during her tenure at the College, and stated that there was no documented request for a voice activated computer.

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If you have any questions regarding OCR's determination, please contact David Krieger, Compliance Team Attorney, at (646) 428-3893 or david.krieger@ed.gov; or Michael Goldberg, Senior Compliance Team Investigator, at (646) 428-3817 or michael.goldberg@ed.gov.

Very truly yours,

/s/

Timothy C.J. Blanchard

cc: XXX

Encl.