

XXXXXXXXXX XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXX to the complainant as testing modifications.

The complainant received the following grades on the four exams: XX on Exam 1; XX on Exam 2; XX on Exam 3; and XX on Exam 4. The complainant earned a GPA of XXXX for the spring 2014 semester, and the Academic Coordinator confirmed the complainant’s dismissal from the program by letter dated XXX XX, 2014.

In an electronic mail message (email) to the Dean of the School of XXXXX XXXXXXXXXXXXX (the Dean) on XXX XX, 2014, the complainant complained that he had to take his exams with the class.¹ The complainant further stated that the professor never had him sign a waiver of his right to receive the testing modification of a XXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXX. The Dean and the complainant arranged to meet on XXX XX, 2014, to discuss the complainant’s concerns. The complainant forwarded a copy of his email of XXX XX, 2014, to the NYIT’s Section 504 Coordinator on XXX XX, 2014.

The NYIT’s “Policies and Procedures for Students with Disabilities” includes a formal grievance procedure for responding to disability-related complaints.² The grievance procedures require that the 504 Coordinator respond to complaints alleging a violation of Section 504 with a thorough investigation that affords all interested persons an opportunity to submit evidence. OCR determined that the complainant’s email of XXX XX, 2014, which was forwarded to the Section 504 Coordinator on XXX XX, 2014, constituted a complaint alleging a violation of Section 504, to which the 504 Coordinator was obligated to respond.

The 504 Coordinator acknowledged that she did not conduct an investigation following her receipt of the complainant’s email of XXX XX, 2014. She stated that based on a discussion with the complainant shortly after she received the email, she determined that the complainant’s focus was on getting his grades changed. Specifically, the 504 Coordinator stated that the complainant raised several other issues regarding the professor’s two courses that were not related to his disability. She stated that the complainant wanted to have his grades changed without retaking any tests, which could only be accomplished through the Grade Appeals procedure. The 504 Coordinator stated that she did not conduct further investigation regarding the professor’s failure to administer his exams XX X XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX, because she believed that the complainant would be addressing his concerns through the Grade Appeals procedure. In an email dated XXXX XX, 2014, the 504 Coordinator inquired whether the complainant wished to file a formal grievance regarding the professor’s failure to provide testing modifications. The 504 Coordinator stated that the complainant did not file a grievance with her office, and decided to pursue only the academic Grade Appeal process.

The complainant met with the Dean on XXX XX, 2014. At the meeting, the Dean advised the complainant that he could file a formal grade appeal if he believed that his grades did not reflect his performance. The complainant filed a grade appeal on XXX XX, 2014. He alleged therein

¹ The complainant asserted that he did not complain earlier about the professor’s failure to administer the exams XX X XXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXX because he did not realize the impact of not receiving this testing modification until after he was dismissed from the program.

² See www.nyit.edu/images/uploads/2013/campus_life/policies_and_procedures_for_students_with_disabilities.pdf

that he had not received the testing modification of a XXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX XXXXXXXXX from the professor for Exams 3 and 4, but did not
raise any such concerns regarding Exams 1 and 2. The complainant stated that he did not raise
concerns about Exams 1 and 2 in his Grade Appeal because Exams 3 and 4 were more important
XXXXXX exams, and he wanted the Committee to change his overall grades in the respective
courses so he could remain in the program.

OCR determined that the Grade Appeals Committee (the Committee) investigated the
complainant's concerns regarding Exams 3 and 4. By letter dated XXXX XXX 2014, the
Committee issued its determination to the complainant that the professor had failed to provide
the complainant with the approved testing modification of a XXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX XXXXXXXXX XXXXXXXXX for Exams 3 and 4. The Committee
offered the complainant an opportunity to retake Exams 3 and 4 with all approved testing
modifications in XXXXXXXXXX, his state of residence, to be scheduled during the weeks of
XXXX X and XX, 2014, respectively; and informed the complainant that he was required to
respond within 48 hours of receipt of the determination if he wished to re-take Exams 3 and 4.
The complainant did not respond to the Committee's offer to retake the exams. He informed
OCR that he did not accept this offer because he believed that he should not be required to retake
the exams; rather, the complainant believed that the NYIT should have adjusted his grades for
the courses so he could remain in the program.

The NYIT also informed OCR that in response to the Committee's determination, the
Department Chair counseled the professor and gave him a stern warning regarding full
compliance with NYIT policies on accommodating students with disabilities. Specifically, the
Department Chair advised the professor that: (a) it is imperative that he provide students with
ODS-approved testing modifications; (b) if a student wishes to waive a testing modification, the
student must do so explicitly in writing; and (c) it is not acceptable under any circumstances to
have a professor's child in an examination room or classroom. The Dean also met with the
professor and reiterated the importance of complying with these policies. The NYIT also
informed OCR that at the next faculty meeting for the Department of XXXXXXXXXX
XXXXXXXXXX XXXXXXXXX, the Department Chair reminded all faculty, including the
professor, of the importance of complying in full with NYIT's policies on accommodating
students with disabilities.

Under OCR's procedures, when the same complaint allegations have been filed through a
recipient's internal grievance procedures, OCR generally will not conduct its own investigation.
Instead, OCR reviews the results of the recipient's investigation and determines whether the
recipient provided a comparable process; i.e., all allegations were investigated, appropriate legal
standards were applied, and any remedies secured meet OCR's regulatory standards. Based on
OCR's review of the NYIT's investigation, OCR determined that the Grade Appeals Committee
appropriately investigated the complainant's allegation that the professor failed to provide him
with the testing modification of a XXXXXXXXXX XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXX during Exams 3 and 4. Specifically, OCR determined that NYIT applied
appropriate legal standards and offered an appropriate remedy to the complainant.

