

November 20, 2015

Andrew J. Matonak, Ed.D.
President
Hudson Valley Community College
80 Vandenburg Avenue
Troy, New York 12180

Re: Case No. 02-15-2325
Hudson Valley Community College

Dear Dr. Matonak:

This letter is to notify you of the determination made by the U. S. Department of Education, New York Office for Civil Rights (OCR) in the above-referenced complaint filed against the Hudson Valley Community College (the College). The complainant alleged that the professor for his XXXXXXXXXX I course (the Course), taken during the spring 2015 semester, discriminated against him on the basis of disability, by failing to provide him with the approved academic adjustments of double time for online quizzes and examinations (Allegation 1); and an alternative testing location for an on-campus final examination (Allegation 2). The complainant also alleged that the same professor harassed him on the basis of his disability by making derogatory comments when he requested to receive his approved academic adjustments during the spring 2015 semester (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 or activities receiving financial assistance from the U.S. Department of Education (the Department). In addition, OCR is responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (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 College is a recipient of financial assistance from the Department, and is a public postsecondary education system. Therefore, OCR has jurisdictional authority to investigate this complaint under Section 504 and the ADA.

In its investigation, OCR interviewed the complainant and College personnel. OCR also reviewed documentation that the complainant and the College submitted, and information provided by students who were enrolled in the Course. OCR made the following determinations.

OCR determined that during academic year 2014-2015, the complainant was enrolled in the Mortuary Science Program at the College. The College provided OCR with documentation indicating that the complainant registered as a student with a disability through its Center for Access and Assistive Technology (CAAT). In an accommodation plan, dated January 9, 2015, the complainant was approved for note-taking services and testing accommodations such as an alternative (proctored) setting, extended time for all tests and quizzes (double time), and the use of a word processor.

The Course was an online class consisting of a lecture and a laboratory class (lab). The professor required students to complete classwork and online quizzes remotely through a web-based learning management system called Blackboard. Students attended lab once per week, and the final examination was administered to students in person. The professor received a copy of the complainant's accommodation plan during the first week of classes for the spring 2015 semester, on or about January 20, 2015.

With respect to Allegation 1, the complainant alleged that throughout the Course, the professor discriminated against him, on the basis of disability, by failing to provide him with the approved academic adjustment of double time for online quizzes and examinations. The complainant asserted that he was therefore unable to finish some of the quizzes and examinations in the Course during the time allotted. The complainant asserted that he was not provided extended time on eight or nine quizzes.

The regulation implementing Section 504, at 34 C.F.R. § 104.44, requires recipients to modify academic requirements when necessary to ensure that the requirements are not discriminatory on the basis of disability, and to take steps to ensure that no qualified individual with a disability is subjected to discrimination because of the absence of educational auxiliary aids. At the postsecondary level, it is the student's responsibility to disclose a disabling condition and to request academic adjustments or auxiliary aids. In reviewing allegations regarding the provisions of academic adjustments or auxiliary aids, OCR considers whether: (1) the student provided adequate notice to the recipient that the academic adjustments or auxiliary aids were required; (2) the academic adjustments or auxiliary aids were necessary; (3) the appropriate academic adjustments or auxiliary aids were provided; and (4) the academic adjustments or auxiliary aids were of adequate quality and effectiveness.

OCR determined that the professor used Blackboard for creating and administering online quizzes. During the spring 2015 semester, the professor administered approximately 13 quizzes online in the Course through Blackboard.

On or about January 24, 2015, the complainant contacted the professor via electronic mail (email) regarding the first online quiz in the Course, administered on January 15, 2015. The complainant informed the professor that he believed he was not provided with sufficient time to complete the quiz.¹ The professor responded on or about January 26, 2015, stating that the quiz was originally intended to be completed within 15 minutes and that the complainant had received 30 minutes.

¹ OCR determined that on or about January 26, 2015, the complainant also notified the CAAT Director regarding the issue. She responded to the complainant asking him whether the professor had responded to his email.

On April 17, 2015, the complainant contacted the CAAT Director by telephone and reported that the professor had not provided him with extended time on his tests and quizzes; and that as a result, he had withdrawn from the Course. In response to the complainant's report, the CAAT Director met with the professor on or about April 21, 2015. During that meeting the professor advised the CAAT Director that she had been providing double time to all of the students in the Course to comply with the complainant's accommodation plan. The professor explained that when creating an online quiz in Blackboard, she was able to allot the time period for students to complete the quiz; however, she asserted that she did not know how to assign extended time only to the complainant using the online software. As a result, she provided all students in the Course with double time to complete each quiz. At the meeting, the professor agreed to permit the complainant to repeat the quizzes with his accommodations and to issue an "Incomplete" to the complainant for the spring 2015 semester so that he could complete the remaining work during the summer 2015 semester.

OCR determined that the CAAT communicated this information to the complainant the same day and sought his approval to rescind his withdrawal. OCR determined that the CAAT Director then met with the complainant on or about May 5, 2015, to review his previous quizzes and to determine which ones he wanted to repeat with his accommodations.² The complainant confirmed that he was offered the opportunity to retake the quizzes of his choice for the Course with no time constraints, but informed OCR that he did not retake any of the quizzes because he was overwhelmed by the amount of material he would have had to relearn. OCR determined that the complainant ultimately failed the Course.

Based on the above, OCR determined that the complainant was entitled to receive double the amount of time other students received for completing online quizzes in the Course; and, the professor failed to provide the complainant with the approved academic adjustment of double time for his online quizzes. Therefore, OCR determined the College failed to comply with the regulation implementing Section 504, at 34 C.F.R. § 104.44.

With respect to Allegation 2, the complainant alleged that the professor discriminated against him, on the basis of his disability, by failing to provide him with an alternative testing location for an on-campus final examination. The complainant asserted that in or around January 2015, the Professor informed the complainant that she did not want him to complete his final examination in the CAAT.

As stated above, OCR determined that the complainant was approved for an alternative (proctored) setting as an academic adjustment for the spring 2015 semester. The College explained that the alternative testing location was meant for in-person examinations. OCR determined that the complainant's quizzes in the Course during the spring 2015 semester were taken online through Blackboard at whatever location the complainant elected and did not require a proctor. The final examination was the only in-person examination administered during the Course; therefore, it was the only examination that the complainant could have taken in an alternate testing location during the spring 2015 semester.

² The College provided documentation to OCR indicating that the complainant decided to repeat only the quizzes on which he had scored poorly.

The College provided documentation indicating that on January 20, 2015, in an email to the professor, the CAAT Director stated that the complainant should be permitted to complete quizzes and examinations at the CAAT. OCR determined that the professor offered the complainant the option of taking the final examination on June 30, 2015, at the CAAT; however, the complainant elected not to complete the final examination for the Course.³

Based on the foregoing, OCR determined there was insufficient evidence to substantiate the complainant's allegation that the College discriminated against him, on the basis of his disability, by failing to provide him with an alternative testing location for an on-campus final examination. Accordingly, OCR will take no further action regarding Allegation 2.

With respect to Allegation 3, the complainant alleged that the professor subjected him to harassment because of his disability by making derogatory comments in January 2015 when he requested to receive his approved academic adjustments during the spring 2015 semester. In support of his allegation, the complainant asserted that in or around January 2015, when he requested to complete his examinations in an alternative testing location (the CAAT), the professor responded that he would not be permitted to complete his examinations in the CAAT and commented that "Nothing but cheating goes on there." The complainant did not provide a specific date on which this alleged harassment occurred, and did not indicate the specific location in which this alleged harassment occurred. The complainant asserted that he responded to this statement by attempting to explain to the professor that he was entitled to test in an alternative location, but the professor again responded that he would not be permitted to do so. The complainant asserted that he then contacted the CAAT Director to report this interaction with the professor. The complainant also alleged that in response to his inquiry about extended time, the Professor asked the complainant, "What do you need extra time for? To hula hoop?" The complainant stated that several classmates witnessed the professor's comments; however, the complainant did not indicate why he believed that other students had heard the comments.

Disability harassment is a form of discrimination prohibited by Section 504, the ADA, and their implementing regulations. Harassing conduct by an employee, a student, or a third party can include verbal, written, graphic, physical or other conduct; or, conduct that is physically threatening, harmful or humiliating. Harassment can create a hostile environment if it is sufficiently serious to interfere with or deny a student's participation in or receipt of benefits, services or opportunities in the recipient's program. If OCR determines that harassing conduct occurred, OCR will examine additional factors to determine whether a hostile environment existed and whether the recipient took prompt and effective action that was reasonably calculated to stop the harassment, prevent its recurrence, and, as appropriate, remedy its effects.

The professor denied making the alleged comments. During its investigation, OCR contacted eight students enrolled in the Course with the complainant; six students agreed to speak to OCR.⁴

³ OCR determined that the complainant emailed the professor on May 6, 2015, advising her that he intended to repeat several quizzes and that he would also complete the final examination for the Course. On June 29, 2015, the professor emailed the complainant regarding the outstanding quizzes and final examination that needed to be completed by June 30, 2015. OCR determined that the complainant did not repeat any of the online quizzes or the final examination, and as a result he received a final grade of F for the Course.

⁴ Two students declined to participate or did not respond to OCR, including a student the complainant singled out as having witnessed the conduct.

None of the students interviewed stated that they heard the professor asking the complainant why he needed extra time or said anything about a hula hoop. On the contrary, several students OCR interviewed asserted that the Professor was always very accommodating of students, including the complainant.⁵ Only one student (Student 1) recalled the professor making the comment about cheating in reference to the CAAT. Student 1 stated that the professor made this comment in the companion lab course in front of the other Embalming I students while the complainant was not in the room.⁶ Student 1 also stated that the professor told the entire class that “no one should get extra time or special treatment for examinations” and that “it was unfair that [the complainant] got 2 hours for an exam when the rest of the class was given 1 hour.” Student 1 stated that he did not hear the professor make discriminatory remarks directly to the complainant. Student 1 described the professor’s attitude about the complainant’s disability as “dismissive and rude,” but did not cite any examples of such conduct other than the comments Student 1 asserted that he heard as described above. OCR interviewed the professor for the companion lab course; the professor of the companion lab course denied hearing the professor make any derogatory comments regarding the complainant.

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, Student 1 provided testimony that on at least one occasion the professor commented that testing in the CAAT leads to cheating, and that students should not receive accommodations such as extended time. In addition, OCR determined that the professor had raised similar concerns to the CAAT Director on at least one occasion. Accordingly, OCR determined that the preponderance of the evidence substantiated the complainant’s allegation that when he requested to complete his examinations in an alternative testing location, the professor responded, “Nothing but cheating goes on there.” OCR determined that the complainant was nonetheless given the opportunity to take the final exam in the CAAT, though he chose not to. Accordingly, OCR determined that while the professor’s comment was inappropriate and unprofessional, it was not sufficiently serious to interfere with or deny the complainant’s participation in or receipt of benefits, services or opportunities in the recipient’s program; thus, the conduct did not rise to a level to substantiate a violation of the regulations implementing Section 504 or the ADA. Therefore, OCR will take no further action regarding Allegation 3.

On November 17, 2015, the College agreed to implement the enclosed resolution agreement to address the above-referenced compliance issue identified with respect to Allegation 1. OCR will monitor the implementation of the enclosed resolution agreement. If the College fails to comply with the terms of the resolution agreement, OCR will resume its investigation.

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 file a private suit in federal court whether or not OCR finds a violation.

⁵ Two of the five students asserted that the complainant had acted inappropriately in class on multiple occasions and that they had contacted both the professor and the professor for the companion lab course regarding his behavior.

⁶ OCR determined that the professor frequently attended the lab taught by the lab professor.

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, which, 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 Jonathon LeBeau, Compliance Team Investigator, at (646) 428-3790 or jonathon.lebeau@ed.gov Joy Purcell, Compliance Team Attorney, at (646) 428-3766 or joy.purcell@ed.gov; or Felice Bowen, Compliance Team Leader, at (646) 428-3806 or felice.bowen@ed.gov.

Very truly yours,

/s/

Timothy C.J. Blanchard

Encl.

cc: XXXXX X. XXX, Esq.