

April 15, 2019

Brian W. Casey, Ph.D.  
President  
President's Office  
Colgate University  
301 James B. Colgate Hall  
Hamilton, New York 13346

Re: Case No. 02-18-2139  
Colgate University

Dear President Casey:

This letter is to notify you of the determination made by the U.S. Department of Education, Office for Civil Rights (OCR), regarding the above-referenced complaint filed against Colgate University (the University). The complainant alleged that a University professor discriminated against her son (the Student), on the basis of his disability, by failing to appropriately provide him with his approved academic adjustment of 100% extended time on quizzes and exams in his XXXXXXXX XXX XXXXX XXXXXXXX course, XXXX XXXX (the course), during the fall 2017 semester.

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). The University 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. § 104.44(a), 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 provision 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.

In its investigation, OCR interviewed the complainant, the Student, and University staff. OCR also reviewed documentation that the complainant and the University submitted. OCR made the following determinations.

The complainant alleged that a University professor discriminated against the Student, on the basis of his disability, by failing to appropriately provide him with his approved academic adjustment of 100% extended time on quizzes and exams in the course during the fall 2017 semester. Specifically, the complainant alleged that the professor dissuaded the Student from using extended time on six of the eight quizzes in the course (issue 1); forced the Student to take the other two quizzes in the hallway in order utilize his academic adjustment of 100% extended time (issue 2); and, failed to provide an appropriate amount of extended time for the Student to complete his midterm and final exams in the course (issue 3).

According to the University's "Reasonable Accommodations" policy, students seeking accommodations or academic adjustments must submit a "Special Needs Identification Form" to the University's Director of Academic Support and Disability Services (ASDS) (the Director) to initiate the interactive process. The policy states that academic adjustments and auxiliary aids are provided "[o]n a case-by-case basis"; and, students should expect to meet with their professors at the beginning of each semester to discuss the approved academic adjustment(s) and/or auxiliary aide(s) necessary for each course.

OCR determined that the Student enrolled in the University beginning with the fall 2016 semester. At that time, he registered with ASDS. The University approved his academic adjustment of 100% extended time for testing for the fall 2016 semester, and each semester that followed, through the fall 2017 semester.<sup>1</sup> During the fall 2017 semester, the Student was enrolled in the course.

The course syllabus provided that "students needing special accommodations must meet with [the professor] . . . to discuss their particular circumstances and which, as needed [sic], other forms of graded written work will be necessary." The professor informed OCR that there were three students (the Student, student A and student B) who took the course during the fall 2017 semester and had an approved academic adjustment of extended time for testing.

The fall 2017 semester began on August 29, 2017, and the Student attended his first lecture in the course on September 4, 2017.<sup>2</sup> The course syllabus stated that the final semester grade would be composed of "frequent in-class quizzes" worth 35%;<sup>3</sup> a take-home midterm exam worth 20%; and, an in-class, open-notebook final exam worth 45%.

The professor informed OCR that the quizzes were initially intended to be pop quizzes, but he often hinted as to when the quizzes would take place and explicitly informed students of the dates

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<sup>1</sup> The complainant informed OCR that the Student XX XXXXXXXXX.

<sup>2</sup> The Student informed OCR that he missed a couple of lectures in the course at the start of the semester because XX XXX XXX.

<sup>3</sup> The course syllabus stated that the professor would exclude the two lowest quiz grades from this calculation.

of upcoming quizzes towards the end of the semester. The professor stated that the quizzes took place at the very beginning of the lecture; and, each quiz tested the students' knowledge of their most recent reading assignment. The professor advised OCR that he allowed approximately 15 to 20 minutes for students to complete each quiz. Following each quiz, the professor went over the quiz answers and discussed the assigned readings.

With respect to issue 1, the complainant alleged that the professor discriminated against the Student, on the basis of his disability, by dissuading the Student from using extended time on six of the eight quizzes in the course. The Student informed OCR that he took quiz 1 on or about September 6, 2017.<sup>4</sup> The Student acknowledged that he had not provided the professor with the accommodation letter from the ASDS prior to taking the first quiz in the course. The Student received a score of XXX (XX%) on quiz 1.<sup>5</sup>

The Student informed OCR that after the class on September 6, 2017, he spoke to the professor regarding his academic adjustment of 100% extended time on quizzes and exams. The Student stated that he subsequently provided the professor with the accommodation letter from the ASDS on September 13, 2017.<sup>6</sup>

According to the Student, when he advised the professor that he needed his academic adjustment of 100% extended time on quizzes, the professor dissuaded the Student from using his academic adjustment by telling him that he should try to take the quizzes without the extended time, or complete essay assignments in lieu of taking the quizzes. The professor acknowledged that he offered the Student the alternative of completing essay assignments in lieu of taking the quizzes, which the Student could complete outside of class. The professor informed OCR that he offered this same alternative to students A and B, and previous students in the course with the academic adjustment of extended time for testing; and, students A and B, and previous students in the course, did not take the course quizzes with extended time.<sup>7</sup>

According to the professor, he and the Student mutually agreed that the Student would try taking the quizzes without extended time to see how he performed. The Student informed OCR that "out of respect for the professor," he wanted to do what the professor suggested that he do; i.e., to take the quizzes without extended time. Therefore, he opted not to do the essay assignments in lieu of taking quizzes.

The Student informed OCR that he took quiz 2 without extended time on or about September 15, 2017; he received a score of XXX (XX%). The Student advised OCR that he took quiz 3 without extended time on or about September 25, 2017; he received a score of XXX (XX%). The Student informed OCR that following quiz 3, he told the professor that he did not think taking his quizzes

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<sup>4</sup> The professor informed OCR that he had no record of the dates he administered the quizzes in the course.

<sup>5</sup> The professor advised OCR that because of the Student's XXXXXX XXXXXX at the beginning of the semester, he agreed not to consider quiz 1 as part of the six highest quiz grades for the Student's final semester grade.

<sup>6</sup> The letter states that the Student is eligible for "extended time (100%) for testing."

<sup>7</sup> The Director confirmed that students A and B spoke to her early in the fall 2017 semester regarding their performance in the course and about not receiving extended time on quizzes; however, the Director assumed that their approved academic adjustments were being provided because they did not return to meet with her again and neither student filed a complaint.

without extended time was working out for him. The Student stated that, in response, the professor stated, “Let’s see how the next quiz goes.” The Student advised OCR that he took quiz 4 without extended time on or about October 13, 2017; he received a score of a XXX (XX%). The Student informed OCR that following quiz 4, he again advised the professor that he did not think taking his quizzes without extended time was working out for him; but that, in response, the professor again stated, “Let’s see how the next quiz goes.” The Student advised OCR that, thereafter, on a weekly basis, he asked the professor to grant him extended time on future quizzes. The Student advised OCR that the professor responded, “Let’s see how the midterm exam goes,” because the midterm was in essay format, similar to the alternative essay option that the professor offered the Student in lieu of the quizzes. The professor denied that the Student asked for extended time on quizzes on a weekly basis during the period of time leading to the midterm exam, which was scheduled to begin on October 16, 2017.

The Student advised OCR that after the midterm exam, he took quiz 5 without extended time on or about October 30, 2017; he received a score of XXX (XX%). The Student advised OCR that he took quiz 6 on or about November 6, 2017; he received a score of XXX (XX%).

The Student then met with the Director to discuss his concerns about the course on November 16, 2017, and November 28, 2017. The Director informed OCR that during their meeting on November 16, 2017, the Student informed her for the first time that he had not received extended time on the six course quizzes to date.

The Director informed OCR that after that meeting, she began communicating with the professor about these concerns, and attempted to come up with a final semester grade rubric that included additional work product by the Student that would evidence his knowledge in the course but would exclude his course quiz grade. The Director advised OCR that on December 12, 2017, she offered the Student the option of completing supplementary essays that he could complete over the winter break, to be used in lieu of his quiz grades, which would be two papers of six to seven pages in length; and, the Student could select the topic from three to four questions the professor was prepared to provide to the Student. The supplementary writing assignments would be worth 40% of the Student’s final grade, while his midterm would be worth 10%, and his final exam worth 50% of his final grade. On December 19, 2017, the Student rejected the Director’s offer to complete two writing assignments, because he learned that the professor would not be available during the winter break to answer any questions he might have about the assignments; he would not have access to University resources XXXX XX XXX XXXXXXX XXXXXXX; and, completing essays for the course would take time from his ability to XXXX XXXXXXX XXXXXXXXXXX XXX XXX XXXXXXX XXXX XXXXXXX.

Ultimately, on or about December 19, 2017, through an exchange of emails, the Student and the professor agreed on a grading rubric that would exclude the Student’s quiz grades in calculating his final grade for the course. Instead, the Student’s midterm grade would be worth 20% and his final exam would be worth 80% of his final grade.

Based on the foregoing, OCR determined that the Student was approved to receive 100% extended time for his quizzes as an academic adjustment; and, following quiz 1, the Student requested that the professor provide this academic adjustment to him for the remainder of his quizzes for the

course. Although OCR determined that the professor offered the Student an alternative to taking the quizzes, OCR determined that the preponderance of the evidence indicated that the professor dissuaded the Student from using his approved academic adjustment of 100% extended time on quizzes; i.e., the Student believed that the professor really wanted him to take the quizzes without the extended time instead of choosing the alternative of completing essays. OCR determined that the preponderance of the evidence indicates that, thereafter, the Student approached the professor multiple times requesting that the professor provide him with his approved academic adjustment of 100% extended time on quizzes; however, the professor failed to provide this approved academic adjustment to the Student for quizzes 2 through 6. OCR determined that the alternative the Director offered the Student at the end of the semester would not have been an effective alternative for the Student, as the professor would not be available during the winter break to answer any questions he might have about the assignments; he would not have access to University resources such as XXXX XX XXX XXXXXXX XXXXXXX; and, completing essays for the course would take time from his ability to XXXX XXXXXXX XXXXXXXXXXX XXX XXX XXXXX XXXX XXXXXXX.

On April 9, 2019, the University agreed to implement the enclosed resolution agreement, which addresses the compliance issue described above.

With respect to issue 2, the complainant alleged that the professor discriminated against the Student, on the basis of his disability, by forcing the Student to take two of his eight quizzes in the hallway in order to utilize his academic adjustment of 100% extended time. The Student stated that he could not begin the course quizzes before the start of the class because he had a XXXXXXX class right before the course, and it was on the other side of the campus; therefore, he began each quiz with the rest of the class, and then continued quizzes 7 and 8 outside of the classroom using his extended time accommodation. The complainant asserted that the professor forced the Student to finish these quizzes in the hallway.

According to the University, the professor suggested that the Student complete his quizzes in the faculty lounge located across the hallway from the professor's classroom. The University also asserted that there were several other classrooms near the professor's classroom, some of which would likely have been empty at the time, and the Student could have used one of those classrooms to take the quizzes.

According to the Student, he declined to take the quizzes in the faculty lounge because he observed professors in it at the time that he was taking the quizzes, and he believed it would be too loud for him. The Student also asserted that the nearby classrooms were all occupied at the time he was taking the quizzes. During the course of the investigation, the Student acknowledged that the professor did not thereafter force him to take the quizzes in the hallway; rather, the Student elected to stand in the hallway to take the quizzes instead of utilizing the faculty lounge or nearby classrooms. The Student advised OCR that he took quiz 7 with the accommodation of 100% extended time on or about December 1, 2017; he received a score of XXX (XX%). The Student advised OCR that he took quiz 8 with the accommodation of 100% extended time on or about December 6, 2017; he received a score of XXX (XX%).

The professor informed OCR, and the Student acknowledged, that the Student did not complain to the professor about the fact that he was taking the quizzes in the hallway. The Director informed OCR that the Student only told her that he had taken the quizzes in the hallway after the fact. OCR determined that the Student's approved academic adjustments from ASDS did not include a quiet or distraction-reduced testing location.

Based on the foregoing, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that the professor discriminated against the Student, on the basis of his disability, by forcing him to take quizzes 7 and 8 in the hallway. Rather, the professor offered the Student two alternatives for completing his quizzes outside of the classroom, and the Student chose to complete the quizzes in the hallway instead. Accordingly, OCR will take no further action regarding issue 2.

With respect to issue 3, the complainant alleged that the professor discriminated against the Student, on the basis of his disability, by failing to provide an appropriate amount of extended time for the Student to complete his midterm and final exams in the course.

OCR determined that on October 16, 2017, the professor provided the midterm take-home essay exam to the class, which he expected students to return in one week from that date, or on October 23, 2017. The professor permitted the Student to return his midterm a week later, on October 30, 2017. The complainant asserted that the Student should have been given additional time, because the Student XXXXXXXXXXX XXXXX XXX XXXXXXXX XX XXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX; however, the Student acknowledged to OCR that he received sufficient time to take the midterm exam, and that he did not ask the professor for additional time. The Student received a score of XX% on the midterm exam.

On December 20, 2017, the Student took the open-notebook final exam in class. The entire class was allowed two hours for the final. The Student was allowed 100% extended time to complete the final exam; or a total of four hours. The Student received a score of XX% on the final exam. The complainant alleged that the Student should have been provided with more than 100% extended time, because the rest of the class was allowed to go over the allotted two hour exam period; however, the Student informed OCR that he only used three of the four allowed hours to complete the exam; and, he did not need or ask the professor for additional time.<sup>8</sup>

Based on the foregoing, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that the professor discriminated against the Student, on the basis of his disability, by failing to provide an appropriate amount of extended time for the Student to complete his midterm and final exams in the course. Accordingly, OCR will take no further action regarding issue 3.

As stated above, on April 9, 2019, the University agreed to implement the enclosed resolution agreement to resolve the compliance issue OCR identified with respect to issue 1. OCR will monitor the implementation of the resolution agreement.

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<sup>8</sup> The Student's final semester grade for the course was XX% or a XX.

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 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.

The complainant has a right to appeal OCR's determination with regard to issues 2 and 3 within 60 calendar days of the date indicated on this letter. In the appeal, the complainant must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect, or the appropriate legal standard was not applied; and, how correction of any error(s) would change the outcome of the case. Failure to do so may result in dismissal of the appeal. If the complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the recipient. The recipient has the option to submit, to OCR, a response to the appeal. The recipient must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

If you have any questions, please contact Kathleen Ryder, Compliance Team Attorney, at (646) 428-3825 or [kathleen.ryder@ed.gov](mailto:kathleen.ryder@ed.gov); or Crystal Johnson, Senior Investigator, at (646) 428-3821 or [crystal.johnson@ed.gov](mailto:crystal.johnson@ed.gov).

Sincerely,

/s/

Timothy C.J. Blanchard

cc: Laura Harshbarger, Esq.

Encl.