

September 6, 2019

Dr. Robert Barchi  
President  
Rutgers, The State University of New Jersey  
83 Somerset Street  
New Brunswick, New Jersey 08901

Re: Case No. 02-18-2251  
Rutgers University

Dear President Barchi:

This letter is to notify you of the determination made by the U.S. Department of Education, Office for Civil Rights (OCR), with respect to the above-referenced complaint filed against Rutgers University (the University). The complainant alleged that University staff discriminated against him, on the basis of his disability, by failing to provide him with his approved testing modification of extended time to complete the final examination for his XXXXXX XX XXXXXX XXXX XXXXX XXX course (the course), which was administered on XXXX XX, XXXX (Allegation 1). The complainant also alleged that University staff retaliated against him for his disability-related advocacy, by denying his request for additional time to complete the course final examination (Allegation 2).

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). OCR also is responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (the 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 University is a recipient of financial assistance from the Department and is a public post-secondary education system. Therefore, OCR has jurisdictional authority to investigate this complaint under both Section 504 and the ADA.

The regulation implementing Section 504, at 34 C.F.R. § 104.61, incorporates by reference 34 C.F.R. § 100.7(e) of the regulation implementing Title VI of the Civil Rights Act of 1964, which provides that no recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by regulations

enforced by OCR or because one has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing held in connection with a complaint. The regulation implementing the ADA contains a similar provision at 28 C.F.R. § 35.134.

In its investigation, OCR interviewed the complainant, a witness the complainant identified, and University staff. OCR also reviewed information and documentation that the complainant and the University provided. OCR made the following determinations.

With respect to Allegation 1, the complainant alleged that University staff discriminated against him, on the basis of his disability, by failing to provide him with his approved testing modification of extended time to complete the final course exam (the final exam). Specifically, the complainant alleged that although he was approved to receive 100% extended time on all examinations, he was instead provided the same amount of time as all other students to complete the final exam.

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 or services. In reviewing allegations regarding the provision of academic adjustments and/or auxiliary aids/services, OCR considers whether: (1) the student provided adequate notice to the recipient that the academic adjustments or auxiliary aids/services were required; (2) the academic adjustments or auxiliary aids/services were necessary; (3) the appropriate academic adjustments or auxiliary aids/services were provided; and, (4) the academic adjustments or auxiliary aids/services were of adequate quality and effectiveness. At the postsecondary level, it is the student's responsibility to disclose a disabling condition and to request academic adjustments and/or auxiliary aids/services in accordance with the recipient's procedures for doing so.

Pursuant to University procedure, which is available online, students requesting academic adjustments must register with the University's Office of Disability Services (ODS); schedule an intake meeting with an ODS coordinator; and, submit documentation supporting the request. Registration with ODS is done online; and during registration, the student completes an online form in which the student indicates which academic adjustments the student is requesting from a set menu. During the intake meeting, the coordinator reviews the form with the student; and, discusses the nature of the student's disability and its impact, and what academic adjustments might be appropriate for the student. The coordinator then meets with a committee of staff members in ODS (the ODS committee) to determine which requested academic adjustments should be approved; and, ODS notifies the student that academic adjustments have been approved. The student then must go online, and for each course for that semester select from a drop-down menu of approved academic adjustments, to indicate which academic adjustment(s) the student wants for that particular course. The online system then generates a Letter of Accommodation (LOA) that the student must provide to the professor for each course for which it is applicable. ODS staff tell students that they should meet with their professors to review approved academic adjustments and LOAs. The LOAs also state that "[i]t is important that you and your professor have a clear understanding of what is agreed upon regarding the use and implementation of these accommodations."

Pursuant to the University’s procedures regarding “exam accommodations,” which are available online, “[a]ll students wishing to utilize exam accommodations need to be registered with the ODS and have requested their [LOA].” The procedures further state that “[f]or each course the student would like to utilize their exam accommodations, they must meet with the professor privately to: Submit their [LOA]; Discuss all exam accommodations for the entire semester; [and] [l]eave the meeting with an understanding of whether the professor will administer your exams or ODS Exam Services will administer your exams.” The University’s XXXXXXXX XXXX XXXXXXXXXXXX, who also serves as the XXXXXXXX XXX Compliance Officer (the XXXXXXXX XXX officer) informed OCR that if a student has approved testing modifications but does not satisfy the foregoing requirements, testing modifications will not be provided.

OCR determined that the University admitted the complainant to its XXXXXXXX XX XXXXXXXX XXXX Program (the program) for the fall XXXX semester. On XXXXX XX, XXXX, the complainant registered with ODS online and requested extended time for exams and quizzes.<sup>1</sup> The documentation that the complainant submitted with his request stated that the complainant has “XXXXXXXX, XXXXXXXXXXX and XXXXXXXXXXX”; “XXXXXX XXXXXX”; and, “XXXXXXXX XXXXXX” due to XXX XXXXXX and residual effects of being XXX XX X XXX XX X XXXXXXXXXXXX in the past. He also submitted documentation that included a recommendation for “extra time for testing,” stating that “he requires extra time to reread information to avoid and provide an accurate measure of his capability.” The documentation did not make a distinction between timed and untimed tests.

An ODS coordinator (the coordinator) conducted an intake meeting with the complainant on XXXXXX XX, XXXX, to discuss his request for academic adjustments. The complainant stated that during the meeting, he advised the coordinator that as a result of his disability, XXXXXXXXXXX XXXXXXXX of XXXXXXXX, XXXXXXXX XXXXXXXXXXX, or XXXXXXXX, may cause his XXXXXXXX to become XXXXXXXX, give him XXXXXXXXXXX, and cause him to become XXXXXXXXXXX; and as a result, he requested extended time on examinations and quizzes. The coordinator asserted that during the meeting, when discussing the testing modification of extended time on examinations and quizzes, she explained to the complainant that, if approved, it would apply only to “timed tests.” The complainant denied this assertion, and stated to OCR that his understanding, based on his conversation with the coordinator during the meeting was that extended time would apply to all examinations and quizzes; there was no distinction made between timed or untimed examinations and quizzes. The University advised OCR that during this meeting on XXXXX XX, XXXX, the coordinator provided to the complainant the University’s procedures for receiving testing modifications; including that the complainant would need to discuss his accommodations, including testing modifications, with his professors and that he would not be entitled to use testing modifications without doing so. The complainant denied that the coordinator informed him during this meeting that he would need to discuss his testing modifications with his professor. OCR determined that there were no witnesses to this meeting. Neither the University nor the complainant provided to OCR any contemporaneous meeting minutes, notes, or other record documenting what was discussed at the meeting.

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<sup>1</sup> The complainant indicated on his registration form that he has a XXXXXXXXXXX XXXXX XXXXXXX XXXXX, XXXXXXXXXXXXXXXXXXX XXXXXXX XXXXXXXXXXX XXXXXXX, XXXXXXXXXXX, and a XXXXXXXXXXX XXXXXXXXXXX.

The University informed OCR that a “timed test” is a test for which students are given a specific amount of time in which to complete the test, such as one class period; whereas an “untimed test” is a test for which students are able to “go in and out of the exam” multiple times prior to submitting the exam by a fixed date. The University did not provide a cut-off time for when a test is considered “untimed”; and, does not indicate in any literature or on its website that an academic adjustment of extended time on examinations applies only to “timed tests.”

The coordinator informed OCR that soon after her meeting with the complainant, she met with the ODS committee to review the complainant’s requested academic adjustments. ODS thereafter approved the complainant to receive, among other things, “(100%) extended time on exams and quizzes” for the fall XXXX and spring XXXXX semesters. The coordinator stated that in making the determination to approve or deny the requested academic adjustments, the ODS committee considered the complainant’s medical documentation and the information he provided to the coordinator during the meeting on XXXXX XX, XXXX; and, discussed the functional impact of his disability as it related to the academic adjustments he sought. The coordinator did not consider the specific impact of the complainant’s disability in determining that the complainant was eligible for extended time only on timed tests, as University staff all stated that the academic adjustment of extended time at the University is intended to apply only to timed tests when it is granted.

By letter to the complainant dated XXXXX XX, XXXX, the coordinator informed the complainant that he had been approved to receive, among other things, “extended time (100%) for in-class/online exams and quizzes.” The letter noted that the coordinator and complainant had “reviewed [ODS’s] website” and suggested that the complainant “bookmark [the] site for future reference.” The letter stated that the complainant could submit an LOA request form, and thereafter LOAs for his courses would be provided to him; and that upon receipt of the LOAs, “it is recommended you meet with your professor privately to discuss your approved accommodations and the manner in which they will be coordinated for their course (i.e., utilizing [ODS] to proctor exams).”<sup>2</sup> The complainant requested and was provided with LOAs to give to his fall XXXX and spring XXXX course professors. The ODS coordinator also sent a copy of the LOA to the complainant by email the same day and informed the complainant that “you can provide the LOA to your professor in person or you can email the LOA to the professor with the letter as an attachment” and “it is important that you and your professor have a clear understanding of what is agreed upon regarding the use and implementation of these accommodations.”

OCR determined that the complainant was enrolled in the course during the spring XXXX semester. The course included homework assignments, a midterm examination, a final examination, and one written assignment/final research paper. Both the midterm and final examinations were each three-day, take-home, open-book examinations, consisting of multiple choice questions, administered online through the University’s Canvas system.<sup>3</sup> The instructions for both the midterm and final examinations stated that students had three days to complete the examination and may “go into [the examination], work on it, save it, and then go back again to

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<sup>2</sup> The letter further noted that the complainant and his professors would need to complete and sign a “Rights and Responsibilities Form” on the back of each LOA; and, that the complainant would be responsible for returning these forms to ODS. The complainant returned these forms to ODS.

<sup>3</sup> Canvas is a “cloud-native learning management system” that the University routinely uses to administer timed and untimed examinations.

work on it as long as [they] do not submit it until [they] are ready.” The course syllabus included general information regarding the process for obtaining academic adjustments; and, stated that students with LOAs should “share this letter with your instructors and discuss the accommodations with them as early in your courses as possible.”

At the start of the semester, the complainant provided a copy of his LOA for the course to the course professor (professor 1) via email; however, the complainant did not make any specific advance request to professor 1 or ODS to receive his approved “extended time (100%) for in class/online exams and quizzes” for the course midterm or final examination, in accordance with the University’s stated policy and did not meet with professor 1 to discuss the LOA.

On XXXXX XX, XXXX, at midnight, the final exam became available online and the complainant was given three days, or until 11:59 p.m. on XXXX XX, XXXX, to complete the exam. The complainant began working on the final exam on XXXXX XX, XXXX, at XXXX p.m. The complainant submitted the final exam after it was due, at XXXX a.m. on XXXX XX, XXXX.

On XXXX X, XXXX, the complainant notified professor 1 in emails and in person that he was unable to submit the final exam by the due date/time because he experienced problems with the Canvas online system and requested additional time to complete the final exam. The University’s Associate Dean XXX XXXXXXXX XXXXXXXX (the dean), professor 1, and the “lead teacher” of the course (professor 2) determined that there was no network issue related to Canvas during the time that the complainant alleged that he was unable to access the final exam.<sup>4</sup> In addition, they reviewed the complainant’s LOA and concluded that he was entitled to an accommodation of extended time on timed class/online exams and quizzes, not on untimed exams and quizzes. Professor 1 informed OCR that the complainant “did not mention his disability as a reason why he needed more time.” On XXXX XX, XXXX, after consulting with the lead instructor and the dean, professor 1 informed the complainant that he could not have any additional time to complete the final exam.

The University advised OCR that after denying the complainant’s request for additional time, the dean contacted ODS on XXXX X, XXXX, to provide them with information regarding the complainant’s examination to ensure compliance with complainant’s applicable LOA. The coordinator informed the dean that “[f]or exams that are untimed and students have a window of several days to complete them, extended exam time accommodations generally do not apply, which I would have discussed with [the complainant].” The coordinator told the dean that she would contact the complainant to clarify that extended time on exams does not apply to “these types of exams,” and discuss options with him going forward.

By email that same day, the coordinator notified the complainant that he was not entitled to extended time on the final exam. Specifically, she stated: “When an exam itself is untimed but you have a window of several days to complete it, extended time does not apply. Extended time

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<sup>4</sup> Documentation that the University submitted to OCR confirmed that there was no network issue related to Canvas during the time the complainant alleged that he was unable to access the final exam.

on exams is only applied to timed exams (such as when you log in and a clock starts and you have to complete it in an hour).<sup>5</sup> Your accommodation would not have applied to this exam.”<sup>6</sup>

The XXXXXXXX XXXX officer asserted to OCR that, in addition, the complainant was not entitled to extended time on the final exam because he did not discuss his approved testing modifications with professor 1 in advance of the final exam, as required by the University’s published procedures; however, the XXXXXXXX XXXX officer acknowledged that even if the complainant had done so, extended time likely would not have been approved for the final exam because it was an untimed examination written “under principles of universal design,” such that most students could complete the final exam within two to three hours, as opposed to the three days allotted. The coordinator did not inform the complainant in her email on XXXX XX, XXXX, that he did not receive extended time for the final exam because he had not discussed use of this testing modification for the final exam with professor 1.

Based on the foregoing, OCR determined that ODS approved 100% extended time for exams as an academic adjustment for the complainant; provided the complainant with an LOA for the course that listed 100% extended time as an approved accommodation; and, the complainant provided a copy of the LOA to professor 1. OCR determined that the complainant did not discuss with professor 1 his approved testing modifications or request to use extended time on the final exam; however, OCR determined that the University’s written policies do not state that a student must engage in an additional interactive process with a professor in order to use an approved accommodation. The website states that the student must discuss the administration of the exam with the professor—i.e. whether the professor or ODS will be administering the exam, not whether the approved accommodation will be provided on the particular exam. Further, the University acknowledged to OCR that it likely would not have provided the complainant with extended time on the final exam even had he made such request, because the final exam was “untimed”; however, the University’s policies do not make a distinction between “timed” and “untimed” exams or define these terms. Although the coordinator stated to OCR that she advised the complainant that extended time was not applicable to untimed tests, the University provided no documentation to support that the complainant was informed prior to taking his final exam in XXXXX/XXXX XXXX that extended time did not apply to such an exam.<sup>7</sup> OCR determined that the University

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<sup>5</sup> The coordinator informed OCR that the testing modification for extended time for an “untimed exam” such as the final exam is really “extended time on assignments,” which had not yet been approved for the complainant. OCR found nothing in the University’s written policy that provided this interpretation. OCR determined that on XXXXX XX, XXXX, ODS approved the complainant for “extended time on assignments, within the academic standards of the course,” and indicated that it would apply beginning with the fall XXXX semester.

<sup>6</sup> The complainant responded twice to the coordinator, again complaining of a technical glitch in the Canvas system during the final exam.

<sup>7</sup> The only documentation the University provided regarding any discussion of a distinction between “timed” and “untimed” tests occurred in email exchanges between the complainant and the coordinator on XXXX XX, XXXX. In an email on that date, the complainant told the coordinator that professor 1 “was able to extend the [final exam] time for five days on the computer”; and, asked if one of his other final examinations (exam 2) could also be extended to five days. In response, the coordinator asked why the complainant was requesting five days for exam 2, and asked whether exam 2 was “a timed exam, or is the class given a certain number of days to do it and the exam itself is untimed?” The complainant responded that his professors had been giving him five days to complete examinations, so he “thought it was the standard”; and, that he believed that exam 2 was untimed, but that “if it was really untimed then why precisely five days? Which is 120 hours total. So it does have a time limit.” The coordinator responded by saying, “Just so I’m clear, the exam itself is untimed (as in, when you sit down to take it you do not have to complete

did not provide the complainant with his approved academic adjustment of extended time to complete the final exam.<sup>8</sup> On August 23, 2019, the University signed the enclosed resolution agreement to resolve this compliance issue. OCR will monitor the implementation of the resolution agreement.<sup>9</sup>

With respect to Allegation 2, the complainant alleged that University staff retaliated against him for his disability-related advocacy, by denying his request for additional time to complete the final exam on XXXX XX, XXXX. In analyzing whether retaliation occurred, OCR must first determine whether the three prima facie elements of retaliation can be established: (1) whether a recipient or other person subjected an individual to an adverse action; (2) whether the recipient or other person (a) knew that the individual engaged in a protected activity or (b) believed that the individual might engage in a protected activity in the future; and, (3) there is some evidence of a causal connection between the adverse action and protected activity. When a prima facie case of retaliation has been established, OCR then determines whether there is a facially legitimate, non-retaliatory reason for the adverse action; and if so, whether the facially legitimate, non-retaliatory reason is a pretext for retaliation.

OCR determined that the complainant engaged in protected activity when he sought academic adjustments from ODS in XXXXX XXXX and during the spring XXXX semester; and when, in XXXXXX XXXX, he sought assistance from the dean in obtaining extended time to submit a final version of an assignment. OCR determined that the dean was aware of this protected activity.

The complainant asserted that on XXXX XX, XXXX, he began “having problems with Canvas”; specifically, he asserted that he logged out of Canvas and later tried to reenter the final exam, but it was no longer available. The complainant asserted that on XXXX XX, XXXX, he contacted the University’s Information Technology (IT) department<sup>10</sup> and professor 1 to request additional time to complete the final exam, and professor 1 told him that he was “sorry” that he could not assist him. The complainant asserted that he then contacted the dean and the dean’s supervisor (the supervisor) to request additional time to submit the final exam, and they told him that it was his “fault for not know[ing] what to do” and there was nothing they could do to help him. The complainant asserted that the dean and supervisor refused to help him, and instructed professor 1

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it in, say, an hour), but it is only available on Canvas for a certain number of days, and other instructors are giving you an additional five days beyond that?” The complainant did not respond; and, the coordinator acknowledged that she did not address the matter further. Accordingly, the coordinator did not specifically advise the complainant during this email exchange that he was not allowed extended time on untimed exams.

<sup>8</sup> Prior to the start of the fall XXXX semester, the coordinator advised the complainant to “send an email to [his] instructors inviting more clarification of their expectations around extensions on assignments.” ODS also provided the complainant with LOAs for his courses; the LOAs did not list extended time on assignments as an approved accommodation. Following a request by OCR for copies of the complainant’s LOAs for the fall XXXX semester, the coordinator emailed the complainant to tell him that extended time on assignments “is not listed on your LOA.” The University asserted that this was because the complainant did not select extended time on assignments from the drop-down menu when generating his LOAs. The complainant informed OCR that he did not recall seeing extended time on assignments listed in the drop-down menu.

<sup>9</sup> The complainant informed OCR that he graduated from the University in XXXX XXXX; therefore, the resolution agreement does not include individual remedies for the complainant.

<sup>10</sup> The complainant asserted that he did not contact the IT department on XXXX XX, XXXX, prior to the deadline to submit the final exam, because it was “approximately 6PM [and] the offices are closed.”

not to give him any “breaks” and to deny his request for additional time to complete the final exam, in retaliation for his disability-related advocacy.

OCR determined that after the complainant contacted professor 1 on XXXX XX, XXXX, professor 1 contacted professor 2, the dean and IT staff. The dean, professor 1, and professor 2 reviewed the “action log” for the final exam and determined that the complainant had the final exam open for thirty-five hours (35). They also determined that there was no network issue related to Canvas during the time the complainant alleged that he was unable to access the final exam. The staff members also reviewed the complainant’s LOA and concluded that he was entitled to an accommodation of extended time on timed class/online exams and quizzes, not on untimed exams and quizzes. On XXXX XX, XXXX, after consulting with the lead instructor and the dean, professor 1 informed the complainant that he could not have any additional time to complete the final exam.

Based on the foregoing, OCR determined that professor 1 proffered legitimate, non-retaliatory reasons for denying the complainant’s request for additional time to complete the final exam; namely, there was no evidence that there was any network or IT issue that prevented the complainant from completing the final exam in a timely manner, and professor 1 did not believe that the complainant was entitled to additional time to complete the final exam as an approved academic adjustment. OCR did not find any evidence to indicate that the proffered reasons were a pretext for retaliation, because documentation that the University submitted to OCR confirmed that there was no network issue related to Canvas during the time that the complainant alleged that he was unable to access the final exam; and, although the University had not specifically indicated to the complainant that his academic adjustment of extended time for exams did not apply to this type of exam, University staff had advised professor 1 that the complainant was not entitled to extended time on the exam based on their interpretation of the policy. Therefore, OCR determined that there was insufficient evidence to substantiate the complainant’s allegation that University staff retaliated against him for his disability-related advocacy, by denying his request for additional time to complete the final exam. Accordingly, OCR will take no further action with respect to Allegation 2.

This letter should not be interpreted to address the University’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 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 a 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 regarding Allegation 2 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 Bernard Dufresne, Compliance Team Attorney, at (646) 428-3802 or [bernard.dufresne@ed.gov](mailto:bernard.dufresne@ed.gov); or Amy Breglio, Compliance Team Attorney, at (646) 428-3942 or [amy.breglio@ed.gov](mailto:amy.breglio@ed.gov).

Sincerely,

/s/

Timothy C.J. Blanchard

Encl.

cc: Jenna A. Rottenberg, Esq.