

November 20, 2018

Mitchell S. Nesler, Ph.D.
Acting President/Officer in Charge
State University of New York, Empire State College
Two Union Avenue
Saratoga Springs, New York 12866

Re: Case No. 02-18-2252
State University of New York, Empire State College

Dear Dr. Nesler:

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 the State University of New York, Empire State College (the College). The complainant alleged that a College professor of an online XXXXXXXXXXXXXXX business course (the course) discriminated against her, on the basis of her disability, during the fall 2017 semester, by refusing to provide her with her approved academic adjustment of extended time to complete written assignments (Allegation 1). The complainant also alleged that the College discriminated against her, on the basis of her disability, by failing to respond to reports of discrimination that she made regarding the professor, in or around late November and/or December 2017 (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 is also 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 educational system. Therefore, OCR has jurisdictional authority to investigate this complaint under both Section 504 and the ADA.

In its investigation, OCR reviewed documents and information that the complainant and the College submitted to OCR. OCR also interviewed the complainant and College staff. OCR made the following determinations.

With respect to Allegation 1, the complainant alleged that the professor of the course discriminated against her, on the basis of her disability, during the fall 2017 semester, by refusing to provide her with her approved academic adjustment of extended time to complete written assignments. The complainant stated that she had been doing well in the course until the professor received notice in October 2017 that she was entitled to academic adjustments. The complainant asserted that the professor thereafter denied her requests for extended time to complete her assignments. Specifically, the complainant asserted that after the professor learned that she was entitled to academic adjustments, she denied the complainant's request to revise and resubmit the next assignment due (assignment M6). The complainant stated that even though the professor provided her with extensive feedback on assignment M6, such that the complainant could have revised and resubmitted the assignment, the professor denied her request for an additional day to do so, and instead instructed her to work on other assignments. The complainant did not provide any other examples of the professor's alleged denial of extended time for assignments.

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. The regulation implementing the ADA, at 28 C.F.R. § 35.130(b)(7), contains a similar provision. 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 during academic year 2017-2018, the complainant was enrolled in three online courses at the College, including the course.¹ Pursuant to the College's Academic Adjustment Policy, a student seeking academic adjustments or auxiliary aids must complete an intake form with the College's Office of Accessibility Resources and Services (OARS). If OARS determines that the documentation demonstrates that the student requires academic adjustments or auxiliary aids, OARS will prepare an Approved Accommodation Memo (accommodations memo) and will send it, via electronic mail message (email), to the student, the student's professors for that term, and the Office of Retention/Office of Student Success and Development (student success office) to which the student is assigned.² The accommodations memo notifies each professor of the academic adjustments the student is entitled to receive; and, attaches "tips" and guidelines about accommodations for students and professors.

¹ The complainant was also registered for XXXXXXXX XXXXXX and XXXXXX XXXXXXXXXXXX courses during the fall 2017 semester. The complainant did not allege that the College failed to provide her with any required academic adjustments for those two courses.

² College staff advised OCR that at times the College has referred to this office as both the Rochester Office of Retention and the Office of Student Success and Development. OCR determined that the student success office employs staff to support students.

With respect to the academic adjustment of extended time, the guidelines state that if a student is approved for an academic adjustment of extended time, the student should “open the lines of communication early in the term in order to discuss how much extra time is appropriate for their individual assignments.” Professors may consider “remind[ing] students to begin this dialogue” or they can “begin the conversation” with a student who they know has been provided academic adjustments. In addition, the guidelines ask professors to, “use the accommodation notification email as a bridge to discuss implementing the accommodations with the student if the student has not reached out to you by the 2nd week in the term. Students may not want or need to use their accommodations for every assignment or throughout the entire term.” Pursuant to the academic adjustment policy, the student is responsible for informing OARS or the student’s student success office if the student believes that an academic adjustment is not being provided to him or her, so that OARS can address the issue.

OCR determined that the complainant completed the “Disability Request for Accommodation Form” on September 8, 2017; and, by email dated October 3, 2017, a disability specialist within OARS sent the complainant an accommodations memo stating that she had been approved to receive the academic adjustment of “[e]xtended time for individual assignments” and “[e]xtended time (1.5x) for any timed exams, quizzes, or writing assignments that occur.” The accommodations memo did not state that the complainant was approved for an academic adjustment allowing her to revise and resubmit assignments. The OARS disability specialist also sent a copy of the accommodations memo to the complainant’s advisor, her professors for the fall 2017 term, the Hudson Valley student success office, and the Rochester student success office.³

The professor acknowledged that she received the complainant’s accommodations memo on October 3, 2017. The professor asserted that she thereafter granted the complainant’s request, made on October 4, 2017, to use her academic adjustment of extended time with respect to an assignment (assignment M2). The complainant confirmed this.

OCR reviewed the syllabus for the course and determined that although it states that the professor will provide feedback regarding students’ assignments, it does not state that students will be permitted to revise and resubmit assignments after obtaining such feedback. OCR determined that in September 2017, the professor sent a message to all of the students enrolled in the course via Moodle⁴, the College’s online platform, in which she explained the rules of the course. The professor informed OCR that students generally are not permitted to revise assignments after the due date to receive a higher grade; however, on occasion, after grading an assignment, she will provide feedback to the student and allow the student to resubmit the assignment for a higher grade when she determines that there would be an academic benefit to the student in doing so. The professor stated that she makes such decisions on a case by case basis, but stated that it typically occurs when her review of a student’s work indicates that a

³ Staff informed OCR that the College assigns students to a student success office based on their last names, and that the complainant was originally assigned to the Hudson Valley student success office based on her last name; however, the complainant would often study in the Rochester student success office and would ask the staff at the Rochester student success office questions.

⁴ Moodle is the College’s learning management system which allows students and professors to post course materials, lead discussion forums, submit student work, set up assignments and/or quizzes that are automatically graded, and set up an online gradebook.

student did not understand the particular assignment, and/or based on the student's prior work, she believes that the student is capable of earning a higher grade. The professor asserted, and the complainant confirmed, that the professor never stated that students were generally entitled to revise and resubmit assignments in the course.

With regard to assignment M5, OCR determined that the complainant did not request extended time to complete the assignment prior to November 20, 2017, the scheduled due date for assignment M5; and, she initially submitted assignment M5 to the professor on time. OCR further determined that the professor subsequently permitted the complainant to revise and resubmit assignment M5, which was after the date that the professor had learned of the complainant's approval for academic adjustments. The professor explained that she did so because after reviewing the complainant's first submission for assignment M5, she determined that it was of lower quality than the complainant's first assignment had been, and the professor thought the discrepancy in quality might have been caused by the complainant's misunderstanding of the purpose of assignment M5. The professor stated that she hoped that after reviewing feedback on the initial submission for assignment M5, the complainant would be able to then submit a paper of higher quality; however, the professor stated that the complainant's second submission for assignment M5 was not much better than the first, and the professor assigned a grade of 60%.

With regard to assignment M6, OCR determined that the complainant did not request extended time to complete the assignment prior to December 3, 2017, the scheduled due date for assignment M6; and, she submitted assignment M6 to the professor on time. The professor provided the complainant with written feedback on December 4, 2017, the day after assignment M6 was due, and issued a grade of 30%. In her feedback to the complainant, the professor stated to the complainant that her submission for assignment M6 was "confusing, not logical and . . . unclear," and noted that "many pieces contradict each other which [made] it difficult to follow [her] logic." The complainant thereafter contacted the professor on December 4, 2017, to request an opportunity to revise and resubmit assignment M6. OCR determined that the professor denied the complainant's request to resubmit the assignment, via Moodle; and, stated that the complainant should instead focus on ongoing activities in the course. OCR determined that the complainant and the professor did not have any further communications after December 4, 2017.

The professor asserted to OCR that she denied the complainant's request to revise and resubmit assignment M6 because she did not believe that it would be academically beneficial for the complainant. She stated that the amount of work that would have been required for the complainant to earn a higher grade for assignment M6 by revising it would have been very time-consuming, as the lack of clarity in the complainant's initial draft indicated that the complainant would need to re-read all of the assigned texts prior to drafting a new report. The professor stated that she concluded that the time and effort involved in revising assignment M6 would have detracted from the complainant's ability to focus on the next assignments and final project for the course; therefore, it would not have been academically beneficial for her to do so.

The College informed OCR that the complainant was the only student in the course who requested to revise and resubmit assignment M6; however, the professor offered two other

students in the course (students A and B) the opportunity to revise and resubmit assignment M6. With respect to student A, the College informed OCR that the professor reviewed student A's initial submission and determined that student A did not understand the assignment; therefore, she permitted student A the opportunity to revise and resubmit assignment M6. With respect to student B, the College informed OCR that the professor determined that student B's submission demonstrated that he had put a great deal of time and thought into the initial draft, but had written about the wrong aspect of the topic; therefore, the professor gave student B an opportunity to attempt to correct the assignment and resubmit it by a certain date. Student B did not resubmit assignment M6 by that date, and when he asked for additional time, the professor denied the request and instructed student B to focus on later assignments. The College informed OCR that students A and B were not registered with OARS as having disabilities.

Based on the above, OCR determined that the complainant did not request extended time to submit assignment M6. Rather, she submitted assignment M6 by the due date. Further, OCR determined that when the complainant requested extended time to submit assignment M2, the professor granted the complainant extended time to submit assignment M2. As stated previously, the complainant did not provide any other examples to OCR of assignments on which she did not receive her approved academic adjustment of extended time. Accordingly, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that the professor for the course discriminated against her, on the basis of her disability, during the fall 2017 semester, by refusing to provide her with her approved academic adjustment of extended time to complete written assignments. To the extent that the complainant is alleging that the professor discriminated against her, on the basis of her disability, by not allowing her to resubmit assignment M6, OCR determined that the complainant did not have an academic adjustment that allowed her to resubmit assignments for a better grade. Further, OCR determined that the professor had a legitimate, non-discriminatory reason for allowing students A and B to revise and resubmit assignment M6, and not allowing the complainant to do so; specifically, the professor believed that there would be an academic benefit for students A and B to revise and resubmit assignment M6, but not for the complainant. OCR did not find evidence to substantiate that the proffered reason was pretextual, as the professor's decision was consistent with her stated practice of allowing students to revise and resubmit assignments only when she deemed it academically beneficial for a student; and, the professor permitted the complainant to revise and resubmit another assignment, assignment M5, after the professor had become aware of the complainant's academic adjustment of extended time to submit assignments, because the professor deemed it academically beneficial for the complainant. 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 to reports of discrimination that she made regarding the professor in or around late November and/or December 2017. Specifically, the complainant alleged that she complained to (a) an Assistant Dean (the dean), (b) the Student Services and Recruitment Specialist⁵ (the coordinator), (c) her academic advisor (the advisor), and (d) the Chief Diversity Officer (CDO), about the professor's refusal to provide her with her approved academic adjustment of extended time to complete written assignments and that she

⁵ OCR determined that the staff member's formal title is Student Success and Development Coordinator.

believed that the professor had given her lower grades for having requested to use her academic adjustment. The complainant alleged that the College failed to investigate her complaints.

During the course of its investigation, OCR reviewed the College's grievance procedures to determine whether these provide for the prompt and equitable resolution of complaints of discrimination on the basis of disability. OCR also reviewed whether the College had: (a) designated a Section 504/ADA coordinator; (b) provided notification of the name, office address, and telephone number of the Section 504/ADA coordinator; (c) provided notice that it does not discriminate on the basis of disability; and, (d) adopted and published grievance procedures providing for the prompt and equitable resolution of student and employee complaints of discrimination/harassment on the basis of disability.

Section 504/ADA Coordinator

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 the ADA, at 28 C.F.R. § 35.107, requires a public entity that employs 50 or more persons to designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under the ADA, including any investigation of any complaint communicated to it alleging its noncompliance with the ADA or alleging any actions that would be prohibited by the ADA. The public entity shall make available to all interested individuals the name, office address, and telephone number of the employee or employees designated pursuant to this paragraph.

The College advised OCR that the CDO is the individual designated to coordinate its efforts to comply with Section 504 and the ADA. Accordingly, OCR determined that the College met the requirements of the regulations implementing Section 504 and the ADA, at 34 C.F.R. § 104.7(a) and 28 C.F.R. § 35.107, respectively.

Notice of Non-Discrimination

The regulation implementing Section 504, at 34 C.F.R. § 104.8(a), requires each recipient to take appropriate and continuing steps to notify participants, beneficiaries, applicants, employees, and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of disability; and, states that this notice should also include the identity of its designated coordinator(s). The regulation, at 34 C.F.R. § 104.8(b), requires recipients to publish this notice in any recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees. Similarly, the regulation implementing the ADA, at 28 C.F.R. § 35.106, requires public entities to make available to applicants, participants, beneficiaries, and other interested persons, information regarding the provisions of the regulation and its applicability to the services, programs, or activities of the public entity, and make such information available to them in a manner which apprises such persons of the protections against discrimination assured them by the ADA and its implementing regulations.

On December 23, 2010, OCR initiated a compliance review of the SUNY System (Case No. 02-11-6001).⁶ On October 31, 2013, OCR reached an agreement with SUNY (the Agreement). SUNY agreed that it and each of its 29 state-operated campuses, including the College, would ensure, among other things, that its notices of non-discrimination and grievance procedures complied with Title IX requirements. Pursuant to the Agreement, the College was required to revise and publish its notice of non-discrimination to state that the College does not discriminate on the basis of sex in the educational programs or activities that it operates or in employment (and the notice could include other bases such as race, color, national origin, disability, and age). The College submitted documentation to OCR regarding revisions to its notice of non-discrimination in accordance with the Agreement. OCR will address any compliance issues identified with respect to the College's notice of non-discrimination through its monitoring of Case Number 02-11-6001.

Grievance Procedures

The regulation implementing Section 504, at 34 C.F.R. § 104.7(b), requires that a recipient 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. Additionally, the regulation implementing the ADA, at 28 C.F.R. § 35.107, requires any public entity that employs 50 or more persons to adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by the ADA and its implementing regulations.

During the course of OCR's monitoring of the Agreement reached with the SUNY System, SUNY revised its grievance procedures and provided copies of the revised procedures to OCR for review and approval. OCR determined that the proposed grievance procedures, known as the "SUNY-Wide Discrimination Complaint Procedure," were prompt and equitable as written. OCR approved the procedures on April 29, 2015. On November 5, 2015, the College notified OCR that it had adopted the SUNY-Wide Discrimination Complaint Procedure. OCR determined that the College includes a link to its grievance procedures on its website. OCR will address any compliance issues identified with respect to the College's grievance procedures through its monitoring of Case Number 02-11-6001.

Handling of the Complainant's Alleged Reports of Discrimination

The complainant asserted that she contacted the professor on December 4, 2017, to request one additional day to resubmit assignment M6; however, the complainant asserted that the professor did not respond until December 6, 2017, at which time the professor denied the request. Thereafter, the complainant asserted that she contacted her advisor (complaint 1), the coordinator (complaint 2), the dean (complaint 3), and the CDO (complaint 4), to report the difficulties she had experienced in the course during the fall 2017 semester. The complainant asserted that despite informing these individuals that the professor had not provided her with her approved academic adjustment of extended time, and that she believed that the professor had given her

⁶ That compliance review examined SUNY's handling of complaints of sexual assault/violence and sexual harassment under its various procedures to determine if SUNY had responded promptly and equitably, especially with regard to complaints of sexual assault/violence.

lower grades for having requested to use her academic adjustment, the College failed to investigate her allegations. The complainant also provided copies of various emails she sent to College staff regarding her allegations of disability discrimination.

Complaint 1

OCR determined that the complainant contacted her advisor by email dated November 29, 2017. In her email she stated, “I received two bad grades from [the professor]. If you look at my grades in her class you can see that everything was a 100%. When she received my disability paper she told me I can not [sic] send in paper late.” The complainant further stated, “I knew after she stated that I could not send in my paper late that I was going to get bad grades.”

OCR determined that the complainant’s advisor responded by email the same day; and, requested permission to forward her concerns to “student services.” The complainant responded by email the same day giving her advisor permission to do so; and, the advisor informed OCR that she forwarded the complainant’s email to the College’s XXXXXXXXXX student success office, so that staff within this office could assist her. The advisor informed OCR that a staff member within the student success office responded to her email immediately, confirming receipt; and, the advisor did not further investigate the complainant’s concerns.

Complaint 2

OCR determined that the coordinator received the email from the complainant’s advisor forwarding the complainant’s email dated November 29, 2017, referenced above. Thereafter, on December 6, 2017, the complainant met with the coordinator in the XXXXXXXXXX location of the student success office and reported that she believed that the professor was not providing her with her approved academic adjustment of extended time.⁷ Based on this conversation, the coordinator agreed to assist the complainant by informing the professor of her concerns, and attempting to resolve the issue.

The same day, the coordinator sent an email to the professor in which she notified the professor of the complainant’s concerns, including that the complainant believed that she had not received her academic adjustment of extended time for assignment M6.⁸ In response, the professor sent an email to the coordinator later that evening in which she disputed that the complainant had not received her approved academic adjustment of extended time. The professor also asserted that she had not requested that the complainant revise and resubmit assignment M6, rather she had given her feedback; and when the complainant requested additional time to revise and resubmit assignment M6, the professor advised her to focus on her ongoing assignments.

⁷ The coordinator informed OCR that the complainant also reported that the professor had not been giving her feedback in a timely manner.

⁸ Specifically, the coordinator stated, “She also has a concern about her accommodation of extended time for assignments and how it is being implemented in this course, which is why I’ve copied the [OARS] on this email. She indicated that you told her that her M6 assignment was not acceptable and she could rewrite it and resubmit it to in a very short time frame – she said it was about three hours. Should she have been allowed additional time to submit since she has an accommodation in place?”

OCR determined that the coordinator contacted the complainant by email dated December 11, 2017, to advise her of the information she obtained from the professor; including that the professor disputed that she had requested that the complainant resubmit assignment M6 and denied the complainant's request for extended time to do so. The coordinator also provided the complainant with information about several options she could take to resolve any outstanding concerns, including that she could (1) complete the course and file a grade appeal; (2) file a student grievance; or, (3) withdraw from the course and reenroll in it for a future term. The coordinator informed OCR that she did not inform the College's CDO about the complainant's allegations, because the complainant had not used the word "discrimination" and she understood the complainant to be "concerned about things that students are always concerned about (e.g. she wasn't given time to re-do an assignment/wasn't getting feedback)." The coordinator informed OCR that in or around December 2017, she forwarded the information she had obtained to the dean; she stated she understood that the complainant had met with the dean.

Complaint 3

OCR determined that the coordinator forwarded to the dean the email dated December 11, 2017, in which she provided the complainant with the three options referenced above. OCR determined that on December 13, 2017, the complainant met with the dean to discuss her concerns regarding the course. During this meeting, the complainant informed the dean that she "felt [she] [was] discriminated against based upon [her] disability." In a follow-up email to the complainant dated December 15, 2017, the dean stated that she had referred the matter to the College's CDO "to investigate the complaint of discrimination."

The dean then sent an email to the CDO the same afternoon in which she stated that the complainant had informed her during a meeting earlier that week that the complainant intended to withdraw from the course, because "she feels that she was treated in a retaliatory way by the instructor, because of [the complainant's] documented disability which indicates that she is to receive extra time for assignments. Because [the complainant] expressed the concern that she felt discriminated against because of her disability, I am sending this information to you, please, so that your office can investigate."

OCR determined that later that day the CDO responded to the dean's email by stating, "In the past, I have not initiated a formal investigation of a student's claim of discrimination unless I receive a formal complaint from the student first...I am willing to talk with any student who alleges discrimination and will advise them of the process of submitting a formal complaint. Because I have not received a formal complaint from [the complainant] yet, please feel free to forward my contact information to [the complainant], and advise her that I am available to discuss her concerns."

Later that afternoon, the dean sent a follow up email to the complainant in which she stated, "I have been advised that in order to initiate an investigation, [the CDO] hears from the student first. She also provided the complainant with the CDO's name and contact information. The dean also sent a follow up email to the CDO the same day stating that "because [the complainant] expressed her perception that she was discriminated against, I thought I could ask for an investigation. However, I understand that in order for you to begin an investigation of a

claim of discrimination on the part of a student, the student must request the investigation.” OCR determined that the dean did not otherwise investigate the complainant’s allegations.

Complaint 4

OCR determined that the complainant contacted the CDO via email dated December 15, 2017. In her email, she stated that the professor of the course had not implemented her approved academic adjustment of extended time; and, she believed that the professor had assigned her failing grades because she did not want to provide her with her academic adjustments.⁹ The CDO responded to the complainant’s email on December 18, 2017, stating that he would like to speak with her to discuss the College’s process for filing formal complaints of discrimination; he also requested her permission to share this information with several College administrators, including the Director of College-wide Student Affairs, the Dean of Undergraduate Education, and the OARS disability specialist. The complainant did not respond to this email, but sent a follow-up email to the CDO dated January 3, 2018, in which she stated that she had not heard from the CDO. The CDO responded to the complainant’s email the same day, forwarding his previous email dated December 18, 2017. In his email on January 3, 2018, the CDO asked the complainant to schedule a time to speak with him. The complainant responded by stating that she had not received his previous email, and agreed to speak with him later that day.

OCR determined that the complainant and the CDO spoke by telephone on January 3, 2018; and, during this conversation the complainant provided the CDO with information regarding her concerns about the professor’s implementation of her academic adjustment of extended time, and her belief that she was “targeted for discrimination as a person with disabilities.” The CDO advised the complainant that she could submit a complaint regarding the alleged discrimination using the College’s grievance procedures, and he described the College’s process for investigating complaints of discrimination. OCR determined that the CDO sent a follow up email to the complainant dated January 4, 2018, in which he provided information about how the complainant could file a complaint with the College; including links to the College’s non-discrimination policy and procedure located on the College’s website. The CDO informed OCR that he did not receive a formal complaint from the complainant, and he did not take any action to investigate the complainant’s allegations because she had not submitted a complaint using the College’s complaint form. The CDO stated that the complaint form “triggers the response of the CDO”; and pursuant to the College’s non-discrimination policy, complaints must be submitted using the College’s complaint form. The CDO further informed OCR that because the complainant had not submitted a complaint using the College’s formal complaint form, he assumed that she did not wish to move forward with the complaint process.

⁹ Specifically, the complainant stated, “I believe my disability accommodation was not honored by my [course professor]...I learned nothing in this class. I believe the lack of wanting to support my accommodation lead [sic] to her teaching me nothing. I never received a paper back with comments... She told the class that she does not accept papers late. My work at this school does not reflect the grade this professor has given me. Actually my grade did not reflect an F in this class until she decided that I would fail this class. The grade is a result of the not wanting to accept my paper with accommodation time.”

Complaint 5

During the course of OCR's investigation, OCR determined that the complainant subsequently notified staff at the College (including the CDO in May 2018 and the disability specialist in June 2018) that she had filed a complaint with OCR regarding the professor's alleged discrimination during the fall 2017 semester. In addition, on June 6, 2018, the complainant provided to the disability specialist a copy of the written complaint she had filed with OCR, in which she specifically stated, "Please accept this letter as a formal complaint of discrimination arising from disability and a failure to accept reasonable adjustment by [the professor]" (complaint 5). The complainant also alleged that the professor failed to provide her with instruction and written feedback for having requested to use her academic adjustment of extended time. OCR determined that the CDO contacted the complainant via email dated June 6, 2018, and asked whether anyone from the College had contacted her to discuss her concerns; he also offered to discuss complaint 5 and advise her of the College's procedures to submit complaints alleging discrimination; however, after the complainant advised him that she would not be filing any other formal complaint with the College because it had failed to respond to complaints 1 through 4, the College did not otherwise investigate complaint 5.

OCR determined that in making complaint 1, the complainant did not specifically inform the advisor that she believed that the professor had discriminated against her, or provide sufficient information for the advisor to infer that discrimination may have been occurring; however, OCR determined that in making complaints 2, 3, and 4, the complainant provided the College with a complaint of alleged discrimination;¹⁰ and, the information she provided was sufficient to enable the College to respond or proceed with an investigation.

With respect to complaint 4, OCR determined that despite receiving a written complaint via email dated December 15, 2017, and receiving additional information from the complainant during a telephone call on January 3, 2018, the CDO did not take any action to investigate the complainant's allegations, stating that the College's stated policy requires individuals to submit formal complaints of discrimination using the College's complaint form. OCR determined that the College's procedure is somewhat contradictory in that it states, "All complaints must be submitted on the forms provided by the College"; however, the procedure also states, "Although in limited circumstances, [oral] complaints may be acted upon, the procedures set forth here rest upon the submission of a written complaint that will enable there to be a full and fair investigation of the facts. The College prefers written complaints." As such, the procedures imply that oral complaints may be accepted without using the College's designated forms and that a written complaint might also be accepted even if not provided on the complaint form.

Based on the foregoing, OCR determined that despite receiving written complaints from the complainant that the professor had allegedly discriminated and retaliated against her, the College failed to investigate the complainant's allegations of disability discrimination and retaliation to determine whether discrimination or retaliation occurred. Accordingly, OCR determined that the

¹⁰ In addition, OCR determined that the complainant provided the College with notice that the professor had allegedly retaliated for her requesting to use her approved academic adjustment of extended time by failing to provide her with instruction, including written feedback.

College failed to provide the complainant with a prompt and equitable procedure for addressing her complaint of disability discrimination and retaliation.¹¹

On November 16, 2018, the College agreed to implement the enclosed Agreement to remedy the compliance issues identified in this investigation. OCR will monitor the implementation of the Agreement. Upon the College's satisfaction of the commitments made under the Agreement, OCR will close the case.

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 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 may appeal OCR's determination regarding Allegation 1. An appeal must be submitted within sixty (60) calendar days of the date of this letter. In the appeal, the complainant must explain why the complainant believes that the factual information was incomplete or incorrect, the legal analysis was incorrect, or the appropriate legal standard was not applied; and, how the correction of any error(s) would change the outcome of the case. Failure to do so may result in the dismissal of the appeal. The complainant must either submit a completed online appeal form or mail a written statement of no more than ten (10) pages (double-spaced, if typed). If submitted by mail, send to the Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue SW, Washington, D.C. 20202. If submitted by electronic mail, send to OCR@ed.gov. If submitted by fax, send to 202-453-6012.

¹¹ As stated in Allegation 1, OCR determined that the professor did not discriminate against the complainant by failing to provide extended time for the complainant to resubmit assignment M6 after the professor provided feedback to the complainant on the assignment; however, OCR will obtain a resolution agreement to resolve the College's failure to investigate the complainant's other allegations regarding the professor.

If you have any questions regarding OCR's determination, please contact Joy M. Purcell, Senior Compliance Team Attorney, at (646) 428-3766 or joy.purcell@ed.gov or Félice Bowen, Compliance Team Leader, at (646) 428-3806 or felice.bowen@ed.gov.

Sincerely,

/s/

Timothy C.J. Blanchard

Encl.

cc: Adam Haney, Esq.