



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION IV

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ATLANTA, GA 30303-8927

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September 10, 2019

Dr. James Henningsen
President
College of Central Florida
3001 SW College Road
Ocala, Florida 34474

RE: OCR Complaint No. 04-19-2157
Resolution Letter

Dear Dr. Henningsen:

The U.S. Department of Education (Department), Office for Civil Rights (OCR) has completed its case-resolution process for the above-referenced complaint filed on March 14, 2019 against College of Central Florida (College). The Complainant alleged that the College discriminated against him on the basis of disability (legally blind) and retaliated against him. Specifically, the Complainant alleged that the College:

1. discriminated against the Complainant on the basis of disability when it failed to provide the following academic adjustments: (a) time and a half for Exam 1 in Chemistry 1025; and (b) PowerPoint presentations for Chemistry 1025 in an accessible format;
2. discriminated against the Complainant on the basis of disability when his request for the reasonable accommodation of video recordings for lectures in Chemistry 1025 was denied; and
3. retaliated against the Complainant based on his prior disability discrimination complaint regarding Exam 1, by denying the Complainant the opportunity to: (a) take Exam 3; (b) take the Final Exam; and (c) take class notes on his phone on April 10, 2019.

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, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance; and Title II of the Americans with Disabilities Act of 1990 (Title II), as amended, 42 U.S.C. §§ 12131, *et seq.*, and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. These laws also prohibit retaliation against any individual who asserts rights or privileges under these laws or who files a complaint, testifies, or participates in an OCR proceeding. The College receives Federal Financial Assistance from the Department and is a public entity. Therefore, OCR has jurisdiction over this complaint.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

Based upon the Complainant’s allegations, OCR opened an investigation of the following legal issues:

1. Whether the College discriminated against the Complainant on the basis of disability when it failed to provide the following academic adjustments: (a) time and a half for Exam 1 in Chemistry 1025, and (b) PowerPoint presentations for Chemistry 1025 in an accessible format, in noncompliance with the Section 504 regulation at 34 C.F.R. § 104.44 and the Title II implementing regulation at 28 C.F.R. § 35.130.
2. Whether the College discriminated against the Complainant on the basis of disability when his request for the reasonable accommodation of video recordings of lectures for Chemistry 1025 was denied, in noncompliance with the Section 504 regulation at 34 C.F.R. § 104.44 and the Title II implementing regulation at 28 C.F.R. § 35.130.
3. Whether the College retaliated against the Complainant based on his prior disability discrimination complaint regarding the first Chemistry 1025 exam, by denying the Complainant the opportunity to: (a) take the third Chemistry 1025 exam, (b) take the final Chemistry 1025 exam, and (c) denying the Complainant the opportunity to take class notes on his phone on April 10, 2019, in noncompliance with the Section 504 regulation at 34 C.F.R. §104.61 and the Title II regulation at 28 C.F.R. §35.134.

Pursuant to OCR’s *Case Processing Manual* (CPM) Section 302, a complaint may be resolved when, before the conclusion of an investigation, the recipient expresses an interest in resolving the allegations, and OCR determines that it is appropriate to resolve them with an agreement. After submitting information in response to OCR’s data request letter, the College informed OCR of its desire to take voluntary action necessary to resolve this complaint prior to OCR’s conclusion of its investigation of these issues, and OCR agreed. Accordingly, OCR has not issued findings concerning these issues.

Allegation 1(a):

The Complainant alleged that the College discriminated against him on the basis of disability when the Professor failed to provide time and a half for Exam 1 in Chemistry 1025.

The Complainant’s Spring 2019 Faculty Accommodation Notice (FAN) states that “testing may be handled through the Disability Services Department to better serve faculty, staff, and students.” The FAN lists the Complainant’s approved accommodations as follows:

1. Classroom Accommodations
 - a. Enlarged print of all materials or electronic format of all materials.
 - b. Printout of PowerPoint and/or Photocopies of overheads and copies of notes as available.
2. Testing Accommodations

- a. Extended time (equal to time and a 1/2) for all tests and quizzes; *does not apply to classroom pop quizzes.*
- b. [Complainant] may test in Disability Services on any CF campus.
- c. He may have electronic versions of tests, large print paper tests, or use of the CCTV.
- d. He may have a reader and scribe.

The January 12, 2019 transmittal e-mail sending the Complainant and professors a copy of the Complainant's FAN states:

Keep in mind for quiz and testing accommodations, it is best to plan ahead by making arrangements at least one week in advance with your professors and with the Testing Department. This helps to ensure that the test is available. These arrangements must be made in advance for every quiz/test.

In a February 4, 2019 e-mail to the Disability Services Office, the Professor stated that the Complainant elected to take his first exam for Chemistry 1025 in class. When the class ended, the Professor walked around the classroom and collected all remaining tests, including the Complainant's exam. The Complainant advised the Professor that he should receive time and a half on his test. The Professor advised the Complainant that his accommodation of time and a half was not allowed in the classroom and that an appointment with Disability Services should have been scheduled. Further, the Professor advised the Complainant that it was impossible for him to give him time and a half in the classroom because the Professor teaches a class immediately after Chemistry 1025.

Later that day, the Disability Services Director responded stating that the Complainant, "is well aware of how receiving extra time works." On February 4, 2019, the Complainant sent an e-mail to the Professor requesting that he permit the Complainant to have additional time to complete the first exam for Chemistry 1025. The Professor responded via e-mail denying the request and reiterating that the exam should have been scheduled with the Disability Services Office.

Allegation 1(b):

The Complainant alleged that the College discriminated against him on the basis of disability when the Professor failed to provide PowerPoint presentations for Chemistry 1025 in an accessible format.

On April 2, 2019, the Professor wrote in an e-mail to the Vice President for Academic Affairs:

[Complainant] is registered with Disability Services, and I received his FAN on January 12. As part of his accommodations, [Complainant] receives copies of all PowerPoint files, copies of notes/overheads used by the instructor, and time and a half on quizzes and tests. As part of my lecture, I use PowerPoint and these files are available to all students on the Canvas course site. I also use a document camera in the classroom (as opposed to writing on the whiteboard) and provide [Complainant] with these notes at the end of each class. These are notes that I hand-write during each lecture and he is the only student that gets these notes.

Allegation 2:

The Complainant alleged that he requested the video recordings for Chemistry 1025 from the Disability Services Office at the beginning of the semester and was denied because he was enrolled in the physical course and the video recordings were only available to students taking the online version of the course. The Complainant alleged that he was improperly denied the request and the College should have considered his request for the videos as a reasonable accommodation.

OCR reviewed documentation submitted by the College, wherein the Professor stated that the Complainant was enrolled in the on-campus version of Chemistry 1025 and the video recordings were only available for the online version of Chemistry 1025. The Professor provided the Complainant with the PowerPoint slides and handwritten notes the Professor used in class. The Professor advised the Disability Services Office that only students enrolled in the online course had access to the videos, as they were embedded in the course. The Professor stated that the Complainant could not be added to the course because the timeline and dates are different than the on-campus section and that the online version has classwork posted with the solution keys already posted.

Allegation 3(a)

The Complainant alleged that the College retaliated against him based on his prior disability discrimination complaint regarding the first exam in Chemistry 1025, by denying him the opportunity to take the third exam in Chemistry 1025.

On April 2, 2019, the Professor wrote in an e-mail to the Vice President for Academic Affairs:

To try and eliminate any issue, prior to test two I approached [Complainant] after class and reminded him that he would need to take the test in the testing center for extra time and that he must make an appointment to take the test at the same day and time as the rest of the class. This is my policy to protect the integrity of the exam and reduce cheating. Unfortunately, [Complainant] did not make an appointment with the testing center as needed. As part of the email that [Complainant] received on January 12, it states that students are to make arrangements one week in advance with your professor and testing center. Regardless, I sent the test over to Disability Services and [Complainant] completed the test. For test 3 (April 1), [Complainant] again did not make prior arrangements with me nor the testing center. [Complainant] has missed the past 2-3 classes prior to this test (his attendance is often poor and is often tardy) or I would have discussed this with him again to try and prevent any issue. Even though [Complainant] did not communicate his plans with me nor schedule an appointment with the testing center, I again sent the test over for him to complete. His class started their test at 9:30 am and concluded at approximately 10:50 am. [Complainant] apparently tried to take the test at the testing center at approximately 11 am and was denied. I find it very suspicious that [Complainant] wished to start his multiple-choice test at approximately the same time his class had ended. To protect the integrity of the exam, he was not allowed to take the test. Communication on

the part of [Complainant] with both myself and the testing center would have prevented this.

Allegation 3(b):

The Complainant alleged that the College retaliated against him based on his prior disability discrimination complaint regarding the first Chemistry 1025 exam, by denying him the opportunity to take the final Chemistry 1025 exam.

On April 24, 2019, the Complainant sent an e-mail to the Professor stating that due to a traumatic injury he would be unable to take his final exam and requested the ability to reschedule. The Professor responded stating that he was sorry to hear of the traumatic injury and the Complainant would need to submit documentation regarding the injury within twenty-four (24) hours in order for the Professor to make a decision regarding rescheduling the test. Further, the Professor stated that the exam would need to be taken by the end of the week, since it was the last week of classes.

On April 25, 2019, the Complainant sent an e-mail stating that he had a medical procedure scheduled for that day to treat a traumatic injury and doubted that he would be cleared to return to school by Friday, April 26, 2019. The Complainant stated that he had documentation to substantiate his claim but would need to hand deliver the documents because the College did not have a HIPAA compliant method for him to transmit his medical records. The Complainant also stated that he was concerned about the Professor's stated course end day because the syllabus stated that Exam week was April 26, 2019 through May 2, 2019.

On April 26, 2019, the Complainant sent an e-mail to the Professor stating that he hand delivered the medical documentation to the office of the Dean on April 25, 2019 for his review, that he was not medically cleared to return to school until May 1, 2019, and that an additional procedure was scheduled for April 29, 2019 which may push his return back even further. The Complainant requested to have the final exam sent to the Disability Services Testing center as soon as possible, without an arrival restriction.

On April 26, 2019, the Professor responded to the Complainant's e-mail stating that he and the Dean reviewed the Complainant's documentation and determined that it did not support the Complainant's claim that he had a medical emergency preventing him from taking the final exam on April 24, 2019 at 9:30 am. The e-mail advised that the Complainant would not be permitted to take the final exam and that a grade of zero was entered into the gradebook for the final exam.

On April 26, 2019, the Complainant responded via e-mail stating that he disagreed with the decision and requested the appeals procedure.

Allegation 3(c):

The Complainant alleged that the College retaliated against him based on his prior disability discrimination complaint regarding the first Chemistry 1025 exam, by denying him the opportunity to take class notes on his phone on April 10, 2019.

On April 10, 2019, the Vice President of Academic Affairs wrote an e-mail to the Professor inquiring about that Complainant's report that he was admonished earlier that day by the Professor for using his cell phone to take notes.

On April 10, 2019, the Professor responded via e-mail to the Vice President of Academic Affairs stating that the Complainant was playing on his phone and "making audible noises such as laughing, sighing, etc. in reference to the content on his phone." Therefore, the Professor asked the Complainant to put his phone away. The Complainant responded that he was taking notes and did not put his phone away. The Professor asked the Complainant again to put away his phone as it was causing a distraction to the rest of the class and the Complainant refused again.

Analysis

Prior to the point where OCR reached a final determination, the College expressed an interest in resolving the allegations pursuant to Section 302 of OCR's Case Processing Manual (CPM). OCR determined that it is appropriate to resolve the allegations under Section 302 of the CPM because OCR's investigation identified issues that could be addressed through a Resolution Agreement (Agreement). The provisions of the Agreement are tied to the allegations and the evidence obtained during the investigation and is consistent with applicable regulations.

On September 10, 2019, OCR received the enclosed signed voluntary Agreement. The Agreement, when fully implemented, will resolve the complaint allegations. OCR will monitor the College's implementation of this Agreement to ensure that it is fully implemented. If the College fails to fully implement the Agreement, OCR will reopen the case and take appropriate action to ensure compliance with Section 504 and Title II.

This concludes OCR's investigation of the complaint. 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 must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

If you have any questions, please contact Adrienne Harris, the OCR attorney assigned to this complaint, at XXX-XXX-XXXX.

Sincerely,

Andrea de Vries
Compliance Team Leader

Enclosure