



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

REGION VI
LOUISIANA
MISSISSIPPI
TEXAS

Renaissance Tower
1201 Elm Street, Suite 1000
Dallas, TX 75270

January 26, 2021

Dr. Ric Baser, President
Alamo Colleges District Northwest Vista College
3535 N. Ellison Drive
San Antonio, TX 78251

Sent via electronic mail only: rbaser@alamo.edu

RE: OCR Complaint 06-20-2347
Alamo Colleges District Northwest Vista College

Dear Dr. Baser:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, has completed its investigation of the above-referenced complaint, received on July 30, 2020, filed against Alamo Colleges District Northwest Vista College (Recipient or College), San Antonio, Texas. The Complainant (Student) alleged that the Recipient discriminated against xxx on the basis of disability. Specifically, the Student alleged the Recipient failed to provide xxx approved academic adjustments xx xxxxxx xxxx xx xxx xxxxx xxx xxxxxxxxx xxxxxx xx xxxxxxxx xxxx xxxxxx xxx xxxx xxxxxx xxx xxxxxx xxxxxxxxxx.

This agency is responsible for determining whether entities that receive or benefit from Federal financial assistance from the Department (recipient), or an agency that has delegated investigative authority to the Department, are in compliance with Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 704 (amended 1992), and its implementing regulations at 34 C.F.R. § Part 104, which prohibit discrimination on the basis of disability. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12132, and its implementing regulations, at 28 C.F.R. Part 35. Under Title II, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The College is a recipient and public entity. Therefore, OCR has jurisdiction over this complaint under Section 504 and Title II.

OCR opened the following legal issue for investigation:

Whether the Recipient failed to make such modifications to its academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating, on the basis of disability, against a qualified disabled student, by
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XXXXXXXXXX, in violation of Section 504, at 34 C.F.R. § 104.4, and Title II, at 28 C.F.R. § 35.130.

During the investigation of this complaint, OCR reviewed information received from the Complainant and the Recipient.

Legal Standard – Academic Adjustments/Auxiliary Aids

Under Section 504 and Title II, recipients of Federal financial assistance and public post-secondary education programs must provide such academic adjustments or auxiliary aids as may be necessary to ensure that their academic requirements do not discriminate or have the effect of discriminating, on the basis of disability, against any “qualified” person with a disability. To establish a violation of this requirement in this case, OCR must determine the following: (1) that the complainant is a “qualified person with a disability”; (2) that the complainant provided adequate notice to the recipient that the complainant believed he or she needed academic adjustments; (3) that the requested academic adjustments were necessary; and either (4) that the recipient did not provide the academic adjustments; or (5) that the academic adjustments provided were not of adequate quality and effectiveness. For purposes of this letter, the terms academic adjustments and accommodations are used interchangeably.

Under Section 504 and Title II, a “qualified person with a disability” is a person who meets the essential eligibility (including academic and technical) requirements for admission to or participation in the recipient’s/public entity’s education program or activity, and who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. In the academic adjustments/auxiliary aids context, a “qualified person with a disability” must have an actual impairment that substantially limits one or more major life activities. OCR policy provides that students with disabilities have the obligation to provide adequate documentation to postsecondary education institutions evidencing the existence of their disability(ies) and their need for academic adjustments or auxiliary aids. The question of whether a student has provided documentation sufficient to evidence the existence of a disability requiring an academic adjustment or auxiliary aid must be decided on a case-by-case basis using a standard of reasonableness.

In accordance with Section 504 and Title II, once students provide their institutions sufficient notice of their disabilities and their need for academic adjustments or auxiliary aids, the institutions must provide those academic adjustments or auxiliary aids that are necessary and

reasonable. In addition, the academic adjustments and auxiliary aids that are provided must be of adequate quality and effectiveness. However, academic requirements that a recipient can demonstrate are essential to instruction being pursued by students or directly related to a licensing requirement will not be regarded as discriminatory. Consequently, a recipient is not required to provide an academic adjustment that it can demonstrate would fundamentally alter or lower essential academic requirements.

Summary of the Evidence Obtained to Date

Evidence obtained by OCR indicates that the Student began attending the College in the xxxx xxxx semester. The Student first registered with the Access Office on xxxxxxxx xx xxxx. The Access Office determined the Student to be a qualified student with a disability and began providing accommodations for the Student during the xxxx xxxx semester. The accommodations were renewed for the xxxx xxxxx xxxxxxxxx xxx xxx xxxx xxxxxxx x xxxxx. xxx xxxxxxx xxxxxxx xx xxx xxxxxxx xxxxxxx xxx xxx xxxx xxxxxxx x xxxxx xxxx xxx xxxxxxxxxxxxxxx xxxxxxxxxxx xxxxxxx xxxxxxx xxxxx.

Records provided by the College reveal that the Student’s accommodations included xxxxxxxxx xxxxxx xxxxxxx xxxxxxx, xxx xxxxxxx xx xxxx xxxxxxxxxxx xxxxxxxxxxx; xxx xx xxxxxx xxxxxxxxx xxx xxxxxxxxx; xxxxxx xx xxxx xx xxxxxxx xxx xxxxxxx xxx xxxxxx; xxxxxxx xx xxx xxxxxxx xxx xxxxxxx xxxxxx; x xxxxx xxx xxxxxxx xxx xxxxx xx xxxxxx x xxxxx xxxxxxxxx; xxx x xxxxx xxx xxxxxxx xxx xxxxx xx xxxxxxx xxx xx xxxxxxx xxxxxx. According to the College, the Student never requested the Access Office provide an accommodation for xxxxxxxxx xxxxxx, xxx xx xxxxxxx xxxxxxxxxxx xxx xxxxxxxxx xx xxxxxxx xxxxx xx xxxxxxxxxxxxxxx xxxxxx xx xxx xxxxxxxxx xxxxxxxxxxx xxxxx xxxxxxx xxxxx xx xxx xxxxxxx xxxxx xxxxxxxxx.

According to information provided, after enrolling in xxxxxxx xxxxx xxx xxx xxxxxxx xxx xxxxxxxxx xx xxxxxxxxx x, xxxxx, the Student directly contacted the Professor for xxxxxxx xxxxx xx xxxxxxx xxxxxxx xxxxxxxxx xxxxxxx xxx xx xxxxxxxxxxx xxx xxxxxxx xxx xxxxxx. The Professor met with the Student and prepared an agreement regarding accommodations for the class that both the Professor and the Student signed. The Agreement included accommodations reflected in the Student’s approved LOA; provided the Student xxxxx xxxxx xx xxxxxxxxx xx xxxxx xxxxx xxxxxxxxxxxxxxx xxxxxxxxx xxx xxxxx xxxxxxx xxxxx xxxxx xxx xxxxxxxxx xxxxx xxxxx xxxxx xx xxxxxxxxx xxx xx xxx xxxxxxxxx; xxxxxxxxx x xxxxxxxxx xx xxx xxxxxxxxx xxxxxxx xx xxxxx, xxx xx xxxxxxx xx xxxxxxx xxxxx xxx xxxxxxx xxx xxxxxxxxx xx xxx xxxxxx; xxx xxxxxxx xxx xxxxxxx xx xxxxx xxxxxxxxx xxx xxxxxxxxxxxxxxx xxxxx xxx xxxxx xx xxxxxxxxxxx xxx xxxxxxx xxxxxxxxx.

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xxx xxxx xxx xxxx. Xxx xxxxxxxx xxxx xxxxxxxxxx xxx xxxxxxx xxxxxxx xxxxxxxxxxxx x xxx xxxxxxxxxxxx xxxx xxx xx xxxxxxxx x, xxxx, xxxxxxxx x xxxxx xx xxxx xx xxxx xxxxxxxxxxxx. The Student withdrew from xxxxxxx xxxxx xx xxxxxxxx xx, xxxx, xxxxx xxxxxxxxxxxx xxxx xxx xxxxxxxx xxx xxxxxxxxxxxxxxxxxx xx xxxxxxxxxx xxxxxxxxxx xxxxxxx xxx xxxx, xxxxx xxx xxxxxxxx xx xxxxx xxxx.

Documents and information provided by the Student and College reveal that the Student enrolled xx xxxxxx xxxx xxxxxxx xxx xxxxxxxxxxx xxxxx xxxxxxx x xxxxx xxxxxx xx xxxxx x, xxxxx xxx xxxxxx xx xxxxx x, xxxxx, xxxxx xxxxxxx xxxxxxxxxxx xxxxxxxxxx xxx xx xxxxxxxx. Xxxxx xx xxx xxxxxxx xxxxx xxx xxxxx xxxxxxx x xxxxx xxxxxxxxxx xxx xxxxxxx xxxxx xx xxxxx xx xxxxx, xx xxx xxxxxxxxxx xxx xxxxxxxxxx xxxxxxx, xxx xxxxxxxxxx xxx xxxxxxxxxx xxxxx xxxxxxxxxxxxxxxxxx xxxxxxx xx xxxxxxx. Xxxxxxxx xxxxxxxxxxxxxxxxxx xxxxxxx xxxxx xxxxxxxxxx xxxxxxx xxxxx xx xxxxxx xxx xxxxxxxxxx xxxxx xxxxxxx xxxxx xx xxx xxxxxxxxxx xxx xxxxxxxxxx xxxxx xxx xxxxxxx xxxxxxxxxx xxx xxxxxxxxxx xxxxxxxxxx. Xxx xxx xxxxxxxxxx xxxxx xxx xxxxxxxxxx xxx xxxxx xx xxxxxx xxxxx xxxxxxxxxx.

The College provided records of email correspondence between the Professor of xxxxxxx xxxxx and the Student. Xxx xxxxxxxxxxxxxxxxxx xxxxxxxxxx xx xxxxxxxxxxx xxxxx xxx xxxxxxxxxxx xxx xxx xxxxxxxxxx xxxxx xx, xxxx, xx xxxxxx xxx xxxxxxxxxx xxxxx xxxxxxxxxxxxxxxxxx xxx xxxxxxxxxx xxx xxxxxxxxxx. Xxx xxxxxxxxxx xxxxx xxx xxxxxxxxxxx xxxxxxxxxxxxxxxxxx xxxxx xxx xxxxxxxxxx xxx xxxxxxxxxx xxxxx xxx xxxxxxxxxx xxx xxxxxxx xxxxx xxxxxxx xxxxx, xxxxxxxxxxx xxx xxxxx. Xxx xxxxxxxxxx xxxxxxxxxx xx xxxxxxxxxx xxxxx xx xxxxxx xxx xx xxxxxxxxxx xx xxx xxxxxxxxxx xxxxx, xxx xx xxxxxxxxxx xxxxx xxxxxxxxxx xxxxx xx xxx xxxxxx xx xxx xxxxx xxx xxxxxxxxxx xxxxx, xx xxx xxxxxxxxxx xxxxxxxxxx xx xxxxx.

Records indicate the Student experienced technical difficulties taking exam 1 and was not provided double time on tests as provided for in xxx LOA but was provided opportunities to retake exam 1. The student was also provided an opportunity to take exam 2. On xxxx xx, xxxx, the Student submitted a request to withdraw from the xxxxxxx xxxxx course.

The College provided information to OCR reflecting that a legal representative of the Student sent a letter to the College complaining about the xxxxxxx xxxxx xxxxxxxxxxxxxxxxxx xxxxxxxxxx xxxxxxx xxxxxxx xxxxx xx xxx xxxxxxx xxx xxxxxxxxxx and requesting action by the College to make the Student “whole.” The College responded, denying the Student’s allegations, and stating that although it could not remove the “W” on the Student’s transcript, it would waive the fee for the Student’s xxxxxx xxxxxxxxxx xx xxxxxxxxxxxxxx x xxxxxxxxxx xxxxxxx xxxxxxx xxx xxxxxxx x xxxxxxxxxx xxxxx xxxxxxx.

Analysis

The evidence indicates that the Student was a qualified person with disabilities and that she provided notice to the College of xxx need for academic adjustments by registering with the Access Office and by directly communicating xxx needs to xxx professors. The LOA approved by the College provided for accommodations that included xxxxxxx xxxxx xx xxxxx xx xxxxxxxxxx xxx

XXXXXXXX XXX XXXXX XXX X XXXX XXX XXXXXXXX XXX XXXX XX XXXXX XXXXX XXXXXXXX. The LOA for the XXXXX XXXX XXX XXXX XXXXXXXX X XXXX did not specifically address XXXXXXXX XXXXXXX, but the accommodation of needing to XXXX XXXXX XXXXXXXXXX was approved in the LOA.

With regard to XXXXXXX XXXX, the evidence obtained to date indicates that the Student directly contacted the Professor to request XXXXXXXX XXXXXXXX XXXXXXX instead of contacting the Access Office. XXXXXXX XXXX XXX XXXXXXXXXX XXX XXXXXXX XXX XXXXXXX XXXX XXXXXXX XXXX XXX XXXXX XXX XXXXXXXXXX XXX XX XXX XXXX XXX XXXX XXXXXXXXXX XXX XXXXXXX XX XXXX XXX XXXXXXXXXX XXXXXXX XX XXXX, XXX XX XXXXXXX XX XXXXXXX XXXXXXX XXX XXXXXXX XXX XXXXXXX XX XXXX XXX XXXXXXXXXX XXXXXXX XX XXXX, XXX XX XXXXXXX XX XXXXXXX XXXX, XXX XXXXXXX XXX XXXXXXX XX XXXXX XXXXXXXXXX XXXX XXX XXXXXXXXXXXXXXX XXX XXXXX XX XXXXXXXXXXXXXXX XXX XXXXXXX XXXXXXXXXX. Thus, the information received by OCR reflects that the accommodation requested by the Student was granted by the Professor. Additionally, although the Student contended that xxx would have needed XXXXXXXXXX XXXXXXXXXX XXXXXXX, xxx withdrew from the course before taking the exam. Records also reflect that the Student XXXXXXX XX XXXXXXX X XXX XXXXXXXXXXXX and withdrew from the course. With regard to the XXXXXXX XXXX course taken during the XXXX XXXXXXX X XXXX, documents provided by the College indicate possible compliance concerns because the Student was not provided the approved accommodation of XXXXXXX XXXX XX XXXX XX XXXXXXX XXX XXXXXXX XXX XXXXX that was approved in the Student's LOA.

Prior to the conclusion of OCR's preliminary investigation, on XXXXXXXXXX XX XXXX, the Recipient informed OCR that it was interested in resolving the complaint. Section 302 of OCR's Case Processing Manual (CPM) provides that a complaint may be resolved at any time 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 because OCR's investigation has identified concerns that can be addressed through a resolution agreement. The provisions of the resolution agreement will be aligned with the complaint allegations or the information obtained during the investigation and will be consistent with applicable regulations. OCR determined that a resolution under Section 302 of the CPM was appropriate.

On XXXXXXX XX, XXXX, the Recipient voluntarily signed a Resolution Agreement (Agreement) to resolve the complaint allegations. A copy of the Agreement is enclosed. OCR determined that the provisions of the Agreement are aligned with the complaint allegation and appropriately resolves it. Further, OCR accepts the Agreement as an assurance that the Recipient will fulfill its obligations under Section 504 and Title II with respect to the complaint allegations. The dates for implementation and specific actions are detailed in the Agreement. OCR will monitor the Recipient's implementation of the Agreement.

Effective the date of this letter, OCR is closing the investigation of this complaint and will monitor implementation of the Agreement. This letter should not be interpreted to address the Recipient'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 Recipient 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, we will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have questions concerning this letter, please contact Marvin Macicek, the investigator assigned to the complaint, at (214) 661-9636, or by email at marvin.macicek@ed.gov. You may also contact me at (214) 661-9638, or by email at lori.bringas@ed.gov.

Sincerely,

Lori Bringas
Supervisory Attorney/Team Leader
OCR Dallas Office
Office for Civil Rights

Enclosure: Resolution Agreement

cc (via email to xxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxx xx xxxxxxxx, xx