



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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July 7, 2015

Ms. Kathie Winograd
President
Central New Mexico Community College
900 University Boulevard, SE
Albuquerque, New Mexico 87106

Re: Central New Mexico Community College
Case Number: 08-15-2032

Dear President Winograd:

On November 28, 2014, we received a complaint alleging Central New Mexico Community College discriminated against the Complainant on the basis of disability when her math professor harassed her because of her disability. Additionally, the Complainant alleged that the College failed to provide her a prompt and equitable resolution of her complaint of disability discrimination made to the College.

We are responsible for enforcing Section 504 of the Rehabilitation Act of 1973 and its implementing regulation at 34 Code of Federal Regulations Part 104, which prohibit discrimination on the basis of disability in programs or activities that receive Federal financial assistance from the U.S. Department of Education; and Title II of the Americans with Disabilities Act of 1990 and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability in programs or activities of public entities.

We investigated the following issues:

1. Whether, because the College's math professor harassed the Complainant on the basis of her disability, the College interfered with the Complainant's ability to participate in or benefit from the activities or opportunities offered by the College. 34 C.F.R. § 104.4(b) and 28 C.F.R. § 35.130(b).
2. Whether the College failed to provide the Complainant a prompt and equitable resolution to her formal grievance of disability discrimination. 34 C.F.R. § 104.7(b) and 28 C.F.R. § 35.107(b).

During our investigation we interviewed the Complainant, the math professor, a witness identified by the College, and the Director of the Disability Resource Center. We also received statements from three of the Complainant's classmates and interviewed one of these classmates. Additionally, we reviewed documents submitted by the Complainant and those submitted by the College, which included interviews obtained by the administration. We found that the College failed to provide the Complainant a prompt and equitable resolution to her formal grievance of disability discrimination in violation of 34 C.F.R. § 104.7(b) and 28 C.F.R. § 35.130(b). The

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

College has entered into the enclosed Resolution Agreement to address this compliance concern. With respect to the other allegations raised by the Complainant, we found insufficient evidence to establish a compliance concern. The bases for our findings are explained in this letter.

Whether the College discriminated against the Complainant on the basis of disability when her math professor harassed her because of her disability, including discussing her disability with another student and yelling at her in front of the class to embarrass her.

The Complainant alleged that the professor yelled at her when she was a few minutes late to the first day of class, May 19, 2014. She alleged he yelled at her and made fun of her for about ten minutes until the class began laughing at her expense, and he kept up the harassment during the entire class period.

The Complainant acknowledged to us that the professor was not advised of her disability until June 2, 2014. The Complainant could not provide us the names of any witnesses to corroborate her account of the events. The Complainant did not otherwise establish a basis for believing that the math professor was aware of her disability any earlier than June 2, 2014.

The College denies that the math professor acted inappropriately toward the Complainant on this, or any other, occasion. As support of their denial, the University Disability Resources Officer and our office interviewed the professor who states he remembers the Complainant came to class ten minutes late, and he indicated to her that she should not be late in the future and gave her a copy of the course syllabus. The Professor claimed he in no way wanted to embarrass her or any other student. On the first day of classes some persons come late to the 7:30 a.m. class and he routinely advises all students who are late that they need to come on time. The course is shortened by four weeks in the summer semester and the instruction is compressed. Also, the professor gives baby quizzes at the start of each class. The professor also stated that he did not learn that the Complainant has a disability until June 4, 2014. The STEM peer mentor in this class corroborated the professor's version of events. She recalled that four or five other students were late that day, and they were all greeted in the same manner as described.

We sent an email questionnaire to all the students on the class roster for this class and received responses from three of the Complainant's classmates. None could remember any instance of the Professor harassing her or anyone else. In one reply, the classmate states: "Mr. Acuna is a tough teacher, I never missed a class, did all my homework, and still got an F in the course. I have nothing to gain by supporting Mr. Acuna, but I can tell you as a person who believes in fairness and equality, that I didn't see anything that would justify discrimination."

The Complainant also alleged a second incident of harassment during which the math professor was rude and disrespectful regarding the first test she was to take at the Disability Resource Center (DRC). She alleged he got in her face and yelled at her because she showed up for class lecture on the day he was to hand out the exam she was scheduled to take later at the DRC. She also claimed that the professor shared with the STEM peer mentor information about her disability.

The math professor denied that he yelled at her. Also, the students who responded to our inquiry did not recall any outburst from him. We reviewed the chain of emails between the Complainant and the professor regarding this exam, and the statements from the professor regarding this exam. The Complainant did not take the exam on the date the professor expected. He was concerned that she was going to become aware of the content of the first test before she took it. They discussed this in the hallway according to him. He learned that she had not taken the test and thus the professor provided the DRC another exam for her to take. She was allowed to attend the class lecture on that date. Beyond the Complainant's allegation, we identified no evidence of disability harassment, merely confusion that occurred around the first exam given for this class. Also, the STEM peer mentor denied that she was aware the Complainant has a disability until she was told by her supervisor, not the professor, that the Complainant had filed a disability discrimination complaint with the College. This was confirmed by her supervisor.

Apart from the allegations, we identified no evidence that the math professor harassed the Complainant on the occasions she alleged. There is insufficient evidence to find that, because the College's math professor harassed the Complainant on the basis of her disability, the College interfered with the Complainant's ability to participate in or benefit from the activities or opportunities offered by the College.

Whether the College failed to provide the Complainant a prompt and equitable resolution to her formal grievance of disability discrimination.

According to a document provided to us by the Complainant, on June 22, 2014, she filed a disability discrimination complaint with the College. The College asserted to us that she filed the formal complaint on June 16, 2014. The internal complaint was essentially the same complaint she filed with our office. She alleged to us that she never received a response from the College.

The College asserted to us that its Director of Disability Resource Center immediately began an investigation into the allegation. He interviewed the math professor, the STEM peer mentor, and three others who had no personal knowledge of the allegations. He met with the Dean, the Complainant's DRC counselor, and her Veterans counselor. The Dean met with the Complainant on June 18, 2014, and arranged for the Complainant to take the same math class with another professor. The College claims that the staff believed the Complainant was delighted with the transfer and they had resolved her problem. That she did not succeed in this second class, they attribute to her not taking advantage of the supports offered to her.

We find that the College did not interview any of the Complainant's classmates to verify her allegations. Instead, the administration interviewed only College staff. The College did not provide the Complainant a written or oral response to her allegations of disability discrimination. Instead, they contend that they handled her complaint by providing her an alternative class and instructor. The College failed to provide the Complainant a prompt and equitable response to her internal grievance. We find this is a violation of 34 C.F.R. § 104.7(b) and 28 C.F.R. § 35.107(b). On June 11, 2015, the College entered into a Resolution Agreement to revise its Section 504 and Title II grievance procedures, disseminate the revised procedures once approved by OCR, and

provide training on the revised procedures to key personnel. The Agreement is enclosed with this letter.

This concludes OCR's investigation of the complaint and 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.

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.

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 Complainant may file another complaint alleging such treatment.

We thank you and your staff for the cooperation extended us during this investigation. If you have any questions, please contact Michael Sentel, at (303) 844-3333.

Sincerely,

Thomas E. Ciapusci
Supervisory Team Leader

Attachment: Resolution Agreement