UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

1244 SPEER BLVD, SUITE 310
DENVER, CO 80204-3582

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September 25, 2015

Jan L. Gehler, Ed.D.
President
Scottsdale Community College
9000 East Chaparral Road
Scottsdale, AZ 85256-2626

Re: Scottsdale Community College
Case Number: 08-15-2175

Dear President Gehler:

This is to advise you of the resolution of the above-referenced complaint that was filed with our office. The Complainant alleged the College failed to provide him with testing accommodations during fall semester 2014. The Complainant also alleged the College failed to respond to an internal grievance he filed after fall semester 2014 regarding his academic adjustment.

We began investigating this complaint pursuant to Section 504 of the Rehabilitation Act of 1973 and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the 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 by public entities. As a recipient of Federal financial assistance from the Department and a public entity, the College is subject to these laws and regulations.

During our investigation, we interviewed the complainant and reviewed documentation and other evidence provided by the complainant and the College. On June 11, 2015, during our processing of this complaint, the College indicated its desire to voluntarily enter into an agreement to resolve the allegations pursuant to Section 302 of the *Case Processing Manual*. We reviewed this request and determined that it justified entering into an agreement without completing a full investigation of this complaint.

Facts of the Case

Prior to receiving the College's request to enter into an agreement to resolve the allegations in this case, we made the following factual findings with respect to the complainant's allegations.

With respect to the first allegation, that the College failed to provide the complainant with testing accommodations, we found that the complainant completed the College's "Request for Accommodations" form for fall semester 2014 which he signed and dated November 23, 2014. The complainant requested the academic adjustments of additional time to take examinations and to take examinations in a location other than a lecture hall for his Chemistry 151 and Biology

230 classes. The College provided copies of the Disability Resources and Services (DRS) "Confidential Instructor Notification" addressed to the complainant's Chemistry and Biology professors. The forms were signed by the complainant and the DRS Director and dated December 3, 2014. The form showed that the complainant was to receive 1-½ time for examinations which were to be administered in the College's Test Center.

Before the complainant's academic adjustments were formalized, the DRS Director sent an email to the complainant's Chemistry professor (Professor) on November 13, 2014, advising the Professor that the complainant was approved to receive 1-½ time for tests and asked that the Professor provide that academic adjustment for the test to be given the next day. She also asked that the Professor provide the test to the Test Center. The Professor responded to the DRS Director stating that he would make that adjustment.

The College provided a copy of a Test Center log for the complainant. The log showed that the complainant took four Chemistry tests at the Test Center between September 29 and December 15, 2014. There are no Biology tests reflected on the log.

Regarding the complainant's allegation that the College failed to respond to his internal grievance, the College's preliminary response showed that the complainant sent a letter dated December 29, 2014, to the Chemistry professor. In his letter, the complainant explained the difficulties he had with the Test Center when attempting to take the Chemistry final exam. The complainant stated that the first time he attempted to take the final exam, the Test Center staff advised him that exams would be collected at 4:45 pm. The complainant said Test Center staff did not "finish their work" until 2:45 pm which would have left him with less than two hours to complete the test. The exam was rescheduled for two days later but his study time was interrupted when the College's Canvas system went down. The complainant stated that his study time then became sandwiched between the end of exam week and the final exam he was taking in Microbiology which the College scheduled for the same day. The complainant asserted that he was unable to take the Chemistry final exam and requested that his last exam grade be repeated as his final exam grade.

College documentation showed that the complainant met with the DRS Director on January 5, 2015. The complainant related the events described in his December 29, 2014 letter. Additionally, the complainant told the DRS Director that he did not receive his accommodation when taking his third Chemistry exam. Additionally, by email sent on January 5, 2015, addressed to the DRS Director, the complainant again explained that he had not received his additional time accommodation on his third Chemistry exam and stated that he viewed this as a "violation of [his] legal rights."

After much discussion among College staff regarding the complainant's grievance, staff told the complainant he needed to follow the College's grievance procedures and referred him to the College's Instructional Grievance procedures[1]. The complainant also made several inquiries regarding the status of his grievance.

[1] At the time of this resolution OCR has not reviewed the Instructional Grievance procedures to determine whether they provide for the protections required by Section 504 and Title II.

On January 22, 2015, the Professor responded to the complainant's grievance stating that if his December 29, 2014 letter was requesting an instructional grievance, that grievance was denied. The Professor's response addressed the complainant's failure to take the final exam and found the complainant had ample opportunity to take the exam. Additionally, regarding the "mistimed" third exam, the Professor stated that he could waive or drop that score from complainant's overall grade.

The complainant continued to pursue his grievance and what he viewed as the College's failure to respond. Eventually, on February 17, 2015, the complainant met with the DRS Director and the Dean of Instruction.

Agreement to Resolve Complaint Allegations

As noted earlier, the College requested to enter into a 302 agreement to resolve the complaint allegations before OCR completed its investigation and reached a compliance determination for this complaint. We have received the signed Resolution Agreement, which is enclosed. When the Agreement is fully implemented, the allegations will be resolved consistent with the requirements of Section 504 and Title II and their implementing regulations. OCR will monitor implementation of the Agreement through periodic reports demonstrating the terms of the Agreement have been fulfilled. We will provide written notice of any deficiencies regarding the implementation of the terms of the Agreement and will promptly require actions to address such deficiencies. If the College fails to implement the Agreement, we will take appropriate action, as described in the Agreement. We will provide the Complainant with a copy of formal correspondence we issue to the College during the monitoring.

We thank the College for voluntarily entering into an Agreement to resolve the allegations raised in this complaint. This concludes OCR's investigation of this 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 case is now in the monitoring phase. The monitoring phase of this case will be completed when OCR determines that the College has fulfilled all terms of the Agreement. When the monitoring phase of this case is complete, OCR will close case number 08-15-2175 and will send a letter to the College, copied to the Complainant, stating that this case is closed.

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.

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. In addition, 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.

We thank you for the courtesy and cooperation extended to us during the processing of this case. If you have any questions regarding this matter, please feel free to contact XXXXXXXX, Attorney Advisor, at XXXXXXXX, or me at 303-844-5927.

Sincerely,

/S/

Thomas M. Rock
Supervisory General Attorney

Enclosure

cc: Rebecca Currey, Assistant General Counsel
Maricopa Community Colleges