



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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September 29, 2017

Ms. Kay Norton  
President  
University of Northern Colorado  
Carter 4000  
Campus Box 92  
501 20<sup>th</sup> Street  
Greeley, Colorado 80639

**Re: University of Northern Colorado  
OCR complaint number 08-15-2238, 08-15-2259 and 08-16-2175**

Dear President Norton:

On July 17, 2015 (08-15-2238) and August 18, 2015 (08-15-2259), we opened for investigation the Complainant's allegations that the University discriminated against him (the Student) on the basis of disability. Specifically, the Complainant alleges that the University 1) failed to provide agreed upon academic adjustments including following a previously established practice for providing extended time for testing, 2) failed to appropriately investigate an Americans with Disabilities (ADA) grievance filed on February 9, 2015 by the Student to include an appropriate appeal, and 3) failed to respond to three additional ADA grievances (on March 17, 2015, April 7, 2015 and April 8, 2015) filed by the Student. OCR also received case number 08-16-2175, which was originally filed with the US Department of Justice, which involved the same issues and allegations that were raised in 08-15-2238 and 08-15-2259. Because those matters are being addressed through our investigation of the original two cases, OCR is administratively closing 08-16-2175 at this time.

We are responsible for enforcing Section 504 of the Rehabilitation Act of 1973 and its implementing regulation at 34 Code of Federal Regulation Part 104, which prohibit discrimination on the basis of disability in programs and 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 by public entities. As a recipient of Federal financial assistance from the Department, the University is subject to these laws and regulations.

#### Legal Standards

The Section 504 regulations at 34 C.F.R. § 104.44 (a) state that a recipient to which this subpart applies shall 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 applicant or student with a disability. Academic requirements that the recipient can demonstrate are essential to the instruction being pursued by such student or to

any directly related licensing requirement will not be regarded as discriminatory within the meaning of this section. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted.

Under the applicable regulations, recipients may require a student to follow reasonable procedures to request and document the need for academic adjustments. At the post-secondary level, recipients must provide reasonable notice of such procedures, and students are responsible for knowing these procedures and following them. Generally, at the postsecondary level, if a student with a disability believes that she needs an academic adjustment or other modification, the student has the obligation to identify herself as having a disability, request the academic adjustment, and provide appropriate documentation demonstrating the need for the academic adjustment. Additionally, a postsecondary institution's evaluation of a student's request for academic adjustments requires a fact-specific, case-by-case inquiry. This evaluation process should be interactive, with information exchanged between the student and the postsecondary institution to arrive at a conclusion about the appropriate academic adjustment(s) necessary for the student. In providing an academic adjustment, the postsecondary institution is not required to lower or substantially modify essential requirements of their program.

The regulations implementing Section 504 at 34 C.F.R. § 104.7(b) and Title II at 28 C.F.R. § 35.107(b) require a covered entity, such as the University, to respond in a prompt and equitable manner whenever it has notice of possible discrimination based on disability. When investigating allegations of a failure to respond to possible disability discrimination, OCR first examines whether the University knew or should have known that disability discrimination may have occurred. Once OCR determines that the University is on notice of possible disability-based discrimination, it then examines whether the University responded in a prompt and equitable fashion. In evaluating whether a response is prompt and equitable, we consider whether: (1) the university provided an adequate, reliable, and impartial investigation of the complaint allegations, including the opportunity to present witnesses and other evidence; (2) there were reasonably prompt timeframes for the major stages of the complaint process; (3) parties were notified of the outcome of the complaint; and (4) the university took steps to prevent further discrimination and correct its effects, if applicable. The specific steps in an investigation will vary depending upon the nature of the allegations, the source of the complaint, the age of the student or students involved, the size and administrative structure of the University and other factors.

Allegation 1: The University failed to provide agreed upon academic adjustments including following a previously established practice for providing extended time for testing.

The Complainant states that when he previously attended the University from 2003 – 2008, he was given unlimited time on his exams, as an academic adjustment. The Complaint further states that when he reenrolled at the University in the Fall of 2014, he provided documentation from his physician recommending that the Complainant again be provided “no timed testing” as an accommodation. In the fall of 2014, the Complainant asserts that while he was officially given 1 ½ times the allotted classroom time as an academic adjustment, in practice, he was allowed 4 hours of testing time between the hours of 1:00 and 5:00 PM. Then in February 2015 he was told by a Disability Support Services (“DSS”) staff member that he was only allowed 1 ½ times

the allotted classroom time to complete testing. The Complainant immediately objected to this testing restriction and requested that the written medical recommendations he previously provided the DSS be followed. Thereafter, on February 9, 2015, the Complainant's official testing academic adjustment was modified to provide 2 times the allotted classroom testing time.

The University states that Complainant was provided all academic adjustments in accordance with the Complainant's "Confidential Accommodation Forms" dated September 17, 2014, and then modified February 9, 2015. The University states that its DSS office does not have records regarding the Complainant's prior contact with the DSS or any approved academic adjustments that Complainant might have received. The University provided records from the DSS office to support its assertion that the DSS did provide the Complainant all approved testing academic adjustments. Those records memorialize the amount of time that the Complainant received for each test completed in the DSS office. The records demonstrate that the Complainant received at least the time allotted by his Confidential Accommodation Form but at no time did the Complainant receive unlimited time.

Information regarding academic adjustments administered by the University's DSS can be found on the University's homepage at: <http://www.unco.edu/dss/accommodations.html>

According to DSS documentation, the Complainant first contacted the DSS on August 26, 2014. Academic Adjustments were approved for the Complainant on September 17, 2014. Also, on September 17, 2014, the Complainant and DSS office both signed the DSS form "Rights and Responsibilities of Students Requesting Disability Services at the University of Northern Colorado." This document outlines the responsibilities that students have in relation to exercising their approved academic adjustments and the rights of a student with approved academic adjustments.

While there were some discrepancies between the information provided by the Complainant and that provided by the University, the documentary evidence showed that the Complainant's approved accommodations as of September 17, 2014, included extended time on tests (1 ½ times the regular allotted class-time) and assistance in obtaining a volunteer note taker in the classroom. According to documentation provided by DSS, the Complainant's first test with the approved academic adjustment was September 18, 2014, for BIO 220, a 2 hour class. On September 18, 2014, the Complainant received 1 ½ the classroom time, or 3 hours, for the test.<sup>1</sup>

### Analysis

Under the applicable regulations, recipients may require a student to follow reasonable procedures to request and document the need for academic adjustments. At the post-secondary level, recipients must provide reasonable notice of such procedures, and students are responsible for knowing these procedures and following them. Generally, at the postsecondary level, if a student with a disability believes that she needs an academic adjustment or other modification, the student has the obligation to identify herself as having a disability, request the academic adjustment, and provide appropriate documentation demonstrating the need for the academic

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<sup>1</sup> DSS documentation reflects that for fall 2014 the Complainant received 1 ½ times the allotted classroom time for exams on September 17, 2014, October 10, 2014, November 4, 2014, December 4, 2014 and December 11, 2014. In addition the University did not receive any complaints or concerns about the approved accommodations until February 2015.

adjustment. Additionally, a postsecondary institution's evaluation of a student's request for academic adjustments requires a fact-specific, case-by-case inquiry. This evaluation process should be interactive, with information exchanged between the student and the postsecondary institution to arrive at a conclusion about the appropriate academic adjustment(s) necessary for the student. In providing an academic adjustment, the postsecondary institution is not required to lower or substantially modify essential requirements of their program.

In this case the University has well-publicized procedures for requesting an academic adjustment. OCR was able to locate the University's procedures for requesting an academic adjustment on the University's website.

In the fall of 2014, the Complainant requested and received academic adjustments from the University. In the fall of 2014 the Complainant used the approved testing academic adjustment 5 times without complaint or incident. However, on February 9, 2015, the Complainant expressed his disagreement with his approved testing academic adjustment of 1 and ½ times the allotted testing time. The Complainant stated the test administrator informed him, he could have 2 hours of testing time, which the Complainant again disagreed with because during his previous enrollment at the University he was allowed to test in the afternoons between 1 PM and 5 PM for a total of four hours. On this same date the Complainant's requested "no timed testing" citing the 1 PM to 5 PM testing times given to him during his previous attendance at the University. The Director approved double the allotted class time as the Complainant's approved academic adjustment despite no medical documentation to support this decision. This modification went into effect for the Complainant's exams after February 9, 2015, and did not apply to the test on that date. Thereafter the Complainant received the academic adjustment of double time<sup>2</sup> for all future tests.

The Complainant had no reported concerns about his approved academic adjustment of 1 ½ times the allotted classroom time from September 18, 2014, through February 9, 2015. For the Fall of 2014, the Complainant received an "A" for BIO 220 and made no complaints about the adequacy of his approved academic adjustment.

Thereafter, the Complainant requested a modification to his academic adjustment and was seeking "no timed testing" citing to his accommodations from his previous period of attendance at the University. The University responded immediately by rejecting his request for unlimited testing time, but modifying the Complainant's testing academic adjustment to double the time that was granted to his non-disabled peers. Records reflect that the Complainant used the double time academic adjustment thereafter. While, the Complainant's requested academic adjustment of "no timed testing" was not granted, the University did engage in an interactive process with the Complainant to come to an individualized determination about the appropriate academic adjustment. That interactive process included the Complainant meeting with the DSS Director and informing her he had anxiety. The Director informed him that many students have anxiety but this in and of itself does not grant unlimited time to test. The Complainant stated that his doctor's letter stated he was to get unlimited time. The Director informed him that this is not typical practice in colleges and universities across the country and that time and half is the general standard. The Director further explained that doctors make recommendations for

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<sup>2</sup> For the March 17, 2015 test, the Complainant received less than double time. He receiving approximately 3 hours and 30 minutes instead of 4 hours and 15 minutes that the test was scheduled for, due to the late arrival of the test to the testing center. This matter is discussed in greater detail later in this document.

assistance but that does not mean all recommendations meet with postsecondary professional standards for reasonable and appropriate accommodations. The Director re-evaluated the Complainant's request and subsequently modified the Complainant's testing academic adjustments to increase the allotted testing time to double time. Consequently as the University is not required to adopt the recommendations from a student's physician or from previous enrollments at the institution, OCR finds insufficient evidence to establish that the University failed to provide academic adjustments for the Complainant.

Allegation 2: The University failed to appropriately investigate an Americans with Disabilities (ADA) grievance filed on February 12, 2015 by the Student to include an appropriate appeal. Investigation

From the DSS homepage, under the "Policies and Procedures" tab, students can access the "Rights and Responsibilities of Students Requesting Disability Services at the University of Northern Colorado" form and from the "Discrimination Complaints" tab students are directed to the "Discrimination, Harassment, Retaliation and Misconduct" page on the University's Dean of Students webpage where they can locate the online "Complaint Form". The University's grievance procedures included a provision to file a formal or informal complaint regarding any disagreement "regarding recommendations concerning or the denial of accommodations to which the student believes he/ she is entitled to on the basis of his/ her disability."

#### Investigation

On February 12, 2015, the Complainant filed a written grievance with the University's ADA Coordinator stating that for the test taken on February 9, 2015 he was not approved by his professor for taking the test in the afternoon, "had to wait 50 minutes to begin the test, was interrupted by staff three times during the test, inadequate time to take test, DSS refused to follow doctor's instructions, refusal to allow time taken in the past between 1 and 5PM (established practice) and causing undue stress during test time". The University's Section 504 /ADA Coordinator delegated the responsibility for investigating this grievance to the Assistant Dean of Students and Director of Community Standards and Conflict Resolution ("Dean"). The Dean conducted an investigation which included interviewing the Complainant, DSS staff, Director of DSS, reviewing documentation provided by the Complainant, the DSS, and the Complainant's DSS and student file. The Dean concluded his investigation and issued written findings on March 25, 2015. The Complainant was emailed a copy of the report. The report concluded that the Complainant was not denied his approved academic adjustment of testing time of 1 ½ times the regular allotted testing time. Based on OCR's analysis of the University's investigation, we conclude that the University's investigation, factual and legal analysis, ultimate conclusion and subsequent written report were conducted in a prompt and equitable fashion providing written findings to the Complainant within 6 weeks. Consequently, OCR finds insufficient evidence that the University failed to promptly and equitably investigate the Complainant's ADA grievance.

#### Appeal

The DSS grievance Procedure states that "[i]f the complainant wishes to appeal the decision of the fact-finding panel, the next avenue will be to contact the Provost's office." The grievance procedures give no further guidance or description of the appeal process. In an email dated

March 31, 2015, the Complainant requests that the Dean “move this issue to the provost.” In an email dated April 1, 2015, the Dean informed the Complainant that if he “would like to appeal the decision/findings made in regards to the 2/12/2015 complaint please contact the Office of the Provost.” In an email dated April 28, 2015 and titled “Appeal to Provost UNC” the Complainant requested an appeal from the Assistant to the Provost. In the attachment to the email the Complainant states that “I have concluded the investigation to be unsatisfactory and bias. So, I hereby appeal the investigation.”

The University reported that in late April 2015, the Complainant went to the Office of the Provost without an appointment and met with the Associate Provost for approximately one hour. The University asserts that the meeting covered the topics of the DSS failing to accommodate the Complainant and personal matters but did not include the initiation of an appeal. The University, however, concedes that the Complainant may have used the word “appeal” during his discussions with the Associate Provost. On June 17, 2015, the Associate Provost sent an email to the Complainant stating that he has “completed my review of all documentation related to your appeal, including your original complaint. At this point I have not found any evidence to suggest that you were denied appropriate accommodations.” Despite the Associate Provost’s use of the word appeal and description of a de novo review of the complaint allegations and conclusion of no denial of accommodation, the University maintains that the Complainant did not file an appeal within the meaning of the appeal language of the grievance procedure.

According to the Section 504 at 34 C.F.R. § 104.7(b) and Title II at 28 C.F.R. § 35.107(b), the University must respond in a prompt and equitable manner whenever it has notice of possible discrimination based on disability. The University is not required by the regulations to have an appeal process, however, if it chooses to have an appeal process, the procedural requirements of Section 504 and Title II apply and the appeal process must also include appropriate due process standards (i.e. prompt, equitable, notice of process and written outcome). In reviewing the University’s response to the Complainant’s appeal, which the University’s documentation substantiates that the Complainant did in fact file an appeal, we find that the University’s Associate Provost conducted a de novo review of the Complainant’s February 12, 2015 allegation that the University DSS failed to provide him appropriate accommodations. The Associate Provost, reviewed the Complainant’s complaint, conducted interviews, reviewed the Dean’s written report. In addition, the appeal process took approximately six weeks and resulted in a written response and finding of no denial of accommodations. Despite the University’s position that the complainant did not file an appeal, we find that there was an appeal filed and that University responded appropriately to the appeal. Consequently, OCR found insufficient evidence to conclude that the Complainant was denied an appropriate appeal of the University’s investigation of his ADA grievance.<sup>3</sup>

**Allegation 3:** The University failed to respond to three additional ADA grievances (March 17, 2015, April 7, 2015 and April 8, 2015) filed by the Student.

## Investigation

### April 7, 2015 and April 8, 2015 ADA Grievances

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<sup>3</sup> The University’s current appeal procedures define who may file an appeal, what may and may not be appealed, timeline for filing, standard of review of the appeal process and the provision of written appeal decision. While the appeal procedure is adequate it is difficult to find.

The Complainant alleged that he filed ADA grievances related to events that occurred on April 7, 2015 and April 8, 2015. Complainant further alleged that the University failed to respond to his grievances. The University confirmed that the Complainant filed ADA grievances related to the events of April 7, 2015 and April 8, 2015. The University further stated that both grievances were investigated by the Dean. However, when the Dean contacted the Complainant via email to discuss his specific concerns regarding the grievances and schedule an interview with the Complainant, the Complainant did not respond and has not responded to date. The University stated that the Complainant's failure to contact the Dean and schedule an interview regarding his grievance has rendered the investigations incomplete.

The Complainant's grievance regarding April 7, 2015, related to the format of the note taker's notes that were provided to the Complainant. Specifically, the grievance stated that the Complainant was being provided fill-in-the-blank notes based on Powerpoint lectures, and the Complainant stated that he needed notes on what the instructor discussed outside of the Powerpoint. In response to this grievance, the University initiated an investigation. The investigation included interviews with the instructor and note taker; and the University reviewed the notes provided to date for adequacy and completeness. The instructor confirmed that the notes provided to the Complainant were complete. On April 27, 2015, the Complainant was contacted to schedule a meeting. The Complainant responded on April 29, 2015, indicating that he was having surgery and would not be able to meet in the near future. Next, the Complainant was contacted and a discussion took place about the Complainant coming in for an interview when he returned to campus after surgery. The Complainant has not come in for an interview or called to complete an interview regarding this grievance. The University had made preliminary findings that "[b]ased on the information uncovered thus far there is no indication of discrimination and/or failing to accommodate." But the University kept the complaint open, in the event that the Complainant ever responded to the request for an interview.

On September 30, 2016, the University felt that it had given the Complainant ample time to respond and in the absence of a response, the Dean considered the preliminary finding to be a final determination on this complaint. The Dean emailed the Complainant with the University's investigative report and finding. The 6 page investigative report contained information on the evidence considered, the interviews conducted, and the ultimate findings and conclusions of the investigation. The investigative report notes that the Complainant did not contact the University to reschedule his appointment to discuss his concerns and perspectives regarding his written grievance. Based on OCR's analysis of the University's investigation, we conclude that the University evidence collection, factual and legal analysis, ultimate conclusion and subsequent written report were conducted in an equitable fashion with the provision of written findings to the Complainant. While the actual investigation into this grievance was conducted in a prompt timeframe, the release of the investigative report was significantly delayed by the University's belief that it must conduct a rebuttal interview with a complainant prior to considering an investigation complete.<sup>4</sup> While, OCR agrees that due process generally requires solicitation of information from the complainant, however a complainant's failure to respond to the University's concerted and documented efforts to schedule an interview should not render the

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<sup>4</sup> The University's policy states that if a formal ADA Grievance is not dismissed that the Dean of Students will appoint a fact finding panel. The panel will investigate the complaint and issue a written notice of their decision within 30 days of the submission.

investigation indefinitely incomplete.<sup>5</sup> Consequently, the extensive delay in concluding the investigation constitutes a violation of Section 504's requirement for a prompt response to a grievance.<sup>6</sup>

The Complainant's grievance regarding April 8, 2015, states that the DSS staff failed to accommodate his disability regarding foot pain, religious prayer, stress and panic attacks, and PTSD. Specifically, the Complainant alleged that DSS staff inappropriately docked testing time while he was recovering from panic attacks and discussing accommodations problems. In response to the grievance, the University initiated an investigation. The investigation included position statements from DSS staff as to the events of April 8, 2015, review of Complainant's approved accommodations and medical documentation (which did not include any information about foot pain or foot wear), review of the time provided (double time) as an accommodation for anxiety disorders and PTSD, and consideration of whether any time docking occurred. The University notes that religious prayer is not an ADA issue and is not analyzed as part of the ADA grievance. The University has preliminary findings that the DSS staff did not fail to accommodate Complainant's foot pain disability as it was unknown to DSS at that time and no accommodation request or documentation had been provided, that the Complainant's anxiety and PTSD were accommodated with the double time accommodation and there is no mechanism to stop the double time accommodation, and finally that with regard to the docking allegation, the University finds that the Complainant was informed of his accommodations in writing prior to the exam and had an opportunity to address any concerns before testing began. The University asserts that the Complainant was contacted to schedule an interview regarding the grievance but was unavailable due to surgery then was going to be interviewed when he returned to campus after surgery. The Complainant has never come in for an interview or called to complete an interview regarding this grievance.<sup>7</sup>

On September 30, 2016, the Dean emailed the Complainant the University's investigative report and finding. The 19 page investigative report contained information on the evidence considered, the interviews conducted, and the ultimate findings and conclusions of the investigation. The investigative report notes that the Complainant did not contact the University to reschedule his appointment to discuss his concerns and perspectives regarding his written grievance. Based on OCR's analysis of the University's investigation, we conclude that the University's evidence collection, factual and legal analysis, ultimate conclusion and subsequent written report were conducted in an equitable fashion with the provision of written findings to the Complainant. While the investigation into this grievance was conducted in a prompt timeframe, the release of the investigative report was significantly delayed by the University's belief that it must conduct a rebuttal interview with a complainant prior to considering an investigation complete. While, OCR agrees that in the interest of due process, obtaining as much information from the

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<sup>5</sup> The University's policy states that if a formal ADA Grievance is not dismissed that the Dean of Students will appoint a fact finding panel. The panel will investigate the complaint and issue a written notice of their decision within 30 days of the submission.

<sup>6</sup> The University's written procedure is silent as to whether a complainant interview is required.

<sup>7</sup> Email correspondence documents that the Complainant continued to have contact with the University regarding financial aid and housing through July 2015. The Complainant had multiple email contacts with the Dean and due to difficulties with the Registrar, Financial Aid Office and Residential Education the Dean was made the Complainant's one and only point of contact for the University. The Complainant was notified of this restriction in a July 8, 2015 letter. The University maintains that after the July 8, 2015, letter designated the Dean as the point of contact for all matters related to the University that the Dean had no further contact with the Complainant. There is nothing in the materials submitted by the Complainant that contradict the University's date of no further contact.

complainant about his complaint is necessary, a complainant's failure to respond to the University's concerted and documented efforts to schedule an interview should not render the investigation indefinitely incomplete. While OCR concurs with the findings of the University with respect to this allegation, the extensive delay in concluding the investigation constitutes a violation of Section 504's requirement for a prompt response to a grievance.

#### March 17, 2015 ADA Grievance

The Complainant states that he filed a hardcopy ADA grievances related to events that occurred on March 17, 2015. The Complainant provided a copy of this grievance. The Complainant scanned the grievance and attached it to an email dated April 28, 2015, entitled ADA complaint 3-17-2015 which was sent to the Assistant to the Provost and the Director of Human Resources and Section 504/ADA Coordinator. In additional emails between the Complainant and the Dean, the Complainant notified the University of a complaint about the events of March 17, 2015.

In an email dated March 30, 2015, the Complainant informs the Dean with a minute by minute fact pattern that details the DSS's failure to provide academic accommodations for his March 17, 2015 exam. In an email dated March 31, 2015, the Dean writes "I am aware you have expressed concerns about the exam on 3/17/2015 but have not seen a formal grievance concerning that exam. Are you wanting to file a formal grievance about the 3/17/2015 exam and/or any subsequent issues? Let me know and we can begin the process." In response to the Dean's email the Complainant emailed back later that afternoon, "Yes, it is a complaint, it is all based on the accommodations that have been refused, the dishonesty seems to continue."

The University stated that the Complainant did not file a complaint about the events of March 17, 2015. The University also stated that "the Dean of Students Office has accepted and continues to accept, and respond to, all student complaints through email (emphasis added), oral and written formats." Consequently, even if the University did not receive the Complainant's formal ADA grievance form, which the Complainant sent in the same manner as his other ADA grievances, it did receive an email complaint from the Complainant. The University reports that it undertook some evidence gathering in anticipation of a formal ADA grievance being filed. However, the University maintains that no formal complaint was filed regarding the events of March 17, 2015.

On September 30, 2016, the Dean emailed the Complainant the University's investigative report and finding. The 17 page investigative report contained information on the evidence considered, the interviews conducted, and the ultimate findings and conclusions of the investigation. The substance of this ADA grievance related to whether the Complainant was denied an academic adjustment of double time in testing for BIO 442 on March 17, 2015. The Complainant's testing time was scheduled for 12:45 PM until 5:00 PM on March 17, 2015. According to the investigative report there is a factual dispute as to when the Complainant arrived to DSS to begin the test. According to the Complainant he was 20 minutes late (12:45 PM start time – 1:05 PM arrival time). The DSS reported that the Complainant was 30 minutes late (1:15 PM arrival time). The investigative report next states that the test did not arrive at the testing center until 1:30 PM, despite the DSS's efforts to get the test to the DSS in a timely manner. The Complainant stated that he did not complete the exam, when the testing center closed at 5:00 PM. The investigative report then cites a DSS policy, which states:

*BE ON TIME!!! You are still taking an exam for a class and that room may be scheduled for another student after you. There is a chance that showing up late will impact your extended time; if you are more than 10 minutes late you will need to contact DSS and your faculty to reschedule if possible.*

Finally, the investigative reports cited the DSS policy, above, to conclude that no denial of an accommodation occurred because when a student arrives late he was subject to forfeiting testing time. In addition, the investigative report cited to the DSS's report that the Complainant consented to having his accommodation of double testing time reduced for this test.

On September 30, 2016, the Dean emailed the Complainant<sup>8</sup> the University's investigative report and finding. The 17 page investigative report contained information on the evidence considered, the interviews conducted, and the ultimate findings and conclusions of the investigation.

Based on OCR's analysis of the University's investigation, we conclude that the University's evidence collection, factual and legal analysis, ultimate conclusion and subsequent written report did not cite policy with respect to faculty responsibilities for ensuring tests are delivered to the DSS prior to testing times<sup>9</sup> or take into account the undisputed fact that the test was not available to take until 45 minutes after the test was scheduled to begin. This delay in obtaining the test caused the Complainant to lose 15 to 25 minutes in testing time, through no fault of his own, which amounts to a denial of his approved academic adjustment. As with the prior allegation, OCR finds that the extensive delay in concluding the investigation constitutes a violation of Section 504's requirement for a prompt response to a grievance. Additionally, OCR's analysis of the facts gathered in this University investigation supports a different legal conclusion than the University's determination that they appropriately and accurately provided the Complainant with his academic adjustments. Consequently, OCR finds that the University failed to promptly and equitably investigate the Complainant's ADA grievance of the March 17, 2015, incident when it concluded that no ADA Grievance had been filed by the Complainant despite evidence to the contrary and subsequently that the University did not discriminate against the Complainant because he was late for testing despite the Complainant's professor not following University policy and procedures for ensuring the test was provided prior to the testing date and time.

Based on OCR's findings, the University entered into the attached Resolution Agreement. The Agreement calls for the University to review and revise its Disability Student Services (DSS) testing policy and procedures; train all DSS testing staff on the revised policy and procedures; review and revise its Discrimination, Harassment, Retaliation and Misconduct policy and procedures; train University staff responsible for investigating discrimination complaints on the revised policy and procedures; and provide OCR with a URL for these policies on the University's internet site.

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

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<sup>8</sup> OCR was copied on the email to the Complainant with the findings related to the March 17, 2015 grievance.

<sup>9</sup> Professors, TA and faculty are responsible to for submitting the test and blue form by hand delivery, FAX or email a minimum of one day in advance for test preparation.

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. If we receive such a request, we protect personal information to the extent provided by law.

If you have any questions, please contact me at XXX or David Sumners, Equal Opportunity Specialist at XXXX.

Sincerely,

/s/

Stephen Chen  
Program Manager

Enclosure – Resolution Agreement

cc: Dan Satriana – University General Counsel