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November 17, 2017

Dr. Timothy Mottet, President  
Colorado State University - Pueblo  
2200 Bonforte Blvd  
Pueblo, CO 81001-4901

*By email only to [presidents.office@csupueblo.edu](mailto:presidents.office@csupueblo.edu)*

Re: Colorado State University - Pueblo  
OCR Case Number: 08-17-2239

Dear President Mottet:

We completed our investigation of this case and are notifying you of our determination. We received a complaint alleging Colorado State University - Pueblo (University) discriminated on the basis of disability. Specifically, the complainant alleged that the University denied his request for a course substitution for its general education math course requirement as an academic adjustment.

We conducted our investigation under the authority of 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. The University, a public entity, receives Federal financial assistance from the Department, therefore, OCR has jurisdiction pursuant to Section 504 and Title II.

In reaching a determination, OCR reviewed documentation provided by the complainant and the University, and interviewed the complainant and University administrators. Regarding the complainant's allegation that he was not provided a substitution for the math course general education requirement, we found insufficient evidence to support that the University violated Section 504 and Title II as alleged. During our investigation, however, we identified concerns with the University's *General Education Math Course Substitution Policy*. The basis for our conclusions follows.

### *Background*

The complainant began attending the University in fall 2015 majoring in Sociology with an emphasis in Criminology. The complainant registered with the University's Disability Resource and Support Center (DRSC) which agreed to provide him with academic adjustments for the fall 2016 and spring 2017 semesters: extra time on tests and quizzes, separate space for tests and quizzes, a note taker in class and written instructions for assignments.

The math requirement for the complainant's course of study is part of the general education requirements. To fulfill the general education math requirement, the complainant could take any one of six math courses including, for example: College Algebra, Pre-Calculus Math or Introduction to Statistics. The complainant enrolled in Math 099, Intermediate Algebra, for the fall 2016 semester; which, at that point, was the only math course the complainant had attempted at the University. Math 099 does not count toward graduation but is a prerequisite for three of the courses which would fulfill the general math requirement.

The University will not waive any general education requirements. According to the University's 2016-2017 Catalog, the University's general education program is designed to give students the written and quantitative reasoning skills they will need to be successful in their studies and their future careers. The University explained that the skills associated with the math course general education requirement are vital to satisfying the academic rigor necessary to obtain a degree. Nonetheless, recognizing the needs of students with disabilities, the University has a *General Education Mathematics Substitution Policy* (Policy) for those students with a learning disability or other disability "so profound that it precludes him or her from completing the mathematics requirement...."

Under the Policy, a student who wishes to request a math course substitution must: 1) show proof that she or he has made a good faith effort in attempting a math course, 2) write a letter to the DRSC Director addressing the need for a math course substitution and 3) provide documentation showing that she or he has a disability that impacts mathematics learning. After the letter and documentation are submitted, the DRSC Director submits the information to the review committee which is comprised of the DRSC Director, Dean of Students and the Chair of the Department of Mathematics and Physics (Math Chair). In coming to a decision whether to grant a math course substitution, the committee considers: whether the student's disability precludes him or her from completing the math requirement, the student's grades in previously attempted math courses, evidence of the student's good faith effort toward completing math courses and input from the student.

When evaluating a student's good faith effort to complete a math course, the DRSC Director and Math Chair explained that the committee takes into account the student's class attendance, whether the student used his or her DRSC academic adjustments, and whether there is a record of the student using the University's tutoring services. The committee may also consider input from the math course instructor regarding the student's performance in the class. The DRSC Director stated that he goes over these criteria with all students who are considering requesting a math course substitution.

After the committee makes a decision regarding the student's request, the DRSC Director sends a letter to the student explaining the committee's decision. A student who is awarded a math course substitution may take either Introduction to Java Programming or Deductive Logic to fulfill the general math requirement.

While enrolled in Math 099, the complainant sent a letter dated November 3, 2016, to the DRSC Director requesting a math course substitution. In his letter, the complainant explained his long-standing struggles with math. He stated that he attended all of the Math 099 classes and

completed most of the online homework but he failed the last quiz and was failing the course. He shared that he spent several hours in the math lab the previous week but he was unable to get the level of support he needed because of the number of other students seeking tutoring there. He stated that he attempted to get tutoring from TRIO but he did not qualify for that program because he was a senior. The complainant included a copy of his XXXXXX screening report from an evaluation conducted in 2007 with his letter. After receiving the complainant's request, the committee decided to delay its review of his request until he had completed Math 099 because he was currently attempting that course. The complainant ultimately received a grade of "U" (unsatisfactory) for Math 099.

The committee met on January 13, 2017, to review the complainant's request for a math course substitution. The committee reviewed the complainant's effort in attempting Math 099 and the DRSC Director provided information regarding his disability. The committee also considered input from the instructor of Math 099 and information from the Math Learning Center Coordinator. The committee concluded that the complainant's disability did not preclude him from completing the general math requirement and found that he had not made a good faith attempt to complete Math 099. The Math Chair explained that the instructor for Math 099 shared her impression with the committee that the complainant was not sufficiently prepared and did not put his full effort into passing the course. The DRSC Director said the Math Learning Center Coordinator told him that the complainant had logged in for tutoring only six times during the eight-week course. The DRSC Director stated the complainant told him he had been going for tutoring twice a week.

By letter dated January 17, 2017, the DRSC Director notified the complainant that the committee determined he was ineligible for a general math requirement course substitution due to a lack of documented evidence of a good faith effort. The committee suggested two University math courses that the complainant could take which were conducted at a traditional 15-week pace and reminded the complainant of the available tutoring services. Alternatively, the committee suggested the complainant take a particular math course at a local community college for which credit could be transferred to the University. The complainant subsequently appealed the committee's decision to the Provost who upheld the committee and denied the complainant's request for a math course substitution.

### *Legal Standard and Analysis*

The complainant alleged the University discriminated on the basis of disability when it denied his request for a course substitution for its math course requirement as an academic adjustment.

The Section 504 regulation at 34 C.F.R. § 104.43(a) provides that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any postsecondary education program of a recipient. The Title II regulation at 28 C.F.R. § 35.130(a) contains a similar prohibition applicable to public postsecondary educational institutions.

The Section 504 regulation at 34 C.F.R. § 104.44(a) requires recipient colleges and universities to make modifications to their academic requirements that are necessary to ensure that such

requirements do not discriminate, or have the effect of discriminating, against qualified individuals with disabilities. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific required courses, and adaptation of the manner in which courses are conducted. However, academic requirements that recipient colleges and universities can demonstrate are essential to the program of instruction being pursued or to any directly related licensing requirement will not be regarded as discriminatory.

Under the Title II regulation at 28 C.F.R. § 35.130(b)(1)(ii) and (iii), public colleges and universities may not afford a qualified individual with a disability opportunities that are not equal to those afforded others, and may not provide aids, benefits or services that are not effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others. Under 28 C.F.R. § 35.130(b)(7), public colleges and universities must make reasonable modifications in policies, practices or procedures when necessary to avoid discrimination on the basis of disability, unless doing so would fundamentally alter the nature of the service, program or activity. Section 35.103(a) provides that the Title II regulation shall not be construed to permit a lesser standard than is established by the Section 504 regulation. Therefore, OCR interprets the Title II regulation to require public colleges and universities to provide necessary academic adjustments to the same extent as is required under the Section 504 regulation.

A student with a disability is obligated to notify the college or university of the nature of the disability and the need for a modification, adjustment, aid, or service. Once a college or university receives such notice it has an obligation to engage the student in an interactive process concerning the student's disability and related needs. As part of this process, the college or university may request that the student provide documentation, such as medical, psychological or educational assessments, of the impairment and functional limitation.

In determining what academic adjustments are appropriate for a student with a disability, the postsecondary institution should familiarize itself with the student's disability and documentation, explore potential academic adjustments, and exercise professional judgment. The question of whether a postsecondary institution has to make modifications to its academic requirements is determined on a case-by-case basis. OCR generally does not substitute its judgment for that of qualified educators and professionals regarding modifications. Instead, OCR reviews relevant factual evidence to determine whether a postsecondary institution acted in a reasonable manner and whether it took appropriate steps consistent with Section 504 and Title II in making decisions regarding a student's eligibility for academic adjustments.

The University denied that it discriminated against the complainant. The University stated that the complainant's request for a math course substitution was considered by a committee in accordance with the Policy. The University explained that the committee determined that the complainant's disability did not preclude him from completing the general math requirement and found that he had not made a good faith attempt to complete Math 099. Accordingly, the University asserted that the complainant did not qualify for a math course substitution.

We found that the University followed the Policy in its handling of the complainant's request for a course substitution. After receiving the complainant's request, the DRSC Director convened a committee meeting on January 13, 2017, which included himself, the Math Chair and the Dean of Students. We found that the committee considered whether the complainant's disability precluded him from completing the math requirement, his grade in and evidence of his good faith effort toward completing Math 099<sup>1</sup> and the complainant's input. The committee included feedback from the Math 099 course instructor and the Math Learning Center Coordinator in coming to its determination. In accordance with the Policy, the DRSC Director sent the complainant a letter dated January 17, 2017, explaining the committee's decision that he did not qualify for a general education math course substitution and recommending to the complainant alternative courses he could take to meet the general education math requirement.

The complainant asserted that the evaluation report he provided to the committee demonstrated that his disabilities of XXXXXXXXXXXX impact his ability to master math. We found that University administrators did not dispute that the complainant's disabilities impacted his ability to master math. The Math Chair acknowledged that the complainant's diagnosis indicated that he had problems with math but said there were indications that he could be successful with support from the DRSC. Under the Policy, the committee had to decide whether the complainant's disabilities *precluded* him from completing the general education mathematics requirement before he would qualify for a course substitution.

The DRSC Director stated that his office had not determined that the complainant has a math disability based on the documentation he provided. We found that the committee had copies of the evaluation report and the complainant's Section 504 plan from high school available for its consideration. Although they acknowledged the complainant's difficulties with math, neither stated that the complainant's disability precluded him from doing math. To the contrary, the evaluation report stated that XXXXXXXX students can excel in understanding math concepts and recommended that the complainant's math instruction focus on math concepts over math calculation. We noted that the only requirement in the complainant's Section 504 plan specific to math was that he be permitted to use a calculator for math assignments and tests.

The complainant also asserted that he attended all classes for Math 099, he attempted to complete the online homework, he went to the Math Learning Center for tutoring and he sought more tutoring support from the TRIO office but did not qualify for those services because he was a senior. The University did not dispute that the complainant attended all classes or that he attempted to complete the homework. As noted earlier, the DRSC Director stated the complainant told him he had been going for tutoring twice a week when he originally spoke with him about requesting a math course substitution. The committee found that was not the case. The DRSC Director explained, and OCR confirmed, that the complainant logged in for tutoring at the Math Learning Center just six times during the eight-week course. Moreover, we found no

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<sup>1</sup> We noted that the complainant stated in his request for a course substitution that he had to take several remedial math courses at a local community college and had to repeat one because he failed it. The DRSC Director stated that this did not factor into the committee's deliberations because the complainant provided no information regarding his efforts to complete math courses at the community college level. OCR found no evidence that the complainant provided this type of information to the University.

evidence that the complainant contacted the DRSC for help in acquiring tutoring assistance if he felt the tutoring he was receiving was insufficient to meet his needs.

Based on the above, we found insufficient evidence to conclude that the University discriminated against the complainant as alleged.

### *Potential Compliance Concern*

During our investigation of this complaint, we identified a potential compliance concern regarding the University's application of the Policy. During an interview with OCR staff, the DRSC Director stated that a student with a profound math disability would not be required to attempt a University math course if that student had already taken a higher-level, postsecondary course and did not pass. Conversely, it would appear that if a student with a profound math disability had not already taken a higher-level math course, the University would require her or him to attempt a math course before he or she would qualify for a general education mathematics course substitution. This could raise a compliance concern if there were any students with a disability so profound that it precluded him or her from completing the math requirement who were nonetheless required to attempt to complete a math course.

Prior to the completion of our investigation, the University requested to resolve this potential compliance concern pursuant to Section 302 of OCR's Case Processing Manual (CPM). On November 16, 2017, the University submitted the enclosed signed resolution agreement (the Agreement) to OCR. When fully implemented, the Agreement will resolve any potential compliance concern.

### *Conclusion*

In summary, we determined that the University did not violate Section 504 and Title II with respect to the complainant's individual allegation. We also identified a potential compliance concern during our investigation.

We thank the University for voluntarily entering into an Agreement to resolve the potential compliance concern. OCR is closing the investigative phase of this case effective the date of this letter. The case is now in the monitoring phase. The monitoring phase of this case will be completed when OCR determines that the University has fulfilled all of the terms of the Agreement. When the monitoring phase of this case is complete, OCR will close Case Number 08-17-2239 and will send a letter to the University, 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. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Individuals filing a complaint or participating in the investigation process are protected from retaliation by Federal law.

Under the Freedom of Information Act, we may release this document and related correspondence and records upon request. If we receive a request, we will protect personal information to the extent provided by law.

We thank the University, and especially XXXXXXXXXXXXX, for your continued cooperation throughout this process. If you have questions, please contact XXXXXXXXXXXXX at XXXXXXXXXXXXX or me at 303-844-5927.

Sincerely,

/S/

Thomas M. Rock  
Supervisory General Attorney

Enclosure

cc: Johnna Doyle, Deputy General Counsel, by email only