



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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December 18, 2018

Dr. Katharine Winograd, President  
Central New Mexico Community College  
525 Buena Vista Dr. SE  
Albuquerque, NM 87106

By email only to: [winograd@cnm.edu](mailto:winograd@cnm.edu)

Re: Central New Mexico Community College  
OCR Case Number: 08-18-2340

Dear President Winograd:

We completed our investigation of this case and are notifying you of our determination. We received a complaint alleging that Central New Mexico Community College (College) discriminated on the basis of disability. Specifically, the complainant alleged that the College failed to provide him with a note-taker for the following courses: XXXXXXXXXXXXXXXXXXXX, in which he enrolled during the Fall 2018 semester.

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; 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.

Our investigation included a review of documentation provided by the complainant and the College, as well as interviews of the complainant. We found sufficient evidence to support a conclusion that the College discriminated in violation of Section 504 and Title II as alleged.

**Background**

The complainant, a computer science student at the College, was registered with the Disability Resource Center (DRC). On August 28, 2018, the second day of the fall semester, the complainant sent an email to the DRC stating that he would need the assistance of a note-taker in four courses in which he had enrolled for the fall 2018 semester: XXXXXXXXXXXX, XXXXXXXXXXXX, XXXXXXXXXXXX, and XXXXXXXXXXXX.<sup>1</sup>

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<sup>1</sup> The College stated that the complainant's emailed request for a note-taker did not comply with DRC procedures which required a student needing a note-taker to bring a copy of their class schedule, indicate the class(es) for which they were requesting a note-taker and sign the schedule. The College advised OCR that it has since changed its procedure to allow students to request note-takers by email.

On September 11, 2018, the complainant met with his DRC Academic Coach to provide her with medical documentation supporting his request for a note-taker. The Academic Coach approved his request that same day. According to the College, the complainant's name was placed on a list along with other students who had requested note-takers for the fall 2018 semester in accordance with DRC practice. The complainant's request was XXX of 127 for fall 2018.

During his September 11 meeting with his Academic Coach, the complainant expressed his willingness to use Sonocent, a program used for note-taking. That same day, the DRC Associate Director demonstrated how to use Sonocent for the complainant. On September 12, 2018, the complainant spoke with the Associate Director reporting that Sonocent was not meeting his note-taking needs, especially in his XXXXXXXX and XXXXXXXX courses, and he would still need the assistance of a note-taker. According to the College, the complainant was highest priority for a note-taker when a note-taker was available during his classes. The College reported that a note-taker became available for the complainant's XXXXXXXX class on September 18 and began taking notes for him on September 19, 2018.

On September 12, 2018, the Disability Services Manager sent an email to the complainant and other DRC students stating that the DRC was unable to place readers/writers in all requested courses. The Disability Services Manager explained that as students drop and add courses, availability of readers/writers might change and the DRC would continue to attempt to provide readers/writers for those courses. The email provided a list of alternative technologies available and encouraged students to contact their DRC academic coach if they wanted to try one or more of these options.

On October 1, 2018, the complainant emailed his instructor, the Associate Director and his Academic Coach regarding his concerns about falling behind in his XXXXXXXX course observing that he still did not have the assistance of a note-taker in that class. As a result, he requested to drop his XXXXXXXX course. The complainant met with the Associate Director later that day to discuss his decision to drop his XXXXXXXX course. During that meeting, the College stated that the Associate Director assured the complainant that the DRC was still trying to find a note-taker for him and would follow up on his request to drop XXXXXXXX. Later that evening, the complainant sent an email to his Academic Coach explaining his decision to drop XXXXXXXX and expressing his hope that DRC staff would find note-takers for his other classes. On October 4, 2018, the Associate Director emailed the Disability Services Manager stating that the complainant dropped his XXXXXXXX course and was no longer in need of a note-taker for that course. She also shared that the complainant was still requesting a note-taker for his English and Math courses "if someone becomes available."

According to the College, a new note-taker was hired and completed training on November 6, 2018. The College stated that the new note-taker was assigned to the complainant's XXXXXXXX and XXXXXXXX classes and began taking notes for him on November 8, 2018.

### *Analysis*

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

The Section 504 regulation, at 34 C.F.R. § 104.44(d), requires that a recipient take such steps as are necessary to ensure that no qualified individual with a disability is denied the benefits of, excluded from participation in or otherwise subjected to discrimination because of the absence of educational auxiliary aids for students with impaired sensory, manual, or speaking skills. Similarly, the Title II regulation, at 28 C.F.R. § 35.160(b)(1) requires public colleges and universities to furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity conducted by a public entity. Recipients may establish reasonable procedures for requesting and providing approved auxiliary aids and services.

Under the requirements of Section 504, a student with a disability is obligated to notify their postsecondary institution of the nature of the student's disability and the need for a modification, adjustment, aid, or service. Once an institution receives such notice, it has an obligation to engage the student in an interactive process concerning the student's disability and related needs.

We found that the complainant provided a copy of his medical provider's documentation to the DRC on September 11, 2018 and his Academic Coach approved a note-taker as an auxiliary aid/service for him that same day. We further determined that the College did not provide the complainant with the assistance of a note-taker until September 19 for his XXXXXXXX course. The complainant then waited until November 8, 2018 (about one month before the end of the semester) to get the note-taking assistance he required in his XXXXXXXX and XXXXXXXX classes. The complainant chose to drop his XXXXXXXX in early October in part because the College failed to provide a note-taker for that course.

The College's continued delay in providing the complainant with a note-taker, an auxiliary aid/service determined by the College itself to be necessary to provide the complainant with an 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, is inexcusable. Moreover, there is no evidence suggesting that the College made any attempt to engage the complainant in the interactive process to find an equally effective alternative academic adjustment or auxiliary aid or service to a note-taker except for the use of Sonocent, which the complainant notified DRC early in the semester did not work for him. Granted, the DRC sent an email on September 12, 2018, notifying DRC students of available alternatives but that did not do away with the College's obligation to discuss and identify any alternatives with the complainant when he repeatedly notified DRC staff of his need for a note-taker(s) and the College's failure to provide the same.

Based on the above, OCR found sufficient evidence to establish that the College failed to provide the complainant with the auxiliary aid/service of a note-taker. Accordingly, we found sufficient evidence to conclude that the College discriminated in violation of Section 504 and Title II as alleged.

**Conclusion**

In summary, we determined that the College violated Section 504 and Title II with respect to the complainant's allegation that the College did not provide him with note-takers for his classes during the fall 2018 semester.

We thank the College for voluntarily entering into an Agreement to resolve these compliance concerns. 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 College has fulfilled all of the terms of the Agreement. When the monitoring phase of this case is complete, OCR will close Case Number 08-18-2340 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. 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.

If you have questions, please contact XXXXXXXXXXXX, Attorney Advisor, at XXXXXXXXXXXX or me at 303-844-5927.

Sincerely,

/S/

Thomas M. Rock  
Supervisory General Attorney

Enclosure: Copy of Resolution Agreement

cc (w/o enclosure): Ann-Lynn Hall, Executive Director, by email only