



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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June 9, 2020

Scottsdale Community College  
President Christina M. Haines  
9000 E. Chaparral Rd.  
Scottsdale, AZ 85256

By email only to XXX@scottsdalecc.edu

Re: Scottsdale Community College  
Case Number: 08-20-2084

Dear President Haines,

On January 14, 2020, the United State Department of Education (Department), Office for Civil Rights (OCR) received a complaint alleging Scottsdale Community College (College) discriminated on the basis of disability. Specifically, the Complainant alleged that the College did not provide him with his approved accommodations, specifically extended time on tests and a notetaker, during the fall 2019 semester.

Because OCR has jurisdiction and the complaint was timely filed, OCR initiated an investigation of 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; 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.

OCR applies a preponderance of the evidence standard to determine whether the evidence is sufficient to support a particular conclusion. Specifically, OCR examines the evidence in support of and against a particular conclusion to determine whether the greater weight of the evidence supports or is insufficient to support the conclusion.

After carefully considering all of the information obtained during the investigation, OCR determined that there is sufficient evidence to support a conclusion that the College discriminated against the Complainant by failing to provide him with extended time as alleged. In reaching a compliance determination regarding this allegation, OCR reviewed documentation

submitted by the Complainant and the College. OCR also interviewed the Complainant and obtained clarification of the facts with a College staff member. The basis for this determination is set forth in this letter.

Additionally, regarding the allegation that the College failed to provide him with a notetaker, OCR determined that OCR required additional investigation to make findings. On May 20, 2020, before OCR had completed its investigation, the College notified OCR that it was interested in resolving this complaint. Pursuant to Section 302 of OCR's Case Processing Manual, a complaint may be resolved when, before the conclusion of an investigation, a recipient expresses an interest in resolving the complaint, OCR believes that doing so is appropriate, and the remedies align with the allegations. OCR determined that it is appropriate to resolve this allegation through a resolution agreement.

### ***Legal Standard***

The regulation implementing Section 504 at 34 C.F.R. § 104.44(a) requires a postsecondary education recipient institution to make academic adjustments, or modifications, to its academic requirements as necessary to ensure that the requirements do not discriminate or have the effect of discriminating on the basis of disability against qualified individuals with disabilities. Academic requirements that the recipient can demonstrate are essential to the instruction being pursued by a student or to any directly related licensing requirement are not regarded as discriminatory. The recipient also does not have to make adjustments that would fundamentally alter the nature of a service, program, or activity, or that would result in an undue financial or administrative burden.

In addition, Section 504 at 34 C.F.R. § 104.44(d) requires the recipient to take such steps as are necessary to ensure that no student with a disability is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination under the education program or activity operated by the recipient because of the absence of educational auxiliary aids for students with impaired sensory, manual, or speaking skills.

### ***Findings of Facts***

The Complainant is a student with a disability and was enrolled in courses at the College during the fall 2019 school semester. Specifically, he was enrolled in XXX and XXX, courses (phrase – XXX – phrase) with one professor (Professor). XXX began on XXX, and ended on XXX. XXX began on XXX.

The College uses an online system, DRS Connect, to manage and track student accommodation requests. On September 5, 2019, the Complainant registered on DRS Connect for fall 2019 accommodations. On September 24, 2019, the College approved accommodations for the Complainant. On September 24<sup>th</sup>, through DRS Connect, DRS notified the Complainant and Professor that it had approved two accommodations for the Complainant. Specifically, it states that the Complainant was approved "Alternative Testing" and "Notetaking Services." For

alternative testing, it provided for extended (1.5x) time for exams/quizzes, minimum distraction testing environment or a private room. Regarding notetaking services, it states, “In Class Note-taker. Note taking may include and allows for the use of smart phone pictures of the board, an in-class student note taker, hired note taker by DRS, instructor notes if available, etc.” That day, the Professor emailed a confirmation that she “got both of them” for the Complainant.

On October 4, 2019, an administrative assistant from DRS (Disability Resource and Services) emailed the Professor, stating in part, “Please advise if you have made an announcement to the class asking if someone would volunteer to note take notes for the student. If there are no volunteers, advise if arrangements have been made with student for notes.” That day, the Professor replied, “It’s done and he’s already been sent notes.”

### Extended Time on Exams & Quizzes

The XXX and XXX quizzes and exams were online for all students enrolled in the course. Additionally, up to the due date, all of the students were given (phrase – XXX – phrase) for exams.

The College provided a list of all of the Complainant’s assignments, including quizzes and exams. The list provides the due dates and the dates the Complainant completed them. It also shows the amount of time the Complainant was given for each quiz and exam and the amount of time it took for the Complainant to complete his XXX XXX for each quiz and exam. It also shows the Complainant’s final score for each quiz or exam. It shows that there were five (5) quizzes for XXX and two (2) quizzes for XXX, along with one cumulative final exam for each course. It also shows that the Complainant (phrase – XXX – phrase) for all but one quiz or exam, with the other being XXX XXX XXX on the second quiz for XXX. Finally, it shows that the Complainant received scores at or around 100% on all of the quizzes and exams.

In a written and signed statement provided by the College, the Professor stated that she believes she entered the additional time in the Canvas<sup>1</sup> classroom, but she was unable to verify as she did not have access to log into her previous classes. She added that she had received no communication or complaints from the Complainant regarding his accommodations, including regarding additional time on quizzes and exams or notetaker.

The Complainant explained to OCR that he believes he may have had extended time on the first few quizzes and/or exams, but not on the later quizzes and/or exams. He explained that as DRS approved time and half (1.5x) for all quizzes and exams, he was able to calculate whether he was given extra time. He stated that every amount of time he was given should have been divisible by three (3) if he were given 1.5x time. He then stated that while taking XXX, the Professor announced to the class that the class would have a specified amount of time to complete an assignment, and when he checked Canvas he found that he was given the same amount of time as his classmates. Additionally, in a rebuttal, the Complainant provided that, although his final grades on the quizzes and exams were between 90-100% and his final grade was not impacted by the lack of extra time on quizzed and exams, he had obtained scores around 40-60% (phrase –

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<sup>1</sup> Canvas is a cloud-based learning management platform by Instructure which the College uses for its digital environment. <https://www.instructure.com/canvas/>

XXX – phrase) because he kept running out of time and got scores between 40-60%. As a result of this failure to provide him with additional time on quizzes and exams, he had (phrase – XXX – phrase) resulting in a lot more time, effort, and stress.

In a follow up email communication in response to OCR’s inquiry regarding how the amount of time the Professor allocated for each quiz and exam and how the College determined the amount of time the Complainant would be given for each, the College, through its Student Conduct Administrator, admitted that the Complainant was given the same amount of time as his classmates to complete the quizzes and exams.

### Notetaker

The College provided OCR with a copy of various email communications between the Professor and the Complainant or the notetaker regarding notes for XXX as listed below:

- October 3, 2019: The Professor emailed the Complainant what appears to be notes for the 2<sup>nd</sup> class.
- October 9, 2019: The Professor emailed the Complainant what appears to be notes for the 3<sup>rd</sup> class.
- October 13, 2019: The Professor emailed the Complainant what appears to be notes for the 4<sup>th</sup> class.
- October 16, 2019: The notetaker emailed the Professor what appears to be the notes for the 5<sup>th</sup> and 6<sup>th</sup> classes.
- October 25, 2019: The notetaker emailed the Professor what appears to be notes for the 7<sup>th</sup> and 8<sup>th</sup> classes.

In a written and signed statement, the Professor stated that she confirmed she received notification from DRS Connect, outlining the approved accommodations for the Complainant and that she stated that she coordinated with a note-taker to provide notes to the Complainant. No further details were provided.

The Complainant stated that he received at least one set of notes from the notetaker during XXX and that he stopped receiving notes sometime early during the XXX course. He added that he did not notify his professor or DRS that he was not receiving notes. Regarding XXX, he acknowledged that the course was mostly non-lecture based, but there were some course sessions where the Professor provided lecture content for which he required notes. He also acknowledged that that the Professor sometimes posted notes on Canvas for all of the students in his class. However, he stated that they were just PowerPoint presentations “devoid of the lecture’s context and deeper information,” and were insufficient replacement for notes taken in class.

The College, in its position statement, stated that XXX was not a lecture-based course as students worked on their production/project for the course in small groups and on their own, thus no note-taking was necessary. The College provided that there were two (2) class sessions during the XXX course where there was some lecture content, so the Professor provided her personal notes on Canvas for all students taking the course. The College provided a copy of the Canvas classroom printout demonstrating that the Professor’s notes were on Canvas and

available to the class. Additionally, the College provided OCR with a copy of the Professor's PowerPoint presentation and a brief outline of the lectures for the two class sessions.

In a follow up email communication in response to OCR's inquiry regarding whether the October 16<sup>th</sup> notes for the 5<sup>th</sup> and 6<sup>th</sup> classes and the October 25<sup>th</sup> notes 7<sup>th</sup> and 8<sup>th</sup> classes were forwarded to the Complainant, the College, through its Student Conduct Administrator, stated that the College followed up with the notetaker and the Professor for more information. Specifically, the College stated that there may have been a miscommunication where the Professor believed that the notetaker forwarded the notes to the Complainant, but it appears the notetaker may have forwarded the notes to the Professor to forward to the Complainant. As a result, the College was unable to confirm that the notes were forwarded to the Complainant.

### ***Analysis & Legal Findings***

#### **Extended Time on Exams & Quizzes**

It is undisputed that the College determined the Complainant required alternative testing, particularly extended (1.5x) time for exams/quizzes, in order to have equal access in the XXX and XXX courses he was enrolled in at the College. The evidence demonstrates that DRS notified the Professor of this approved accommodation and the Professor acknowledged receipt of the notice. However, the College did not provide OCR with any documentation demonstrating that this accommodation was provided to the Complainant. Having said that, the College acknowledged that it provided the Complainant the same amount of time on quizzes and exams as it provided non-disabled students in the class.

As a consequence, OCR determined that there is sufficient evidence to find that the College discriminated by failing to provide the Complainant with his approved accommodations of extended time as alleged.

#### **Notetaker**

It is undisputed that the College determined the Complainant required "notetaking services" to have equal access in the XXX and XXX at the College. The evidence demonstrates that DRS notified the Professor of the approved accommodation and the Professor initiated notetaking services for the Complainant for XXX in the form of a student notetaker. The evidence also demonstrates that the Complainant was provided with notes up to the 4<sup>th</sup> class session of XXX. The evidence also demonstrates that the notetaker continued to provide notetaking services throughout XXX, and that the services were intended for the Complainant. However, it is unclear from the evidence whether the Complainant was provided the notes after the 4<sup>th</sup> class session. Additionally, with respect to XXX, it is undisputed that the course was a non-lecture-based with some periods of lecture content. It is also undisputed that the Complainant was not provided notes from a notetaker, and for the most part did not require notes. Instead, the evidence shows, and the Complainant acknowledged, he was provided access to the Professor's notes for some class sessions which were made available to the entire class. However, it is unclear from the evidence whether and when the Complainant required notes from a notetaker for XXX and whether the provision of the Professor's notes were sufficient.

OCR determined that it requires additional investigation to make findings with respect to the Complainant's allegation regarding notetakers. Pursuant to Section 302 of OCR's Case Processing Manual, a complaint may be resolved when, before the conclusion of an investigation, a recipient expresses an interest in resolving the complaint, OCR believes that doing so is appropriate, and the remedies align with the allegations. OCR determined that it is appropriate to resolve this allegation through a resolution agreement.

On May 22, 2020, OCR received the College's signed Resolution Agreement (enclosed). OCR is closing the investigative phase of this case effective the date of this letter. The case is now in the monitoring phase. OCR will closely monitor the recipient's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively and that the recipient's policies and practices are administered in a nondiscriminatory manner. When the Agreement is fully implemented, the allegation will have been resolved consistent with the requirements of Section 504 and Title II, and their implementing regulations. If the College fails to implement the Agreement, OCR will take appropriate action, which may include enforcement actions, as described in the Agreement.

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.

The College is prohibited from intimidating or harassing anyone who files a complaint with our office or who takes part in an investigation.

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, personal information, which if released, could constitute an unwarranted invasion of privacy.

In addition, the Department has developed guidance to support recipients, as well as the students, families, staff, and community served therein, through the unprecedented challenges faced by COVID-19. For more information, see the Department's [\*COVID-19 \("Coronavirus"\) Information and Resources for Schools and School Personnel\*](#). If you are in need of assistance from the Department or OCR as a result of COVID-19, please don't hesitate to reach out.

If you have any questions, please contact Michael Germano, Attorney and primary contact for this case, at (XXX)XXX-XXXX or by email at XXX@ed.gov, or me at (XXX)XXX-XXXX or by email at XXX@ed.gov.

Sincerely,

/s/

Michael D. Todd  
Supervisory Attorney

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