



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VIII

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January 10, 2023

Dr. Steven R. Gonzales
Maricopa Community College District
2411 W. 14th Street
Tempe, AZ 85281

*By email only to steven.gonzales@domail.maricopa.edu
XXXXXX@domail.maricopa.edu*

Re: OCR Complaint No. 08-22-2260
Maricopa Community College District

Dear Chancellor Gonzales:

On July 14, 2022, the United States Department of Education (Department), Office for Civil Rights (OCR) received a complaint against Maricopa Community College District (the District). The complaint alleged that Phoenix College (College A) discriminated against the Complainant on the basis of disability and race or color and engaged in retaliation. Specifically, the Complainant alleged that College A did not conduct a proper investigation of her internal complaint related to denial of an academic adjustment; did not provide approved academic adjustments during her summer human anatomy course in June-July 2022; did not approve a note-taker academic adjustment because of her race or color (African-American); and retaliated against her for filing OCR and internal complaints when a District attorney commented that there are consequences to filing complaints and a District staff member no longer wanted to work with the Complainant as a result of the attorney's comment.

Because OCR has jurisdiction and the complaint was filed timely, OCR initiated an investigation of these allegations of discrimination pursuant to Section 504 of the Rehabilitation Act of 1973, and its implementing regulations, which prohibit discrimination based on disability in any program or activity operated by recipients of Federal financial assistance from the Department; Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 et seq., and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities; and Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d et seq., and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin by recipients of Federal financial assistance from the Department. In addition, OCR noted that individuals filing a complaint,

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

participating in an investigation, or asserting a right under Section 504 and Title II are protected from intimidation or retaliation by 34 C.F.R. § 104.61, which incorporates 34 C.F.R. § 100.7(e), and 28 C.F.R. § 35.134. As a recipient of Federal financial assistance from the Department and a public entity, the District is subject to these laws and regulations.

Investigation Summary

OCR reviewed documentation submitted by the Complainant and the District. OCR obtained the District's response to OCR's data request, which included:

- Emails between the Complainant and the District;
- Emails between and among District staff and administrators;
- Documentation related to academic adjustments and accommodations related to the Complainant; and
- Additional documentation, as requested by OCR.

OCR also interviewed the Complainant and District staff and administrators.

At the conclusion of the investigation, OCR reached a mixed determination pursuant to Section 303(c) of OCR's *Case Processing Manual* (CPM). Specifically, OCR found:

- With regard to Allegation 1, OCR is closing the allegation pursuant to Section 110(a)(2) of the CPM because it determined College A conducted a proper investigation of the Complainant's internal complaint;
- With regard to Allegations 2 and 4, prior to OCR issuing a final determination pursuant to Section 303 of the CPM, the District expressed an interest pursuant to Section 302 of the CPM in resolving these allegations, related to College A failing to provide academic adjustments in a summer course and the retaliating against the Complainant for filing internal and OCR complaints; and
- With regard to Allegation 3, OCR determined pursuant to Section 303(a) of the CPM that there is insufficient evidence to conclude that College A denied the note-taker academic adjustment because of the Complainant's race or color.

The reasons for OCR's conclusions are set forth in this letter.

Background

The Complainant enrolled at College A during spring semester of the 2021-2022 school year and also during the summer of 2022. College A is one of ten colleges that make up the District, which is an Arizona political subdivision. The Complainant also enrolled in one course during the 2021-2022 school year at Estrella Mountain Community College (College B), another of the ten colleges making up the District. The Complainant is a student with disabilities and worked with the disability resources and services office (DRS) at both College A and College B. Each college within the District has its own DRS.

College A’s Investigation of the Complainant’s Internal Complaint

The Complainant alleged that College A discriminated against her on the basis of disability. Specifically, the Complainant alleged that College A did not conduct a proper investigation of her internal complaint related to denial of an academic adjustment.

Legal Standard

OCR will close or dismiss an allegation for the following reason: (a) where the allegation has been filed by the complainant against the same recipient with another federal, state, or local civil rights enforcement agency or through a recipient’s internal grievance procedures, including due process proceedings, and the allegation was investigated, any remedy obtained is the same as the remedy that would be obtained if OCR were to find a violation regarding the allegation, and there was a comparable resolution process in which it applied comparable legal standards.

Factual Findings

In December 2021, the Complainant contacted College A DRS and submitted a DRS application to identify herself as a student with disabilities and to seek academic adjustments before beginning classes in January 2022. During a telephone intake meeting with a College A DRS student services specialist (College A DRS specialist), the Complainant was approved for certain academic adjustments but was told her request for a note-taker was not approved.¹ After the Complainant began classes in January 2022, she eventually found that she did need to take notes and returned to College A DRS again to request a note-taker. College A DRS continued to deny it, telling the Complainant she would need to provide additional documentation to support her request.

The Complainant did not provide additional documentation. On March 7, 2022, the Complainant instead filed an internal complaint with College A pursuant to District internal grievance procedures for not providing her with a note-taker (among other allegations). On March 16, 2022, the Complainant also filed a complaint with OCR (the first OCR complaint). On April 22, 2022, OCR dismissed the first OCR complaint because the Complainant had filed the same allegations with OCR that she had already filed in her internal complaint with College A, which was still pending. In the dismissal letter, OCR stated that at the conclusion of the internal investigation, the Complainant could re-file with OCR and that generally, OCR will not conduct its own investigation; instead, OCR reviews the results of the other agency’s/recipient’s

¹ The Complainant told OCR she was originally told by College A DRS that she was not approved for a note-taker because she was taking online courses and would not be taking notes. The District stated the reason the Complainant was denied a note-taker was because her documentation did not demonstrate the need for a note-taker and did not support a functional limitation in the academic setting. The reasoning behind the denial, as well as the denial itself, are the subjects of a portion of the Complainant’s internal complaint. Thus, because the reasoning for the denial and the denial were investigated in College A’s internal investigation (Allegation #1 addresses only whether the College’s investigation was proper), they are not the subject to re-investigation by OCR and are not subject to a compliance determination by OCR.

determination and determines whether it provided a comparable process and met appropriate legal standards.

On July 14, 2022, College A sent a Notice of Outcome (the Outcome) to the Complainant, finding College A staff were determined it was more likely than not that they did not violate College A policy by failing to apply approved disability accommodations for the Complainant based on her disability, and the complaint was unsubstantiated. As it stated it would in OCR's dismissal letter to the Complainant, OCR has investigated this first allegation because it is the re-filed portion of the first OCR complaint: the Complainant alleges that College A did not conduct a proper investigation of her internal complaint related to a denial of an academic adjustment.

As part of this investigation, the District provided the internal investigation file to OCR, including the Final Investigative Report (the investigative report). The investigative report contained a complete summary of the investigation and the analysis used in the Outcome.

The District reported that the Complainant filed her internal complaint after she met with College A's vice president of student affairs (the VP) and College A's DRS director (College A DRS director) about her request for the note taker academic adjustment and other concerns. During that meeting, the VP walked the Complainant through College A's internal grievance process. The Complainant then filed her internal complaint, naming as respondents the VP, College A DRS director, College A DRS specialist, and the District's Associate General Counsel and Section 504 Coordinator (the District Section 504 coordinator). The investigative report summarized the various allegations of discrimination on the basis of disability related to the note-taker accommodation, among others.

OCR reviewed the investigative report. The investigative report included the following sections:

- A list of violations alleged by the Complainant;
- A timeline of meetings the Complainant had with College A staff and administrators leading to her internal complaint;
- A summary of the Complainant's internal complaint;
- A review of the applicable policies and procedures (specifically District policy A.R. 2.8.1 Eligibility for Accommodations & Required Disability Documentation, as well as the Discrimination Complaint Procedures for Students);
- A statement of the evidentiary standard of preponderance of the evidence;
- A link to all attachments relevant to the investigation, including interview notes and documentation the Complainant submitted for accommodations;
- A list of individuals interviewed during the investigation, which included the Complainant, the District Section 504 coordinator, the VP, College A DRS director, College A DRS specialist, among others;
- A summary of facts;
- A summary of conflicting facts;
- A statement of the determination; and
- A list of recommendations.

In addition, the investigation file included interview notes from the internal investigators' interview with the Complainant. For example, the notes stated that the Complainant had told the Student Senate advisor at College A that she did not believe a student, per [District] Documentation Guidelines 2.8.1, should have to provide DRS with documentation of a qualifying disability that verifies the nature and extent of the disability prior to receiving any accommodations or academic adjustment.²

The investigative report and the Outcome also discussed District policy 2.8.1 related to DRS documentation guidelines. The policy stated that to receive services from DRS, a student must be admitted and enrolled as a District student. Once enrolled, a student seeking accommodations is required to: 1) self-identify and make a request for accommodations; 2) complete and submit an application via DRS Connect (which is the DRS management portal) and upload documentation that verifies the nature and extent of the disability; 3) attend an intake with DRS to determine accommodations/academic adjustments to ensure access; 4) select accommodations appropriate to the format of the course; and 5) meet with the instructors to ensure each has received the FNL once it has been issued through DRS connect. Within the notes, the investigators analyzed the Complainant's facts with the policy, stating the Complainant did not provide DRS with documentation of a qualifying disability that verifies the nature and extent of the disability with regard to the note-taker accommodation.

The investigators' notes also cited to and relied on OCR guidance on Section 504 and Title II. Specifically, the investigators relied on OCR guidance stating:

A post-secondary student with a disability who is in need of auxiliary aids is obligated to provide notice of the nature of the disabling condition to the college and to assist it in identifying appropriate and effective auxiliary aids. . . Colleges may ask the student, in response to a request for auxiliary aids, to provide supporting diagnostic test results and professional prescriptions for auxiliary aides. A college also may obtain its own professional determination of whether specific requested auxiliary aids are necessary.... colleges are not required to provide the most sophisticated auxiliary aids available; however, the aids provided must effectively meet the needs of the student with a disability.³

The investigators analyzed this guidance to say that, according to the guidance, the District is not required to provide best or most desired accommodations, but rather a reasonable accommodation sufficient to provide the eligible student equal access.

² The notes showed that the Complainant also raised in her interview with investigators that she had previously applied for accommodations at College A in the past, which she said were approved. The interview notes also state the Complainant was unable to identify who had conducted her intake then, but that she had attempted to attend College A in 2015 and 2017. The investigators noted that there is no record of a previous application by the Complainant in the DRS system and no record of the Complainant being enrolled at College A in 2015 or 2017, which is notable because DRS Documentation Guidelines 2.8.1 require a student to be enrolled before applying with DRS. Because this issue was included in the internal investigation, this issue also is not being reinvestigated by OCR and is not subject to a compliance determination by OCR.

³ See <https://www2.ed.gov/about/offices/list/ocr/docs/auxaids.html> .

Ultimately, College A found, as stated in the Outcome, that the preponderance of the evidence showed that the respondents did not violate District policy by failing to approve accommodations for the Complainant related to her disability, and that the Complainant's internal complaint was not substantiated. The conclusion also noted two recommendations for College A, which were that prior to intake, all diagnoses and medications should be reviewed to determine potential functional limitations, and that all documentation review notes should be included in the student's profile at DRS. The Outcome informed the Complainant of the right to appeal and procedures for requesting further administrative review of the decision. The Outcome also included a statement of prohibition of retaliation against the Complainant.

OCR asked the Complainant if the Complainant had specific concerns with the investigation. The Complainant noted she was concerned, other than the investigation did not rule in her favor, about whether the investigation could be neutral because it was conducted by District staff.

Analysis

OCR reviewed the investigation file, notes of interviews and analysis by the investigators (which included citations to OCR guidance), the investigative report, and the Outcome. The College's 20-page investigative report and its 15-page Outcome provide a summary of the Complainant's allegations, the facts obtained from interviews and various documents, and an analysis of the facts and District policies. The Outcome ultimately concluded that the College did not violate District policy. Even so, the investigative report identified eight recommendations to improve DRS procedures. The District provided a statement to OCR that all eight have been implemented since conclusion of the investigation in early summer 2022.

Based on OCR's review of this information, OCR has determined that the Complainant's internal complaint was investigated and processed through College A's internal grievance procedures pursuant to legal standards that are acceptable to OCR. Therefore, OCR is closing this allegation pursuant to Section 110(a)(2) of OCR's CPM.

Failure to Provide Approved Academic Adjustments During BIO 160

The Complainant alleged that the District discriminated against her on the basis of disability. Specifically, the Complainants alleged that College A did not provide approved academic adjustments during her summer BIO 160 course in June-July 2022.

Legal Standard

The Section 504 regulations, at 34 C.F.R. §104.43(a), provide 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 regulations, at 28 C.F.R. §35.130(a), contain a similar prohibition applicable to public postsecondary educational institutions.

The Section 504 regulations, at 34 C.F.R. §104.44(a), require 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 regulations, 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 regulations shall not be construed to permit a lesser standard than is established by the Section 504 regulations. Therefore, OCR interprets the Title II regulations to require public colleges and universities to provide necessary academic adjustments to the same extent as is required under the Section 504 regulations.

Under the requirements of Section 504 and Title II, 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.

Background and Facts

The Complainant enrolled in BIO 160 during the summer and expected her approved academic adjustments would be the same as they had been in the spring semester, which she understood to be an extension on assignments and tests of up to five days. The Complainant told OCR that the BIO 160 professor (the professor) did not provide the extended time on assignments and on tests to which the Complainant believed she was entitled. In email exchanges, the professor told the Complainant she understood the Complainant only had an extension for assignments, not tests and quizzes, and the extension was only up to two days. With regard to tests and quizzes, the professor told the Complainant she understood the Complainant's academic adjustment to be double time to complete tests and quizzes. The professor cited to the FNL from College A DRS.

The District provided a copy of the FNL which stated the approved academic adjustments the Complainant should receive in Bio 160:

- **Alternative Testing.** Extra Time 2.00x: Student will be provided double time for all exams and quizzes. When completing a testing request in DRS Connect, the time will be automatically adjusted. For online courses please adjust timer in testing platform. Unlimited time is not an available accommodation.
- **Classroom Access.** Modified Assignment Deadlines: Modified assignment deadlines are intended to provide the student reasonable extensions beyond the course late work policy for disability-related reasons. Students should not be subjected to penalty unless assignment is submitted beyond the adjusted deadlines. Please work with both the student and DRS in order to accommodate this need. This accommodation does not extend the course end date, is not applicable on every assignment, or provide the student unlimited deadlines.

The Complainant and the professor continued exchanging email communications regarding the professor's understanding about the modified assignment deadline/extension from the FNL.⁴ Prior to taking BIO 160, the Complainant had received an email from College A DRS director, dated April 26, 2022, stating, in part: "You currently have extended testing time (2X), alternative capturing of notes, and modified deadlines (up to 5-days) in your DRS Connect available to select, these stay in your portal." On July 17, 2022, the Complainant forwarded the April 26, 2022 email to the professor, stating, in part: "Here is an email from the director, spelling out the accommodations I have. As you will notice, it says modified deadlines of 5 days."

The Complainant copied the DRS director at College B (College B DRS director) when she sent this email. Presumably, the Complainant copied her because she had a positive working relationship with her and was seeking assistance with her academic adjustments. The Complainant knew College B DRS director because the Complainant had recently taken a course at College B and had had to work with DRS at College B to receive academic adjustments in that course. On July 19, 2022, College B DRS director replied, informing the Complainant it was her understanding that the Complainant should copy the District Senior Associate General Counsel⁵ (the Attorney) on all emails because the Attorney was the one working with her on her accommodations at College A.

College B DRS director referred to the Attorney because the District had designated the Attorney as the Complainant's principal point of contact. On May 16, 2022, the Attorney sent email correspondence to the Complainant notifying the Complainant that the Attorney would be stepping in as principal point of contact going forward with regard to review the complaints the

⁴ OCR notes the FNL does not specify whether the extended deadline is up to a certain number of days; however, the Complainant's understanding was that the modified assignment deadlines provided her up to five days of extension on assignments and that the modified deadline also applied to tests and quizzes. The professor, who had spoken to College A DRS director several times before and during BIO 160, understood the modified assignment deadline only applied to assignments and would only extend deadlines by up to two days.

⁵ When the facts related to this allegation occurred, the Attorney's title at the District was Interim District General Counsel.

Complainant had about College A staff and about the Complainant's accommodations requests. On May 25, 2022, the Attorney and the Complainant had a virtual meeting. The Complainant's Vocational Rehabilitation (VR) counselor also attended. The Complainant had technical difficulties and was dropped from the call several times, and the call resulted in concerns by the Complainant that she was being intimidated or retaliated against.⁶ In response to College B DRS director's email, the Complainant stated she did not want to talk to the Attorney because the Attorney had made statements that retaliatory to the Complainant.

The professor told the Complainant that if she thought she needed additional modifications to her academic adjustments, she would need to reach out to DRS. The professor also told OCR that she went into each individual assignment during the course and provided the additional extended time for the Complainant. The Complainant, when provided an opportunity to respond to District information during this investigation, told OCR she thought she would have the same accommodations for BIO 160 that she had had in prior terms. She did not recall DRS informing or discussing with her that the number of days of her extension would decrease from up to five days to up to two days.⁷

The Complainant did not engage the Attorney or College A DRS staff in the interactive process regarding her academic adjustment concerns in BIO 160. She attempted to seek help from College B DRS director; however, College B DRS director, because of District policy and practice, no longer had jurisdiction to assist the Complainant in DRS matters because the Complainant was no longer enrolled in College B courses.

The professor ultimately withdrew the Complainant from BIO 160 per District and syllabus policy before the end of the course because the Complainant did not log in or otherwise participate in the course for two weeks. She withdrew the Complainant with a "W."

Analysis

The evidence shows the Complainant's modified deadlines academic adjustment was decreased from up to five days' extension to up to two days' extension. Emails exchanged between the professor and the Complainant show that: the FNL did not specify the number of days of the modified deadline extension; the Complainant had had modified deadline extensions of up to five days in a past semester; the professor was told by DRS that the modified deadline extension was up to two days; and the Complainant told the professor no one had explained to her the extension would be different.

⁶ These concerns are the subject of Allegation #4 and will be discussed below.

⁷ On June 7, 2022, the Attorney emailed the Complainant, informing her that the modified deadline extension for BIO 160 would be up to two days. It is not clear whether the Complainant noted this information. In the same email, the Attorney also reiterated that she would be the principal point of contact and was still the person the Complainant will work with to communicate issues with requests for accommodations. Finally, the Attorney also stated in the email that the Complainant could continue to work through DRS as well.

OCR notes that the evidence also shows that the professor attempted to direct the Complainant to College A DRS to address her concerns. OCR also notes that even though the Complainant was encouraged to contact DRS or the Attorney, she did not do so. In addition, the Complainant emailed College B DRS director, who also encouraged her to copy the Attorney on emails about her accommodations. The Complainant's replies state that she did not want to contact the Attorney and that she did not contact DRS. OCR notes a concern that College A, by assigning a principal point of contact and by not otherwise fully communicating with the Complainant about the change in her extension, may have hindered the Complainant's desire to engage with DRS in the interactive process regarding her academic adjustments. Further, OCR notes a concern that College A may have determined the decrease in days of extension in a manner that appears more unilateral (including informing her in an email from the Attorney near the bottom of a list of other points) as opposed to DRS inviting the Complainant to engage in the interactive process.

Therefore, OCR determined, based on the information discussed above, that the evidence provided to OCR to date raises concern, which supports a need for the provisions of an agreement which will require College A to provide documentation to OCR that: 1) it has invited the Complainant to re-enroll in BIO 160 at no cost; 2) contacted the Complainant, if re-enrolling in BIO 160, to offer a meeting with DRS to discuss the Complainant's academic adjustments and current documentation; and 3) to provide training as set forth in the agreement. Before OCR completed the investigation, College A expressed interest in voluntarily resolving this allegation.

Denial of Note-Taker Academic Adjustment on Basis of Race or Color

The Complainant alleged that the District discriminated against her on the basis of race or color. Specifically, the Complainant alleged that College A did not approve a note-taker academic adjustment because of her race or color (African American).

Legal Standard

Under the Title VI regulations at 34 C.F.R. §100.3(a) and (b), a college may not treat individuals differently on the basis of race, color, or national origin with regard to any aspect of services, benefits, or opportunities it provides. Section (b)(1) states that a college may not, directly or through contractual or other arrangements, on the basis of race, color, or national origin, (i) deny an individual any service, financial aid or other benefit.

To determine whether a student has been discriminated against on the basis of race or color under Title VI, OCR looks at whether there is evidence that the student was treated differently than students of other races or colors under similar circumstances, and whether the treatment has resulted in the denial or limitation of services, benefits, or opportunities. If there is such evidence, OCR examines whether the college provided a nondiscriminatory reason for its actions and whether there is evidence that the stated reason is a pretext for discrimination. For OCR to find a violation, the preponderance of the evidence must establish that the college's actions were based on the student's race or color.

Background and Facts

The Complainant described her race as Black. The Complainant told OCR that she alleged the denial of the note-taker academic adjustment was based on her race because she is Black and that most College A instructors, administrators, board members, student senate members, and student body are Hispanic.

The District provided information that when the Complainant submitted her application to College A DRS, she selected “not specified” under ethnicity. The DRS intake meeting with the Complainant occurred by telephone, and DRS staff did not have knowledge of the Complainant’s race or color. College A DRS staff verbally denied the note-taker academic adjustment during the intake call, when staff did not know the Complainant’s race or color.

In an interview with OCR, College A DRS director stated that DRS Connect eventually uploads more student information from the District’s student information system, so it eventually would have included the Complainant’s race or color; however, at the time the intake determination was made as to the note-taker accommodation, the Complainant’s race was unknown. OCR provided an opportunity for the Complainant to respond to this information, and the Complainant could not confirm if College A DRS knew of her race or color at the time of intake when the note-taker academic adjustment was first denied.

In addition, the District provided race, color, or ethnicity data of students approved by College A DRS staff for a note-taker accommodation. The data showed that College A DRS approved the note-taker accommodation for 21 students from Spring semester 2021 through Fall semester 2022. Of the 21 students, six provided no information on race or ethnicity; two identified as white; one identified as African American; one identified as African American/Hispanic/Mexican American/Mexica Chicano; five identified as Hispanic; and the remaining students identified as Hispanic and at least one other ethnicity. The District also provided data on approval of alternative capturing of notes, which was the note-related academic adjustment College A DRS had approved for the Complainant. Of the 41 students who were approved, 26 provided no information on race or ethnicity; one identified as white; two identified as African American/white; two identified as American Indian/Alaskan Native/Navajo; five identified as Hispanic; and the remaining students identified as Hispanic and at least one other race or ethnicity. Therefore, the District provided data that at least one African American student and one African American/Hispanic/Mexican American/Mexica Chicano student had been approved for a note-taker out of the fifteen who identified race or ethnicity. Similarly, College A DRS staff approved alternative capturing of notes for students of different races or color.

Analysis

It is undisputed that the Complainant is a member of a protected class (African American), and the Complainant was subject to adverse treatment (she was denied an academic adjustment she requested). Based on OCR’s review of information from the Complainant and the District, however, OCR finds that the preponderance of the evidence fails to establish evidence of

discriminatory intent on the part of College A. OCR finds that the District acted in a manner that was consistent with its policies and procedures.

College A DRS specialist verbally denied the academic adjustment at the intake meeting when she had no knowledge of the Complainant's race. Thus, there is no direct evidence of discriminatory motive in the denial of the note-taker. Absent direct evidence of discriminatory motive, OCR next considered whether there was any circumstantial evidence of discriminatory intent that the Complainant was treated differently than other similarly situated students of other races. The Complainant said she believed that College A DRS denied the note-taker academic adjustment because they are Hispanic, and she is Black.

The Complainant did not provide specific information about other students of a different race who were treated differently by DRS under similar circumstances; however, based on OCR's review of the District's data, students of other races and ethnicities were also approved for the alternative capturing of notes academic adjustment, similar to the Complainant. Likewise, at least two other students identifying as African American were approved for a note-taker, by the same College A DRS staff who reviewed the Complainant's request.

Finally, OCR examined whether the District treated the Student in a manner that was inconsistent with its established policies and procedures and whether there was any other evidence of discrimination based on race. The District stated that College A DRS's reason for not approving the note-taker academic adjustment was because the Complainant's documentation did not support the request. OCR notes that under Section 504 and Title II requirements, a college or university may request that a student provide documentation, such as medical, psychological, or educational assessments, of the student's impairment and functional limitation. College A DRS requested that the Complainant provide additional documentation of the impairment and the functional limitation indicating the need for a note-taker. The Complainant opted not to provide it. College A DRS director told OCR that College A DRS did approve the academic adjustment of alternative capturing of notes because the Complainant's documentation evidenced the need for it; however, the Complainant opted to decline it.

Therefore, OCR finds, by a preponderance of the evidence, that the District followed its policies and procedures. The evidence does not support a finding that the Student was denied a note-taker because of her race or color in violation of Title VI, as alleged. Accordingly, OCR finds insufficient evidence of discrimination on the basis of race.

Retaliation for Filing OCR and Internal Complaints

The Complainant alleged the District engaged in retaliation against her. Specifically, the Complainant alleged that it retaliated against her for filing OCR and internal complaints when a District attorney commented that there are consequences to filing complaints and a staff member no longer wanted to work with her as a result of the attorney's comment.

Legal Standard

The Section 504 regulations, at 34 C.F.R. §104.61, incorporate 34 C.F.R. §100.7(e) of the regulations implementing Title VI of the Civil Rights Act of 1964 and prohibit colleges and universities from intimidating, coercing, or retaliating against individuals because they engage in activities protected by Section 504. The Title II regulations, at 28 C.F.R. §35.134, similarly prohibit intimidation, coercion, or retaliation against individuals engaging in activities protected by Title II.

In analyzing a retaliation claim, OCR first determines whether: the individual experienced an adverse action caused by the District; the District knew the individual engaged in an activity protected by Section 504 or Title II or believed the individual might engage in an activity protected by Section 504 or Title II in the future; and a causal connection existed between the adverse action and the protected activity. If OCR determines that a causal link exists between any adverse action and any protected activity, we next determine whether the District has a legitimate, non-retaliatory, reason for its action; and whether such reason is a pretext for retaliation or intimidation.

Background and Facts

As stated above, on May 25, 2022, the Complainant and the VR counselor participated in a virtual meeting with the Attorney, who the District had recently determined would become the Complainant's principal point of contact. The Attorney spoke with the VR counselor at the virtual meeting after the Complainant was dropped from the virtual meeting because of technical difficulties, that she was becoming the principal point of contact because staff perceived the Complainant's communications with them to be demeaning. The Attorney commented to the VR counselor that the District assigned her as principal point of contact because the consequence of the Complainant filing complaints is that staff had requested the District become involved to calm the situation. The Complainant judged the statement to be intimidation or retaliation because the Attorney knew the Complainant had filed an internal complaint with College A.⁸

During the investigation, the District provided information that the Attorney's intent was not to discourage the Complainant from filing complaints and provided at least two emails from the Attorney to the Complainant where the Attorney expressly stated that it was the Complainant's right to file complaints internally or externally (such as OCR). Around the time of the virtual meeting, the Complainant had also been communicating with College B DRS director because the Complainant was taking a course at College B. In the weeks after the virtual meeting with

⁸ The allegation states that the alleged retaliation was because the Complainant had filed an OCR and an internal complaint. OCR reviewed emails provided by the District. On June 27, 2022, the Complainant sent an email to the Attorney and one of the investigators of her internal complaint, wherein she mentioned she had filed a complaint with OCR. If this email was the first time the Complainant mentioned the OCR complaint, then the Attorney may not have known on May 25, 2022, that the Complainant had filed an OCR complaint. The Attorney did know about the internal complaint because it was one of the subjects in emails between the Complainant and the Attorney leading to the May 25, 2022 meeting.

the Attorney, the Complainant and College B DRS director were no longer communicating to the extent they had been, and College B DRS director began referring her to the Attorney or encouraging her to copy the Attorney on emails. The Complainant saw this as a result of the Attorney telling District staff to not work with the Complainant following the May 25th meeting.

OCR provided the Complainant with an additional opportunity to respond to District information. The Complainant stated DRS staff stopped communicating with her around the same time she had the meeting with the Attorney after the District designated the Attorney as the point of contact. The Complainant interpreted DRS staff not wanting to work with her as being related to the Attorney's comments during the virtual meeting and viewed the staff not wanting to work with her as retaliatory for having filed complaints. Further, in the weeks following the virtual meeting, the Complainant enrolled in BIO 160 and did not attempt to engage in the interactive process, as described above, with the Attorney or with College A DRS about her academic adjustments. Instead, she continued to try to get the professor to change her academic adjustments, even though the professor could not and instead referred the Complainant to DRS. When College B DRS director was copied on these emails, she also encouraged the Complainant to contact or copy the Attorney. The Complainant did not do so.

Analysis

The evidence shows that the Complainant engaged in protected activity when she filed an OCR complaint and an internal complaint at College A in March 2022. By May 2022, College A DRS staff and the District knew of the existence of at least the internal complaint because College A was investigating it. Therefore, OCR notes that the Complainant engaged in protected activity.

With regard to the remaining elements of retaliation, OCR notes concern with the events that occurred between the District and the Complainant. OCR notes the Complainant's communications to College A staff were at times demanding and lacked a respectful tone; however, OCR also notes concern that the District assigned as principal point of contact for one of its students an attorney, suggesting an imbalance of power or an escalation of conflict between the District and one of its students. Finally, when the professor and College B DRS director suggested that the Complainant reach out to College A DRS and/or the Attorney during BIO 160, the Complainant stated in emails and in an interview with OCR that she was already frustrated and felt threatened and did not want to reach out to engage in the interactive process.

Therefore, OCR determined, based on information from the Complainant and the District that the evidence provided to OCR to date raises concern. The allegation made by the Complainant along with concern raised by the evidence obtained to date, support a need for the provisions of an agreement which will require the District to document to OCR that it has provided training to certain District staff on retaliation and intimidation. Before the completion of OCR's investigation, the District expressed interest in voluntarily resolving this allegation.

Conclusion

At the conclusion of the investigation, OCR reached a mixed determination pursuant to Section 303(c) of the CPM. Pursuant to Section 110(a)(2), OCR closed the first allegation because the Complainant filed an allegation of discrimination against the same recipient through the District's internal grievance procedures, and the allegation was investigated, any remedy obtained is the same as the remedy that would be obtained if OCR were to find a violation regarding the allegation, and there was a comparable resolution process in which it applied comparable legal standards. Pursuant to Section 303(a) of the CPM, OCR determined that the preponderance of the evidence does not support a conclusion that the District discriminated against the Complainant by denying the note-taker accommodation based on her race or color in the third allegation. However, pursuant to Section 302 of the CPM, OCR determined it was appropriate to resolve the allegations that the Complainant did not receive academic adjustments in BIO 160 and that College A retaliated against the Complainant for filing internal and OCR complaints.

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 District's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively. When the Agreement is fully implemented, the allegations will have been resolved consistent with the requirements of Section 504 and Title II, and their implementing regulations. If the District fails to implement the Agreement, OCR will take appropriate action, which may include enforcement actions, as described in the Agreement.

The Complainant has a right to appeal OCR's determination pursuant to Section 110(a)(2) and 303(a) of the CPM within 60 calendar days of the date indicated on this letter. An appeal can be filed electronically, by mail, or fax. You must either submit a completed appeal form online at <https://ocrcas.ed.gov/content/ocr-electronic-appeals-form>, or mail a written statement of no more than ten (10) pages (double-spaced, if typed): if submitted by mail, please send to the Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue SW, Washington, D.C. 20202. If submitted via e-mail, send to OCR@ed.gov; if submitted via fax, please send to 202-453-6012. The filing date on an appeal is the date the appeal is postmarked, submitted electronically, or submitted via fax. In the appeal, the Complainants must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect, or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal. If Complainants appeal OCR's determination, OCR will forward a copy of the appeal form or written statement to the recipient. The recipient has the option to submit to OCR a response to the appeal. The recipient must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

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 our resolution process are protected from retaliation by Federal law.

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, it will seek to protect, to the extent provided by law, personal information, which if released, could constitute an unwarranted invasion of privacy.

If you have any questions, please contact XXXXX, the attorney assigned to this complaint, at (303) 844-XXXX or by email at XXXXX@ed.gov.

Sincerely,

XXXXX
Supervisory Attorney

Enclosures – Resolution Agreement

cc: XXXXX
General Counsel
Via email only to XXXXX