

San Diego Community College District
San Diego City College/San Diego Miramar College
Resolution Agreement
OCR No. 09-12-2017
OCR No. 09-13-2400

To resolve the above-referenced complaints, the San Diego Community College District (SDCCD)¹, San Diego City College (City), and San Diego Miramar College (Miramar)² agree, without admitting to any violation of law, to implement this Agreement to resolve the allegations stated in these matters under Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (ADA or Title II), as amended by the ADA Amendments Act of 2008.

I. REVISION OF NONDISCRIMINATION NOTICES, POLICIES, AND PROCEDURES

SDCC will revise or develop, and thereafter provide to OCR in draft form for review and approval, all notices, policies, procedures, or other governing documents related to discrimination, including harassment,³ against students with disabilities so that they are consistent with the requirements of Section 504, Title II, and their respective implementing regulations.

A. SDCCD's revised policies will :

- (i) ensure that no qualified student with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of SDCCD, or be subjected to discrimination by it;
- (ii) provide accurate definitions of various types of disability discrimination that may provide the basis for a complaint pursuant to SDCCD's grievance and other procedures;
- (iii) provide notice to all members of SDCCD community of the grievance procedures that apply to different types of complaints of disability discrimination filed by students against other students, employees or third parties;
- (iv) contain an explanation of how to file complaints pursuant to the grievance procedures and clarification of other types of complaints that may be filed and with whom those complaints should be file;

¹ San Diego City College and San Diego Miramar College are individually accredited and collectively governed by an elected Board of Trustees for SDCCD. The Board of Trustees adopts one set of policies and procedures for the entire District, including those regarding disability discrimination and disability accommodations. The Board of Trustees directs the Chancellor of SDCCD to adopt appropriate procedures to enact the policies for the SDCCD.

² San Diego Miramar College has agreed through a separate Resolution Agreement to investigate an individual disability discrimination allegation raised by the complainant in 09-13-2400.

³Unless otherwise noted, all further references to "discrimination" are intended to include harassment.

- (v) state the title and contact information of the individual(s) with whom to file a complaint and those responsible for taking action on disability discrimination under the complaint procedures, taking appropriate interim measures during the complaint process, and handling appeals;
- (vi) provide clarification of any differences in the role of the individuals with responsibility to take action on disability discrimination;
- (vii) include provisions ensuring that individuals who play a role in receiving, investigating, and otherwise processing student complaints of disability-based discrimination (including, but not limited to, employees in the Disabled Students Programs and Services (DSPS), Section 504 or Title II coordinator(s), deans, and others) are readily available to students and do not have any actual or perceived conflicts of interest in the process;
- (viii) inform employees of their responsibility, once they become aware of disability-based discrimination, to report it to the Section 504 or Title II coordinator regardless of whether a formal complaint was filed;
- (ix) contain procedures for adequate, reliable, prompt, and impartial investigation, hearing, and appeal of all complaints, including interviews of the complainant, the accused individual(s), identify and interview relevant witnesses and evidence identified by each party, and identify and interview any other witnesses, if needed;
- (x) provide guidance on interim measures to stop the discrimination and assist or protect the complaining party or other students during the grievance process and with the complainant's consent;
- (xi) state reasonable timeframes for individuals to report disability-based discrimination and for the major stages of the investigation, hearing, and appeal;
- (xii) require written notification to the parties of the outcome of the investigation, hearing and appeal;
- (xiii) require written notification to the complainant of the opportunity to appeal the findings if that opportunity is provided to the respondent;
- (xiv) provide that SDCCD will keep the complaint and investigation confidential to the extent possible;
- (xv) provide that SDCCD will take steps to prevent recurrence of any discrimination, including disciplinary sanctions, and will remedy the effects of the discrimination on the victims and others, with examples of the types of remedies available to victims; and
- (xvi) prohibit retaliation and require that allegations of retaliation be brought to the individuals designated to receive such complaints to be investigated by SDCCD under the same processes and standards outlined in the grievance

procedures.

B. In addition to incorporating the above-stated general provisions, SDCCD will also revise the following documents:

(i) Notice of Nondiscrimination (Nondiscrimination Policy)

SDCCD will revise its current procedure, *BP 3410 Nondiscrimination*, to state the title and contact information of at least one individual who coordinates efforts to comply with and carry out responsibilities of Section 504 and Title II. Additionally, if the notice continues to provide citations to any California statutory provisions that address unlawful discrimination and harassment, then SDCCD will add the corollary federal statutory provisions.

(ii) Policy Prohibiting Harassment

SDCCD will revise its current policy prohibiting harassment, *BP 3430, Prohibition of Harassment*, so that it does not use the terms “harassment” and “hostile environment” interchangeably. SDCCD will revise its current procedure prohibiting harassment, *AP 3430* to clarify that harassment is conduct, while a hostile environment is created where the harassing conduct is sufficiently severe, persistent or pervasive to deny or limit the student’s ability to participate in or benefit from SDCCD’s programs.

(iii) Student Grievances or Complaints

SDCCD will revise its student grievance procedures, *BP 3100.1* and *AP 3100.1 – Student Grievance*, *BP 3410* and *AP 3410 Nondiscrimination*, *BP 3430* and *AP 3430 Prohibition of Harassment*, and *AP 3435 Discrimination and Harassment Investigations* so that they:

- (a) state the types of discrimination that may give rise to a complaint;
- (b) state clearly whether and to what extent they apply to a student’s complaint of discrimination based on disability;
- (c) state clearly that a student is not required to participate in an informal resolution process prior to filing a discrimination complaint;
- (d) do not require the use of an official complaint form and indicate that a complaint of discrimination that is not on an official complaint form will be treated in the same manner as one on an official complaint form;
- (e) state clearly that an individual does not have to allege that he or she personally suffered unlawful discrimination in order to file a complaint;
- (f) do not require that a student file a new formal complaint if the student’s

previous attempts at informal resolution of the complaint were unsuccessful or if the student failed to pursue any informal resolution at all; and,

- (g) include in *AP 3435 Discrimination and Harassment Investigations* a requirement for Site Compliance Officers (SCOs) that when a complaint is informally resolved using the Informal Resolution Process the SCO will (1) address every allegation in the complaint and (2) provide written notification to the parties of the outcome of the Informal Resolution Process as to each allegation that is resolved.

(iv) Student Rights and Responsibilities

SDCCD will revise the student services policy *BP 3100 – Student Rights, Responsibilities and Administrative Due Process*, so that it:

- (a) includes the right of a student to be free from discrimination based on disability status;
- (b) cites to the specific policies and procedures governing accommodations for students when it references accommodations for students with disabilities;
- (c) cites to the specific policies and procedures governing complaints of discrimination based on disability when it references the prohibition against discrimination based on disability;
- (d) cites to a specific process or procedure that governs how to make a complaint, and what process will be followed in investigating and resolving the complaint, in the event that a student believes one of the listed student rights has been violated; and,
- (e) does not use the terms “harassment” and “hostile environment” interchangeably and clarifies them as provided in (B)(ii) above.

(v) Accommodations for Students with Disabilities

SDCCD will revise its policy and procedure for students with disabilities who are requesting accommodations, *BP 3105 and AP 3105.1 – Academic Accommodations for Students With Disabilities*, so that it ensures that:

- (a) SDCCD will give primary consideration to the requests of the student with a disability when considering and approving communication accommodations.
- (b) The DSPS Office acts as a liaison between students and faculty and takes an active role in working with all instructors (and other participants in College

programs) to promptly and effectively resolve students' disability-related concerns.

- (c) DSPS serves as the main point of contact on issues related to Section 504 and Title II compliance for instructors; an instructor who has a student who is registered with DSPS and makes a disability-related complaint must notify DSPS immediately so that DSPS can ensure and facilitate appropriate resolution of the complaint.
- (d) SDCCD approved accommodations for students who have "Verification of Eligibility" letters are implemented with the supervision of DSPS. This will occur, for example, through contact by DSPS to instructors of students with approved accommodations who are having difficulties securing the accommodations from instructors. SDCCD will continue to enhance training of instructors regarding adherence to the accommodations identified in students' letters in cases where students choose to provide such letters to instructors. The decision to request academic accommodations shall remain the decision of individual students.
- (e) Consistent with the requirements of Section 504 and Title II, opportunities afforded generally to SDCCD students are equally afforded to students with disabilities.
- (f) If DSPS has not fully resolved a student's complaint about the failure or refusal of an instructor to provide approved accommodations, DSPS will notify the student in writing of the student's right to file a complaint of discrimination under the applicable procedure; DSPS will also notify the appropriate administrator that DSPS has been unable to resolve the student's concern.

(vi) Service Animals

SDCCD will revise the student services policy *AP 3105.2 Service Animals* so that it is compliant with Title II and its implementing regulations that address the use of service animals (28 C.F.R. §§ 35.104 & 35.136), so that the policy:

- (a) does not reference Title III of the ADA instead of Title II;
- (b) provides a legally correct definition of a service animal;
- (c) prohibits its staff from asking of an individual with a disability anything other than if the animal is required because of a disability and what work or task the animal has been trained to perform;
- (d) does not provide a process whereby DSPS verifies the legitimacy of a service dog based on a local or county agency's issuance of an identification tag to

the dog;

- (e) does not require a student to notify DSPS of the use of a service animal but may request that a student so notify DSPS;
- (f) does not require documentation of a service animal's vaccinations unless such a requirement is also imposed on pets or other animals brought to campus by nondisabled individuals;
- (g) does not provide for the immediate and automatic denial of use of a service animal when the service animal is disruptive and ensures that any determination of a service animal's direct threat to the health, safety, and well-being of others complies with the regulations;
- (h) does not provide for DSPS staff to test the ability of a service animal to perform the tasks for which it was individually trained;
- (i) does not conflate a "significant effect" with a "fundamental alteration" of a program or "significant risk" with "direct threat," and
- (j) requires that, in the event a service animal is excluded from its facilities, SDDCD will give the student the opportunity to participate in the service, program, or activity without having the service animal on the premises.

SDCCD will also remove the following from the service animal section of its course catalog: "Please contact the DSPS Office at the enrolled college for review and approval for the issuance of SDCCDD identification to access non-public facilities."

(vii) SDCCD Website, DSPS Webpage, College Schedules, and Other Publications

SDCCD will ensure that:

- (a) Its website provides clear, prominent, and easily found and located links to its notice of nondiscrimination and all policies and procedures that address discrimination based on disability. It will further ensure that the policies and procedures found at its website are the current and up-to-date versions;
- (b) The DSPS Office webpage provides clear, prominent, and easily accessible links to the revised policy and procedure for accommodations (*BP 3105 and AP 3105.1*), information about resolving disputes over classroom or other accommodations provided to a student by the DSPS Office, and information on how and where to file a complaint of disability discrimination;
- (c) The website sdcity.edu/About/StateAuthorizationComplaintProcess is amended to correctly reflect the ability to file complaints pursuant to both

state and federal law;

(d) SDCCD's schedule of classes catalog, along with all other publications made available to the general public or the student body, contains a notice of nondiscrimination prominently displayed; and,

(e) SDCCD's publication "*Prohibition of Harassment (Board of Trustees Policy – BP 3430)*" will be revised by providing the definition of harassment and the section titled "*Service Animals (Administrative Procedure – AP 3105.2)*" will be revised by removing the final sentence that states "Contact the DSPPS Office at the enrolled college for review and approval of the issuance of SDCCDD identification."

C. SDCC will provide drafts of its proposed revisions to the policies, procedures, and other information as required by paragraphs (I)(A) and (I)(B) above ("policies, procedures, and other information") and OCR will review and recommend any needed changes to SDCCD in a timely manner. After OCR's approval and return of the policies, procedures, and other information to SDCCD, SDCCD will formally adopt those items requiring governing board action and otherwise implement those items that do not require any governing board action. SDCCD will provide verification to OCR of the adoption and implementation of the policies, procedures, and other information. After adoption and implementation of the policies, procedures, and other information, SDCCD will provide a communication plan to OCR for the purpose of disseminating the items to its student body, faculty, and staff (including by U.S. mail, e-mail, or inclusion in general publications and website) which will remain posted for one year. Thereafter, SDCCD will provide to OCR verification of the dissemination to student body, faculty, and staff pursuant to the communication plan as well as copies of all items disseminated. It is the intention of SDCCD to have completed all of its responsibilities under this section by December 31, 2015. As assistance to OCR, SDCCD notes that its College Schedules, Course Catalogs, Student Handbooks, and other publications made available to the general public or the student body are only printed once per year during the summer and the provision of information to students and employees usually occurs at the beginning of the fall semester for each academic year. Any delay by OCR in approving the policies and procedures could impact the ability of SDCCD to meet this deadline.

II. ADDRESSING ACCOMMODATION DISPUTES

A. In concert with the next available publication, SDCCD will revise all student handbooks and course catalogs for all of its individually accredited colleges so that they contain a provision that advises students with disabilities that they may also request accommodations and academic adjustments in their clinical settings.

- B. In concert with the next available publication, SDCCD will revise its Faculty Handbook so that it does not mandate that instructors state in their course syllabus that students with disabilities should contact the instructor in order to determine their options for accommodations but instead provides the choice to the student of contacting and working with either the DSPS Office or the course instructor (or both).
- C. SDCCD will take the following measures to assist its ability to address and resolve any disputes over the implementation of accommodations for students with disabilities.
- (i) SDCCD, through DSPS, will continue to provide information to all instructors and department heads about the process through which SDCCD provides accommodations to students with disabilities and about the steps an instructor should take if the instructor has questions or concerns about an approved accommodation, as well as contact information for an individual to whom questions or concerns may be addressed.
 - (ii) The information to instructors and department heads will also include a statement reminding the instructor of his or her obligation to provide the approved accommodations. It will further state that only SDCCD and not an instructor can deny an accommodation only if it results in a fundamental program alteration and that the determination of whether an accommodation results in a fundamental alteration is made through an interactive process with the student.
 - (iii) SDCCD will develop a process by which students with disabilities whose approved accommodation(s) were denied by an instructor or other employee of SDCCD can efficiently and effectively have the dispute resolved. The process will, at a minimum: designate one or more College administrators who are knowledgeable about Section 504 and Title II in the post-secondary context and who have authority to resolve all disputes regarding the provision of accommodations for students with disabilities; state clearly established standards by which disputes are to be resolved and that are consistent with state and federal law; ensure that the student is provided with a full opportunity to testify or otherwise provide a statement and any relevant information to the decision making authority; ensure that the student is advised of and provided an opportunity to review and question or counter all information submitted to the decision maker(s); ensure that the student is provided a written determination of the dispute within 20 days that adequately explains the basis for the determination; and, ensure that the student is advised of and afforded an opportunity to utilize an appropriate appeal or review process if so desired (e.g., the discrimination complaint procedures of SDCCD). SDCCD will take all reasonable steps to familiarize instructors with their responsibilities to students with disabilities.

Reporting Requirements

It is the intention of SDCCD to have completed all of its responsibilities required by paragraphs (II)(A)-(C) by December 31, 2015. As assistance to OCR, SDCCD notes that its Colleges Schedules, Course Catalogs, Student Handbooks, and other publications made available to the general public or the student body are only printed once per year during the summer and the provision of information to students and employees usually occurs at the beginning of the fall semester for each academic year. Any delay by OCR in approving the policies and procedures could impact the ability of SDCCD to meet this deadline. SDCCD will provide to OCR a copy of the revised materials required by (II)(A)-(C).

INDIVIDUAL REMEDIES

- A. Within 90 days of executing this Resolution, SDCCD will investigate, review, and address the circumstances surrounding the denial of accommodations to the complainant in this matter and take appropriate administrative action.
- B. Within 30 days of executing this Resolution, SDCCD will send to the complainant at her last known address a letter that offers to her the ability to submit a claim for reimbursement for any additional expense she incurred as a result of having to disenroll in the class in which her accommodations were denied and reenroll in another section of the class. Such expenses can include the cost of books, registration fees, and other reasonably related expenses. SDCCD may request, but will not unreasonably require, receipts or other readily available proof of payment of such expenses from the complainant. The letter will inform the complainant that the claim must be submitted within thirty (30) calendar days of the date of the letter and provide a specific individual and mailing address to which the complainant may submit the claim.

If the complainant submits a claim within the 30-day period of time, SDCCD will reimburse her for those reasonable expenses by way of check or money order within thirty (30) days. SDCCD will act in good faith in evaluating and determining the claim item(s) to be paid and its decision will be final provided such decision is not irrational or unreasonable.

Reporting Requirements

- C. Within thirty (30) days of completing the actions required by paragraph (III)(A) of this Agreement, SDCCD will provide to OCR a narrative statement of the actions taken along with a copy of any document(s) memorializing its actions or any decision made.

- D. Within thirty (30) days of completing the actions required by paragraph (III)(B) of this Agreement, SDCCD will provide to OCR a copy of the letter sent to the complainant and a copy of her claim and the payment made to her, if any. If the complainant did not respond to SDCCD's letter then SDCC will so indicate in lieu of providing a copy of the claim and payment.

TRAINING

- A. SDCC will offer training in the following areas to all faculty and other staff who are involved in the instructional setting and administrators who are or may be involved in any way with the provision of accommodations for students with disabilities:
- (i) a summary and review of the requirements of Section 504 and Title II;
 - (ii) the new and revised governing documents required by this Agreement;
 - (iii) the process and documents required by this Agreement related to resolving disputes about accommodations provided to students; and,
 - (iv) the complaint procedures and process for individuals who allege discrimination or harassment based on disability.

The training will include the distribution of the new or revised policy and procedure and documents related to resolving disputes about accommodations. The training will be given by an individual who is knowledgeable about the subject matter or by an outside third party expert. SDCCD may also request that a representative from OCR provide the training at no expense to SDCCD.

Reporting Requirement

- B. SDCCD will provide verification of the completion of the training required by paragraph (IV)(A), including a copy of the sign in sheets, information about the trainer including his or her qualifications, and a copy of all materials distributed at the training, by December 31, 2015. Any delay by OCR in approving the policies and procedures required in Section (I)(A)-(B) could impact the ability of SDCCD to meet this deadline. The provision of information to students and employees usually occurs at the beginning of the fall semester for each academic year.

V. MONITORING

SDCCD understand that OCR will not close the monitoring of this Agreement until OCR determines that it has fulfilled the terms of this Agreement and is in compliance with Section 504, Title II, and their respective implementing regulations.

SDCCD understand that by signing this Agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this Agreement. Further, it understands that during the monitoring of this Agreement, if necessary, OCR may visit any of its colleges, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether it has fulfilled the terms of this Agreement and is in compliance with the regulations implementing Section 504 and Title II at 34 C.F.R. §§ 104.4, 104.7, 104.43 & 104.44 and 28 C.F.R. §§ 35.106, 35.107 & 35.130, which were at issue in this matter.

SDCCD understands and acknowledges that OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of this Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9 & 100.10) or judicial proceedings to enforce this Agreement, OCR shall give it written notice of the alleged breach and a minimum of sixty (60) calendar days to cure the alleged breach.

San Diego Community College District

By: _____/s/_____
Constance M. Carroll, Ph.D
Chancellor

Date: 03/03/2015