



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

REGION IX
CALIFORNIA

50 UNITED NATIONS PLAZA
MAIL BOX 1200; ROOM 1545
SAN FRANCISCO, CA 94102

August 28, 2017

VIA ELECTRONIC MAIL

Mr. Jim Limbaugh
President
West Los Angeles College
9000 Overland Avenue
Culver City, California 90230

(In reply, please refer to # 09-16-2364.)

Dear President Limbaugh:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against West Los Angeles College (College). The Complainant alleged that the College discriminated against him on the basis of disability.¹ Specifically, OCR investigated the following issues:

1. Whether the College failed to ensure that the Complainant received the necessary academic adjustments or auxiliary aids which the College approved for the Complainant's Calculus 1 course; and
2. Whether the College failed to promptly and appropriately respond to the Complainant's complaints that a College employee was subjecting him to harassment that limited the Complainant's ability to participate in the course.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. §794, and its implementing regulation, at 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability in programs and activities operated by recipients of federal financial assistance. OCR is also responsible for enforcing 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. Title II prohibits discrimination on the basis of disability by public entities. As a recipient of federal financial assistance and as a public college, the College is subject to Section 504, Title II, and their implementing regulations.

To investigate this complaint, OCR conducted interviews, including, but not limited to, the Acting Vice President, Dean of Academic Affairs, Dean of Support Services, and the Calculus 1 Instructor, and reviewed documents and other information provided by the Complainant and the College. After careful review of the information gathered in the investigation, OCR concluded that the College did violate Section 504 and Title II with regard to the two issues OCR investigated. The legal standards, facts gathered, and the reasons for our determinations are summarized below.

¹ OCR previously provided the College with the identity of the Complainant. We are withholding his name from this letter to protect his privacy.

Issue 1: Whether the College failed to ensure that Complainant received the necessary academic adjustments or auxiliary aids which the College approved in Calculus 1.

Legal Standards

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 as 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.

Findings of Fact

Summer 2016

The Complainant was a student who enrolled in one course at the College during summer 2016, Calculus 1 with the Instructor. The Complainant is a veteran, and the Department of Veterans Affairs paid his summer 2016 bill, which totaled \$239.

The Complainant has attention-deficit/hyperactivity disorder (ADHD). On June XX, 2016, he completed the Disabled Students Programs & Services (DSPS) orientation and intake process at the College. The Complainant's Student Education Contract describes his educational limitations and authorized accommodations in the classroom and for test-taking. His authorized accommodations for test-taking included: supervised breaks for 3-4 minutes; 2 times extra time on tests; distraction-reduced setting. On June XX, 2016, the Complainant and a DSPS Counselor signed the Student Education Contract.

The Complainant also had an Academic Accommodations Authorization, specifically for his Calculus 1 course with the Instructor. The test-taking accommodations for Calculus 1 included extra time (double), distraction-reduced exam space, and use of a calculator with instructor permission. The DSPS Counselor told OCR that the DSPS office provides a distraction-reduced exam space for students with that accommodation. As with the Student Education Contract, the DSPS Counselor signed the Complainant's Academic Accommodations Authorization on June XX, 2016. The Complainant emailed the Instructor his Academic Accommodations Authorization.

The Complainant told OCR that he spoke to the Instructor on June XX, 2016 and June XX, 2016 about his accommodations for tests and quizzes. Calculus 1 contained short quizzes as well as tests, and the first test was scheduled for June XX, 2016 (Test 1). According to both the Complainant and Instructor, the Instructor told the Complainant that he does not give extra time on quizzes. The Instructor explained to OCR that quizzes involve students completing one homework question in class for five minutes, and it is not possible to have some students complete the quiz later because they will know the question, which is unfair to students who took the quiz in class. He also stated that it was not possible to allow students to complete the quiz at the same time but in a different setting because the Instructor cannot be in two places at once.

After the Instructor's statement of no extra time on quizzes, the Complainant went to the DSPS office to discuss the situation. The DSPS Counselor who granted the Complainant's accommodations emailed the Instructor on June XX, 2016 informing him of the Complainant's extended time accommodation for exams and quizzes and requesting that the Instructor provide the accommodation. The Instructor responded that it is not fair for students in the class that the same quiz is given to different students at different times. On June XX, 2016, the Dean of Support Services and the Instructor engaged in an email exchange in which the Dean of Support Services informed the Instructor that he may offer a different testing location to a student, but if a student requests to take a quiz at DSPS, the Instructor must permit it. The Instructor communicated in the email exchange that he believed the policy was unfair and stated that if it was the College policy he would no longer give quizzes in his class.

On June XX, 2016, the Complainant went to class, but he told OCR he sat outside to allow the class to take Test 1. The Complainant told OCR he tried to speak to the Instructor after class about how he would take Test 1, but the Instructor evaded him, saying he was busy and that he gave Test 1 to DSPS that morning. The Instructor denies trying to evade the Complainant and saying he was busy. According to the Complainant, he proceeded to ask the Instructor about the quiz the next day and quizzes moving forward, and the Instructor shouted in front of other students that he would not give extra time on quizzes and made statements that the College was declining and handing out degrees. The Instructor told OCR that he has made such statements to students.

After speaking with the Instructor about Test 1 and the quizzes, the Complainant went to the Math Department to speak with the Department Chair about the Instructor's statements. The Department Chair walked the Complainant to see the Dean of Academic Affairs, and the three of them discussed the Instructor's conduct. The Complainant told the Department Chair and Dean that the Instructor yelled at him and said Test 1 was at DSPS. The Department Chair suggested the Complainant take Test 1 on a different date because he was very upset and not in the state of mind to take the exam. The Department Chair stated to OCR it was implied that the Complainant would ask the Instructor to take Test 1 on a different date, and he is not sure if the Complainant did so. The Complainant told OCR that the Dean of Academic Affairs assured him that the situation with the Instructor would be addressed, and

the Dean told OCR that he began to investigate the allegations though he had a three day conference immediately after the meeting with the Complainant.

Test 1 was at DSPS on June XX, 2016, but the Complainant did not take Test 1 that day. The Complainant told OCR that he did not take Test 1 on June XX, 2016 because the Dean of Academic Affairs and the Math Department Chair said he could take the test the next day, on June XX, 2016. The Dean of Academic Affairs denied he said this, and the Math Department Chair told OCR he suggested the Complainant speak to the Instructor about taking Test 1 on a different date. The Instructor went to DSPS on June XX, 2016 at 9 AM to pick up the test because he intended to discuss the test in class, and he believed the Complainant sat for the test the previous afternoon. Because the Instructor collected Test 1 from DSPS, the Complainant was unable to take Test 1. The Instructor told OCR that he later learned that the Dean of Academic Affairs and the Math Department Chair told the Complainant to take Test 1 on a different day without telling him.

The Complainant told OCR he filed a grievance on the College's website on June XX, 2016. The College told OCR that there is no grievance submitted by the Complainant on its online student grievance database.

On June XX, 2016, the Complainant also emailed a grievance letter to the Board of Trustees and copied the Instructor, Math Department Chair, Dean of Support Services, Dean of Academic Affairs, and DSPS Counselor, stating that the Instructor was denying the Complainant his rights as a student with disabilities. The Complainant's grievance letter detailed the Instructor's rejection of the Complainant's authorized accommodations, including his statements about never giving extra time on quizzes and that such accommodation requests were why the College was declining and that the College was just handing out degrees. The Complainant wrote that he felt "belittled, humiliated, insignificant, and plain disrespected for multiple days in this class."

On the same day, the Instructor replied to the Complainant's emailed grievance letter, stating he provided Test 1 to DSPS on the morning of June XX, 2016 and the Complainant was supposed to take the test at DSPS in the afternoon. He collected Test 1 on June XX, 2016 because the class was going to discuss the test. The Instructor also clarified that he would no longer be giving quizzes in the class after an email from DSPS regarding quizzes.

On July X, 2016, the Complainant asked the Instructor if he sent Test 2 to DSPS so he could receive his accommodations. According to the Complainant, the Instructor replied stating that he had not received the paperwork for the approved accommodation. The Instructor denied to OCR that he made the statement. The Complainant told OCR that the Instructor required the Complainant to take Test 2 at the Math Center, not DSPS. After class, the Complainant went to the Math Center to take Test 2, and the Complainant told OCR that there were students, teachers, and tutors creating a disturbance while he took the test. The Instructor told OCR that he gave the Complainant the option to take Test 2 at the Math Center, and the Instructor put the Complainant in an empty office at the end of a corridor, so it was quiet and there was no foot traffic.

On July XX, 2016 and July XX, 2016, there was a series of emails among the Dean of Academic Affairs, Math Department Chair, and the Instructor about the Complainant's accommodations and how the Instructor should communicate with the Complainant.

On July XX, 2016 at 12:51 PM, the Complainant emailed the Dean of Academic Affairs to describe an interaction with the Instructor in which the Instructor refused to permit the Complainant to take Test 1. The Complainant also wrote that he filed a complaint on the College website three weeks earlier and stated that at that point he would no longer be able to pass the class. He expressed frustration and asked about what would be the next course of action.

On July XX, 2016, the Complainant sent the Dean of Academic Affairs another email about the Instructor's conduct that day. In the email, the Complainant described giving the Instructor the Disabled Student Center Proctoring Sheet, which allowed him to take Test 3, scheduled for July XX, 2016, at DSPS. According to the Complainant, as he gave the Instructor the DSPS quiz/exam check sheet, the Instructor told him that he could not take the test at DSPS and had to take it at the Math Center. According to the Complainant, even after explaining that the Math Center was disruptive, the Instructor insisted that he take the exam there and stated in front of other students that students have cheated on tests administered at DSPS. The Instructor told OCR he did not recall receiving any documents about accommodations in the middle of the semester, and he may have told the Complainant that students who take tests at DSPS cheat. The Instructor told OCR he did not bar the Complainant from taking the test at DSPS but instead gave the Complainant the option to take the test at the Math Center. According to the Instructor, sometimes DSPS loses a test or administers the wrong test. Furthermore, the Instructor told OCR DSPS is unable to stop students from cheating by taking photos of the tests on their phones, and DSPS does not care about security the way that professors do.

On July XX, 2016, the Acting Vice President, Dean of Support Services, and Instructor met to discuss the Complainant's concerns. The Acting Vice President initially called for meeting in a June XX, 2016 email, and she told OCR that during the three weeks it took to schedule the meeting, the Instructor eliminated quizzes so the only remaining issue was his accommodation to take exams at DSPS. The Acting Vice President's notes from the July XX meeting show that she, the Dean of Support Services, and the Instructor discussed and developed a plan for the Complainant. The Acting Vice President told OCR that she did not speak to the Instructor about the alleged discriminatory statements because the purpose of the meeting was to ensure the Instructor provided the authorized accommodations for upcoming exams. The Acting Vice President's notes show the Instructor agreed to offer exams in DSPS office in his presence and options were sent to the Complainant.

The Acting Vice President did not communicate directly with the Complainant regarding the outcome of the July XX, 2016 meeting. Instead, she sent an email to the Dean of Academic Affairs on July XX, 2016, and the content of the email was a letter addressed to the Complainant that described a plan for the remaining tests in Calculus 1. A schedule was established that allowed the Complainant to take the remaining tests at DSPS. For instance, the email stated that the Complainant would take Test 3 on July XX, 2016 at DSPS. On July XX, 2016 at 9:50 AM, the Dean of Academic Affairs forwarded the Acting Vice President's email to the Complainant.

The Complainant told OCR that he called the Dean of Academic Affairs on July XX, 2016, and the Dean said the Instructor and the Acting Vice met the previous week and decided that the Complainant would take Test 3 that day, July XX. The Complainant was upset that he was just learning this news and asked why he was not made aware the prior week when the decision was made. The Complainant stated that he then told the Dean of Academic Affairs that he was dropping Calculus 1. The Dean of Academic Affairs told OCR he does not recall speaking to the Complainant by phone on July XX, 2016, but the Acting Vice President told OCR that the Dean spoke to the Complainant that day and the Complainant said he was dropping the class.

The Complainant withdrew from Calculus 1 on July XX, 2016, and he has a W for withdrawal on his transcript.

Analysis

OCR found that the College failed to provide the Complainant with the academic adjustments approved for him in Calculus 1. The Section 504 regulations 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. Under the Title II regulations, 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 as 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. The Complainant is a qualified individual with a disability who complied with the College's procedures to request academic adjustments. The DSPS Counselor and the Complainant engaged in an interactive process to determine the test-taking adjustments needed for him in Calculus 1, including extra time and distraction-reduced exam space. The DSPS Counselor told OCR that DSPS offers a distraction-reduced exam space in its office for students who receive this accommodation, and the Dean of Support Services emailed the Instructor on June XX, 2016 instructing him on the College's obligation to accommodate students with disabilities. Despite approving the academic adjustments and communicating them to the Instructor, the College did not timely or reasonably provide the Complainant with academic adjustments.

In this case, the Complainant did not have academic adjustments for Test 1, 2, or 3. Test 1 was scheduled for June XX, 2016, and the Complainant spoke to the Instructor on June XX and June XX, 2016 about his approved accommodations for extra time and testing taking at the DSPS office. Both times, the Instructor responded that he does not give extra time on quizzes. The Instructor acknowledged that he may have stated that extra time was causing the College to decline and that they were just handing out degrees. Because the Instructor's statement upset the Complainant, he went to see the Math Department Chair and Dean of Academic Affairs. There is disagreement about whether the Math Department Chair and Dean of Academic Affairs advised the Complainant to take Test 1 on a different date, but regardless, the Complainant did not take Test 1 at the DSPS office on June XX, 2016. The Math Department Chair and Dean of Academic Affairs attempted to investigate the Complainant's concerns about the Instructor related to the provision of accommodations, but they did not address the outstanding issue of Test 1 at DSPS on June XX, 2016. Thus, the Complainant did not take Test 1 at all.

The Complainant did not receive his approved academic adjustments for Test 2 on July X, 2016. The Complainant told OCR that the Instructor would not allow him to take Test 2 at DSPS despite his request, instead requiring him take the test at the Math Center. The Instructor told OCR he gave the Complainant a choice to take Test 2 at the Math Center. However, at this point, the Instructor had received the June XX, 2016 emails from the Dean of Support Services informing him that he must allow a student to use the DSPS office for testing if a student asks for it. The Complainant asked to take Test 2 at DSPS, and OCR found the Student credible in his statement that Instructor did not oblige; the evidence also supported the statement because the Student took the exam at the Math Center. OCR also notes that the Student reported that the Math Center was not a distraction-free environment because tutors, students and others were talking while he was taking Test 2. Thus, the Complainant did not receive his approved academic adjustment for Test 2.

Lastly, Test 3 was scheduled for July XX, 2016. On July XX, 2016, the Complainant asked to take Test 3 at DSPS. According to the Complainant, the Instructor refused, saying the Complainant took the last test at the Math Center and expressed concerns about cheating at DSPS. According to the Instructor, he gave the Complainant a choice between DSPS and the Math Center and he commented on the lax supervision and poor test administration at DSPS. As stated above, DSPS determined that the appropriate testing location to ensure a distraction-reduced environment for the Complainant was at DSPS; the Instructor was advised by DSPS that the Complainant must be allowed to use DSPS as the distraction-reduced testing location upon request. The Acting Vice President, Dean of Support Services, and Instructor met on July XX, 2016 to develop a plan to provide the Complainant with his approved academic adjustments for the rest of Calculus 1. Though the plan required the Complainant take Test 3 on July XX, 2016, the Complainant was not made aware of the plan until the morning of July XX, 2016. Thus, OCR finds the College violated Section 504 and Title II and their implementing regulations by failing to provide the Complainant with his approved academic adjustments.

Issue 2: Whether the College failed to promptly and appropriately respond to Complainant's complaints that a College employee subjected Complainant to harassment that limited Complainant's ability to participate in the course.

Legal Standards

The Section 504 regulations, at 34 C.F.R. §104.7(b), require a recipient employing 15 or more persons to adopt grievance procedures that incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints alleging disability discrimination. The Title II regulations, at 28 C.F.R. §35.107(b), similarly require a public entity employing 50 or more persons to adopt and publish prompt and equitable grievance procedures.

OCR evaluates the appropriateness of the responsive action to alleged discrimination on the basis of disability by assessing whether it was prompt, adequate, and effective. What constitutes a reasonable response to discrimination will differ depending upon the circumstances. However, in all cases the college must promptly conduct an impartial inquiry designed to reliably determine what occurred. The response must be tailored to stop the discrimination, and remedy the effects of the discrimination on the student who was discriminated against. The college must also take steps reasonably calculated to prevent the discrimination from recurring.

Other actions may be necessary to repair the educational environment. These may include special training or other interventions, the dissemination of information, new policies, and/or other steps that are designed to clearly communicate the message that the college does not tolerate discrimination and will be responsive to any student reports of discrimination. The college also should take steps to prevent any retaliation against the student who made the complaint or those who provided information.

Findings of Fact

Policies and Procedures for Grievances

The West Los Angeles College 2014-2016 Catalog (revised Fall 2015) contains at least two procedures for students at the College who have complaints or grievances. For instance, the Catalog contains a formal grade grievance process, but also an informal, initial multi-step procedure of contacting and discussing the matter with the person involved before contacting the appropriate chairperson, and then contacting

the appropriate Dean of Academic Affairs. In addition, the Catalog contains a procedure for “Prohibited discrimination complaints (including sexual harassment claims)”. The Catalog does not make clear which process should be used for resolving complaints related to academic adjustments or disability-based discrimination.

In addition to the Catalog, grievance procedures can be found on the College’s website. The webpage titled “Student Grievance and Complaint Resolution Process”² states, “Most student complaints, grievances or disciplinary matters should be resolved at the campus level.” Underneath there are nine bullet points, each linking to another webpage. The nine bullet points include items such as grade grievances, issue with admissions, counseling, and financial aid, discipline, parking, and others areas. Of the nine bullet points on the “Student Grievance and Complaint Resolution Process” webpage, three may reasonably be viewed as relevant to a student alleging disability-based discrimination by a professor: General Information about the Complaint Process; Problem with my Class and/or Professor; and Unlawful Discrimination / Sexual Harassment Complaints (District Compliance Office).

When the “General Information about the Complaint Process” link is selected, a new webpage titled “Grievances and the Role of the Ombudsperson (Administrative Regulation E-55)”³ opens. The webpage states: “The purpose of Administrative Regulation E-55 is to provide students a prompt and equitable means for resolving student(s) grievances or complaints. The grievance procedure may be initiated by one or more students who reasonably believe he/she/they have been subject to unjust action or denied rights involving their status or privileges as students.” The webpage itself does not indicate that this policy and procedure does not apply to allegations of discrimination. Instead, a visitor to the webpage would need to select the hyperlinked “Administrative Regulation E-55” phrase, which opens a PDF document that describes Administrative Regulation E-55 as a process to address grade grievances.

When the “Problem with my Class and/or Professor” link is selected, a new Google form webpage⁴ opens. The Google form webpage is titled “Student Complaint Form: Professor/Class Complaint,” and states:

Your complaint is important to us. Please note that this form is for students to file a complaint about an instructor or class. Students wishing to file a grade grievance should consult the WLAC website Policies page at www.wlac.edu/Policies/Grievance.aspx. Once you SUBMIT this form, your complaint will be forwarded to the Office of Academic Affairs for follow-up. We will respond to your [Los Angeles Community College District (LACCD)] email account in 5 business days.

The first item on the Google form states and asks: “Prior to filing this complaint, students are required to first meet with the instructor and then that instructor’s department chair. Have you done so?”

When the “Unlawful Discrimination / Sexual Harassment Complaints (District Compliance Office)” link is selected, the LACCD Office of Diversity Programs webpage⁵ opens. The LACCD Office of Diversity Programs webpage contains hyperlinks to the a webpage titled “Discrimination,”⁶ which contains the Summary LACCD Prohibited Discrimination and Harassment Policy, Unlawful Discrimination Complaint

² <http://www.wlac.edu/Policies/Grievance.aspx>

³ <http://www.wlac.edu/Policies/Grievance/Ombudsperson.aspx>

⁴ <https://docs.google.com/forms/d/e/1FAIpQLScok5ZKStORGhrImkvwY8rJbpivj4ZHEfuqlbCQ-wZB4Pv-ow/viewform>

⁵ <https://www.laccd.edu/FacultyStaff/diversity/Pages/default.aspx>

⁶ <https://www.laccd.edu/FacultyStaff/diversity/Pages/Discrimination.aspx#harassment>

Form, and contact information for the Office of Diversity Programs. The Summary LACCD Prohibited Discrimination and Harassment Policy includes a non-discrimination statement and lists physical or mental disability among other protected bases. According to the 2012 and 2015 Summary of LACCD Policy, “[a]ny employee who becomes aware of a situation which could reasonably be perceived as a violation of this policy should refer it to the Office of Diversity Programs.” There is an informal and formal procedure to address complaints of discrimination. Under the informal procedure, the compliance officer will investigate and resolve the charges in 30 days. If a resolution is reached, the officer will draft a Settlement Agreement for the complainant and alleged offender to sign, and the officer will monitor to ensure proper implementation of the resolution.

The formal procedure requires a written complaint on the LACCD Complaint Form, and the compliance officer will investigate and provide a written report to College President or Deputy Chancellor within 60 days. The complainant and alleged offender can provide an oral statement to the College President or Deputy Chancellor, who will independently assess whether the preponderance of the evidence establishes a violation and what actions must be taken. The complainant and alleged offender will receive a written decision within 90 days from the start of the investigation. The complaint procedure further discusses disciplinary action, appeals, and additional remedies.

In addition to the discrimination grievance policies and procedures found online, OCR also asked administrators at the College about grievance procedures for students who feel an instructor is discriminating against them on the basis of disability. The Dean of Support Services, Math Department Chair, Dean of Academic Affairs, and Acting Vice President each described an “informal” process by which the student should first speak to the department chair who supervises the instructor. If the department chair, after meeting with the student and instructor, is unable to resolve the issue, then the student should speak with the dean of academic affairs overseeing the department. If the Dean is unable to resolve the issue, then the student should see a vice president, for instance the Vice President of Academic Affairs or Vice President of Student Services depending on the nature of the issue. According to the Acting Vice President and Dean of Academic Affairs, student grievances involving discrimination are referred to the Office of Diversity. The Dean of Support Services also explained that the formal process for discrimination complaints goes through the Office of Diversity. According to the Math Department Chair and Dean of Academic Affairs, the outcome provided through the “informal” process is typically an email to the student letting the student know how the College is responding to the concerns.

The Math Department Chair, who—like all department chairs—is the first line responder to student concerns with a math instructor, told OCR he received very limited training and is not experienced with resolving complaints involving one party saying one thing and another party denying it.

The Complainant’s Complaints of Disability Discrimination

As stated above under Issue 1, the Complainant alleged that the Instructor refused to provide the approved accommodations from DSPS and verbally harassed the Complainant based on disability. The Complainant shared these concerns with the College. Specifically:

- On June XX, 2016, he told the DSPS Counselor the Instructor would not provide extended time on exams and quizzes.
- On June XX, 2016, the Complainant spoke to the Math Department Chair and the Dean of Academic Affairs about the Instructor’s failure to accommodate and the Instructor’s statements

that he would not provide accommodations and the College was declining and just handing out degrees.

- On June XX, 2016, the Complainant said he filed a grievance on the College's website. The College told OCR that there is no grievance submitted by the Complainant on its online student grievance database.
- On June XX, 2016, the Complainant also emailed the Board of Trustees, copying the Instructor, Math Department Chair, Dean of Support Services, Dean of Academic Affairs, and DSPS Counselor, reiterating the same allegations of disability discrimination.
- On July XX, 2016, the Complainant met with the Dean of Academic Affairs about ongoing challenges with the Instructor.
- On July XX, 2016, the Complainant emailed the Dean of Academic Affairs regarding the failure to provide accommodation for tests, expressing his frustration and asking what would be the next course of action.
- On July XX, 2016, the Complainant sent the Dean of Academic Affairs another email about the Instructor's failure to provide accommodations for Test 3 and harassing statements about students with disabilities cheating.

In response to the Complainant's allegations, College administrators contacted the Instructor. For instance, on June XX and XX, 2016, the DSPS Counselor and Dean of Support Services emailed the Instructor about accommodating the Complainant. On July XX and XX, 2016, the Dean of Academic Affairs emailed the Instructor to meet the Complainant to discuss the Complainant's concerns.

The Dean of Academic Affairs also told OCR he began to investigate the Complainant's allegations of disability discrimination after meeting the Complainant on June XX, 2016. The Dean of Academic Affairs told OCR that it was "shocking" that the day after meeting the Complainant about his concerns, the Complainant sent an email to the Board of Trustees outlining his concerns. The Math Department Chair, Dean of Support Services, Dean of Academic Affairs, and DSPS Counselor, who were all copied on the email to the Board of Trustees, did not respond to the Complainant's June XX, 2016 email complaint. The DSPS Counselor told OCR he did not respond because his supervisor, the Dean of Support Services, was copied. The Dean of Support Services did not respond because he was awaiting instructions from administrators above him. The Math Department Chair did not respond because he assumed high level administrators would respond. The Dean of Academic Affairs did not respond because the Complainant emailed the Board of Trustees, and he was in the midst of investigating the matter after his June XX, 2016 meeting with the Complainant. The only person who responded to the Complainant's June XX, 2016 email complaint was the Instructor.

The Acting Vice President learned of the Complainant's June XX, 2016 email complaint on June XX, 2016 and emailed the Math Department Chair and the Dean of Support Services. She wrote that they needed to meet with the Complainant and the Instructor, create a plan so that the Complainant could be tested at DSPS, and asked whether there was another class the Complainant could transfer into. The Math Department Chair responded that there was not another class that the Complainant could transfer into. He also wrote that he and the Dean of Academic Affairs met with the Complainant on June XX, 2016 after the initial incident in class, and he also called the student on June XX, 2016 around the time when the Complainant's letter was sent to the Board of Trustees.

Though the Acting Vice President stated she wanted a meeting with the Instructor on Monday, June XX, 2016, the meeting did not take place until three weeks later. As stated above in the section about Issue 1, the Acting Vice President, Dean of Support Services, and Instructor met on July XX, 2016 to discuss the

Complainant's allegations of disability discrimination. The Acting Vice President told OCR she did not speak to the Instructor about the alleged discriminatory statements because the purpose of the meeting was to ensure the Instructor provided the authorized accommodations for upcoming exams. The Acting Vice President drafted an email to the Complainant that described how his accommodations would be provided for the remaining exams and the final. The email did not contain findings on whether the Instructor failed to provide the accommodations for previous tests or whether the Instructor created a hostile environment with harassing comments about students with disabilities. The Dean of Academic Affairs forwarded the Acting Vice President's email to the Complainant on July XX, 2016.

In addition to the July XX, 2016 meeting to discuss the Complainant's concerns, the Acting Vice President called a second meeting. She emailed the Instructor and Math Department Chair on July XX and XX, 2016 to schedule a meeting regarding the Instructor's "initial lack of compliance with the process and clarify future expectations." The meeting took place on July XX, 2016, and the Acting Vice President, Instructor, and Math Department Chair discussed DSPS guidelines and accommodations, the Instructor's concerns about cheating at DSPS, and the statements the Complainant attributed to the Instructor. According to the Acting Vice President, the Instructor said some statements were taken out of context but he also confirmed he made statements about cheating at DSPS and that the College is going downhill as a result of providing such accommodations and allowing students with disabilities to take exams at DSPS.

The College told OCR that the investigation of the Complainant's concerns occurred through the July XX and July XX, 2016 meetings. The College also told OCR that they did not provide any notice of the outcome of its investigation, other than the July XX, 2016 email to the Complainant with a plan for the remaining tests in the Instructor's course.

The Dean of Academic Affairs told OCR that he and the Acting Vice President did not refer the Complainant's concerns to the Office of Diversity because, by the time they developed a plan for the Complainant's testing accommodations for the remainder of the course, the Complainant dropped the class. The Dean of Academic Affairs also told OCR there were no steps to remedy the classroom environment after the Complainant's allegation of disability harassment because the concerns were limited to the Complainant and no other students complained.

The College told OCR that the Office of Diversity did not conduct an investigation according to its LACCD Prohibited Discrimination and Harassment Policy.

Analysis

OCR first examined the College's grievance procedures to evaluate whether they provided a prompt and equitable process for responding to complaints of disability discrimination. In doing so, OCR examines a number of factors, including whether the procedures provide for the following: notice of the procedure to students and employees, including where to file complaints; adequate, reliable, and impartial investigation of complaints; designated and reasonably prompt timeframes for major stages of the complaint process; notice to the parties of the outcome of the complaint; and an assurance that steps will be taken to prevent recurrence of any discrimination and to correct its effects.

In this case, the College has multiple grievance procedures, and it is not clear which one applies to a situation of harassment or discrimination toward a student based on disability by a faculty member. For instance, the Catalog describes an informal resolution process of contacting and discussing the matter

with the person involved before contacting the appropriate chairperson, and then contacting the appropriate Dean of Academic Affairs. The Catalog also states that discrimination complaints should be directed to the LACCD Office of Diversity. In addition to the Catalog, the College website offers grievance policies and procedures, including: "Grievances and the Role of the Ombudsperson (Administration Regulation E-55)," which applies to "unjust action" to students but does not clearly state on the webpage that it does not apply to allegations of discrimination; "Problem with my Class and/or Professor," which is a Google form that is forwarded to the Office of Academic Affairs; and, "Unlawful Discrimination / Sexual Harassment Complaints (District Compliance Office)," which links to the LACCD Office of Diversity. Aside from the Catalog and College website, the LACCD Office of Diversity contains the Summary LACCD Prohibited Discrimination and Harassment Policy. The variety of grievance procedures is confusing, and the procedures are difficult to access because some contain multiple layers, different points of contact, and the requirement to meet first with the alleged harasser.

While the Summary LACCD Prohibited Discrimination and Harassment Policy outlines adequate, reliable, and impartial investigation processes and designated and reasonably prompt timeframes in the formal complaint process, the College did not follow this process with regard to the Complainant's complaints. The informal process in the Catalog (and the similar informal process described by College administrators) lacks timeframes and procedures, other than instructing a student to contact the alleged harasser before the department chair before the Dean of Academic Affairs. As to requiring a student to speak to an alleged harasser before filing a complaint without any facilitation by the College, this may not only deter a student(s) from pursuing or filing legitimate discrimination or harassment claims but also could result in further harassment for the student. In addition to not providing timeframes and procedures and requiring the student to speak with the alleged harasser before accessing other complaint resources, the College has not provided training to department chairs who are tasked with resolving such complaints. In this regard, the Math Department Chair told OCR he received very limited training on investigations and is not experienced with resolving complaints that contain contradictory evidence. Based on the evidence gathered, OCR finds the informal process described in the Catalog violates Section 504, Title II, and their implementing regulations which require a prompt and equitable grievance procedure alleging any action prohibited by the statutes and their regulations.

The College utilized the informal process in response to the Complainant's complaint about disability harassment and discrimination by the Instructor. Where the allegations filed with OCR have been investigated through a recipient's internal grievance procedures, OCR first thoroughly reviews all documentation of the recipient's investigation and resolution of the complaint to determine whether the recipient provided a resolution and remedy using legal standards that meet Section 504 and Title II and a comparable process that meets OCR's requirements. If OCR finds that that the recipient has not met these requirements, OCR will conduct its own independent investigation or develop a remedy appropriate to address the issue of noncompliance.

Though the Acting Vice President, Dean of Academic Affairs, and Dean of Support Services told OCR that discrimination complaints go directly to the Office of Diversity, the Complainant's complaint remained in the informal process and the Office of Diversity did not investigate the Complainant's complaint according to the LACCD Prohibited Discrimination and Harassment Policy.

In this case, the Complainant spoke to the Instructor on June XX and XX, 2016, then he complained about disability discrimination to the DSPS Counselor on June XX, 2016, to the Math Department Chair and Dean of Academic Affairs on June XX, 2016, and finally to the Board of Directors as well as the Instructor, Math Department Chair, Dean of Support Services, Dean of Academic Affairs, and DSPS

Counselor on June XX, 2016. The DSPS Counselor, Dean of Support Services, Math Department Chair, and Dean of Academic Affairs communicated with the Instructor after learning of the Complainant's complaint, but these efforts did not effectively resolve the allegation of harassment and discrimination as the Instructor continued to remark negatively about the process for accommodating students with disabilities and deny the Complainant his approved academic adjustments. The Dean of Academic Affairs knew of the Complainant's concerns because the Complainant emailed and met with the Dean during the first half of July 2016 to express his continued concerns.

When the Acting Vice President finally met with the Instructor on July XX, 2016, three weeks after the Complainant's June XX, 2016 complaint to the Board of Directors and various administrators, she did not speak to the Instructor about the alleged discriminatory statements because she hoped to resolve the issue of providing accommodations. The Acting Vice President drafted an email with a plan to ensure the Complainant would receive his approved testing accommodations, but the email did not contain findings on whether the Instructor failed to provide accommodations for previous tests or whether the Instructor harassed the Complainant. The Acting Vice President met again with the Instructor on July XX, 2016 to discuss the Instructor's alleged statements, and the Instructor stated some statements were taken out of context and confirmed the statements about cheating at DSPS and the College going downhill. During her investigation of the Complainant's discrimination complaint, the Acting Vice President did not interview the Complainant or other students in the Instructor's class. The evidence gathered does not show what conclusion she came to with regards to the allegation of disability harassment and discrimination. After the July XX, 2016 meeting, the Acting Vice President did not issue any notice of outcome to the Complainant or the Instructor. The Dean of Academic Affairs told OCR the College did not take steps to remedy the classroom environment because the issues were limited to the Complainant and no other students complained, but the burden to investigate a hostile environment lies with the College, not students in the Instructor's class.

Ultimately, the Complainant withdrew from the Instructor's course on July XX, 2016 because the informal process did not quickly ensure he received his approved academic adjustments or adequately address the Instructor's continued statements about students with disabilities.

Accordingly, OCR found sufficient evidence that the College failed to promptly and appropriately respond to the Complainant's complaint that the Instructor subjected him to disability-based harassment that limited the Complainant's ability to participate in the course.

Conclusion

This concludes the investigation of this complaint.

To address the issues alleged in the complaint, the College, without admitting to any violation of law, entered into the enclosed resolution agreement which is aligned with the complaint allegations and the findings and information obtained by OCR during its investigation. Pursuant to the resolution agreement, the College will reimburse the Complainant for Calculus 1 and remove the Withdrawal grade on his transcript. In addition, the College will develop one written procedure to promptly resolve situations where a College instructor refuses to implement an approved accommodation and remove any grievance policy or procedure that contradicts this one procedure. All changes to policies and procedures will be disseminated to students and faculty, including through a DSPS handbook, and the College will affirm its responsibilities to ensure prompt provision of approved accommodations and secure compliance of all College employees with Section 504, Title II, and their implementing

regulations. Lastly, the College will investigate the Complainant's reports of disability discrimination by the Instructor during summer 2016 and provide remedies, if appropriate.

Based on the commitments made in the enclosed resolution agreement, OCR is closing the investigation of this complaint as of the date of this letter, and notifying the Complainant concurrently. When fully implemented, the resolution agreement is intended to address all of OCR's compliance concerns in this investigation. OCR will monitor the implementation of agreement until the College is in compliance with Section 504, Title II, and their implementing regulations, which were at issue in the case.

OCR's determination in this matter should not be interpreted to address the College's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. We are notifying the Complainant simultaneously of OCR's determination. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

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.

Please be advised that the College may not harass, coerce, intimidate, retaliate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the Complainant may file another complaint alleging such treatment.

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 the law, personal information that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact Annie Lee, Civil Rights Attorney, at 415-486-5594 or Annie.Lee@ed.gov.

Sincerely,

/s/

Zachary Pelchat
Team Leader

cc: Dr. Albert J. Roman, Vice Chancellor, Human Resources, Los Angeles Community College District (by email only)

Enclosure (1): Resolution Agreement